

INTERNATIONAL CONFERENCE MATERIALS

**ENFORCED AND INVOLUNTARY
DISAPPEARANCES IN DICTATORSHIP
AND AUTHORITARIAN PAST AND
CONTEMPORARY SETTINGS:**

**A SOCIAL, LEGAL, AND HISTORICAL
APPRAISAL OF TRANSITIONAL
AND TRANSFORMATION POLICES
AND MECHANISMS**

13-15 December 2021



Organization for Security and
Co-operation in Europe
Presence in Albania

INTERNATIONAL CONFERENCE

**Enforced and involuntary disappearances
in dictatorship and authoritarian past and
contemporary settings: a social, legal,
and historical appraisal of transitional and
transformation polices and mechanisms**

13-15 December 2021

Organized in hybrid format by

OSCE Presence in Albania

Centre for Justice and Transformation/University of Tirana

Donor

Federal Republic of Germany

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Opening remarks by Ambassador Vincenzo Del Monaco

Honourable Ministers, Honourable Rector of the University of Tirana, Your Excellency Ambassador Zingraf, Distinguished speakers and panellists, Dear participants,

I welcome you with great satisfaction today for the opening of this international conference on the issue of enforced disappearances and missing persons.

By getting together and engaging in concerted action, we support the Albanian State and the Albanian society to effectively address this crime of the communist regime.

Reconciliation through recognition and redress is the moral ingredient of social peace here and anywhere else.

Given the manifold relevance of addressing this crime of the communist past, this international conference can act as a catalyst for further action and I would like to take this opportunity to thank the donor of this project, represented here by the Ambassador of Germany, for its generous financial contribution. Dear Peter, this conference would not be possible without your utmost support.

I also wish to once again thank the co-organizer of this conference – the Centre for Justice and Transformation at the University of Tirana, established with support of the Presence to foster academic debate in the field of transitional justice.

And, of course, my team, who, faced with numerous challenges caused by the COVID-19 pandemic, were able to bring together this extraordinary panel, both online and here in-person.

Dear participants,

I love being amongst such a diverse and fascinating group of scholars, practitioners, advocates and high-level officials gathered here today. I recognize the enormous value of your expertise and of the exchange of experience, being convinced that academic research can add a valuable perspective through its unique approach to finding the truth: analytical rigour, ethical drive and the use of empirical information.

Over the course of the next three days, the issue of enforced and involuntary disappearances will be examined from social, legal, and historical perspectives reflecting different realities many societies both within and beyond the OSCE region experienced in restoring freedom and democratic rule.

Through interactive panel discussions and presentations of cutting-edge research papers from around the world, participants will be able to explore and rethink the issue of the missing in different national contexts from an inter-disciplinary point of view.

Because addressing the issue of enforced disappearances and missing persons effectively is not a simple administrative matter.

- All institutions have a role to play: lawmakers, the Prosecution service, the Authority for Information on Former State Security Documents.
- *Academia and civil society.*
- Robust inter-agency co-operation is of essence.
- Political will is equally important to making available technical and financial resources.
- Raising public awareness about the importance of this process and the progress in addressing these crimes is of crucial importance.
- *Because addressing these crimes concerns the right to life of all citizens and in doing so carries serious responsibility to act on the part of all responsible.*

By ratifying the *International Convention for the Protection of All Persons from Enforced Disappearances* and other international legally binding treaties, the Government of Albania is under obligation to conduct effective investigation to it as a continuous offence with no statute of limitation.

On numerous occasions, Albania reaffirmed its commitment to investigate and punish the crimes and violations of human rights committed under the communist regime, and to search, locate and identify remains of persons executed by the regime.

- Notably, in 2018, following a decade of systematic efforts, the Memorandum of Understanding has been signed between the Government of Albania and the International Commission on Missing Persons.
- It marked a stepping stone in recognizing the need for inter-agency cooperation in identification and recovery of the bodies of the missing persons; and also the first systematic attempt of the Albanian Government to find the remains of those missing.

However, as my colleagues informed me, not one single case has been solved successfully to date. Justice and reconciliation is still pending for the relatives of an estimated six thousand persons classified as missing because of judicial or extrajudicial imprisonment or executions carried out between 1945 and 1991. Evidence suggests that the relatives of the missing are often compelled to undertake identification and, in some cases, perform arduous excavation of suspected mass graves single-handedly. This raises questions...

Working closely with the Albanian institutions and civil society, the Presence has been involved in enhancing institutional capacities, supporting legislative and policy-making efforts as well as the promotion of academic and policy debate on the issue of missing persons in Albania.

We supported the creation of the specialized Centre for Justice and Transformation at the University of Tirana whose kind co-operation in organizing this conference could not be overstated. And through the establishment of the Centre, the Presence supported a great number of young Albanian researchers who undertook study projects in various fields of transitional justice.

Last month, together with the University of Tirana we launched a first of its kind interdisciplinary Master programme in Transitional Justice aimed to foster research and public awareness about social, political, and legal issues related to transitional justice.

Most recently, in view of fostering the much-needed inter-agency cooperation to advance the identification and recovery of the bodies of missing persons, the Presence held a technical workshop. For the first time, all relevant national and international bodies gathered around to discuss the issue and enhance their coordination efforts.

Ladies and gentlemen,

I trust that this conference will serve as a platform for an honest and open debate on ways in which addressing the past will pave the way forward.

Lastly, I would like to extend my warmest welcome to the relatives of missing persons who are here to share their experience uncovering the truth about the disappearances of their beloved ones over the next few days.

I am convinced that by listening to your testimonies, acknowledging your pain and struggle, and truly embracing your experience and expertise has a potential to help us to identify gaps and opportunities in implementing effective and meaningful solutions on the ground to alleviate the pain and provide restorative justice and reconciliation.

No strategy, policy or mechanism would be effective if it did not reflect your experience and serve to protect the dignity of your relatives.

I therefore thank you for your kind participation and wish everyone an engaging and fruitful conference.

Ambassador Vincenzo Del Monaco

Head of OSCE Presence in Albania

International Conference

ENFORCED AND INVOLUNTARY DISAPPEARANCES IN DICTATORSHIP AND AUTHORITARIAN PAST AND CONTEMPORARY SETTINGS: A SOCIAL, LEGAL, AND HISTORICAL APPRAISAL OF TRANSITIONAL AND TRANSFORMATION POLICES AND MECHANISMS

About the Conference

Both in the OSCE region and beyond, the fate of the missing is an issue of concern for many countries that have experienced authoritarian regimes and dictatorship. Relatively common features include limited progress in the finalization of the lists and records of the missing persons, as well as in the search of the execution places and potential grave location; lack of strategies and a decrease in the financial and human resources devoted to these tasks. In addition, in many countries financial compensation for victims and their relatives remains insufficient and barely reflects the moral and psychological suffering endured since the alleged disappearance. Not unfrequently, identification and excavation of burial sites are promoted and funded by the relatives of the missing persons. Moreover, the current legal framework in force in countries in the OSCE region and beyond requires at times significant amendments as to the definition, typology and timeframe of the alleged criminal offences and their investigation, to the technical processes and their deadlines as well as to the stakeholders and the modalities of the cooperation among them. Enquiring about and locating persons unaccounted for constitutes a state's obligation enshrined first and foremost in the International Convention for the Protection of All Persons from Enforced Disappearances (ICIPED), according to which enforced disappearance constitutes a crime against humanity when practised in a widespread or systematic manner, and states are under the obligation to make the offence of enforced disappearance punishable by appropriate penalties and to investigate it as continuous offence. Those obligations are linked to and complement multiple human rights foreseen and protected by a number of international instruments. Said rights range from right to security, liberty and dignity of the person to the right to life, the right not to be subjected to torture or degrading treatment or punishment, the right to a family life, the right to recognition as a person before the law, the right to effective and official investigations, etc. Against this background, the Conference aims to bring together academics, practitioners and policy makers from any region of the world that experienced authoritarian regimes and dictatorship to explore and rethink the issue of the missing in transitional justice and transformation settings to foster human rights and rule of law.

Date

13, 14 and 15 December 2021

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MAK Albania Hotel, Illyria I, Tirana

Language

English (with simultaneous translation from and to Albanian)

Conference Organizer

OSCE Presence in Albania
Centre for Justice and Transformation/University of Tirana

Donor

Federal Republic of Germany

Convener

Mr. Claudio Pala, Head of Rule of Law and Human Rights Department, OSCE
Presence in Albania

Conference Secretariat

Ms. Irina Ademi, Project Assistant, OSCE Presence in Albania
contact: irina.ademi@osce.org

Conference Program 13 December

11:30 – 12:00 Registration and Coffee

12:00 – 12:30 Welcome Speeches/Opening Remarks

His Excellency Vincenzo Del Monaco, Ambassador, Head of OSCE PiA

Prof. Dr. Artan Hoxha, Rector of the University of Tirana

His Excellency Ulsi Manja, Minister of Justice, Albania

Ms. Ermonela Ruspi, Special Section Commissioner, People's Advocate

His Excellency Peter Zingraf, Ambassador of the Federal Republic of Germany

12:30 – 13:15 Keynote Speech: *Never Too Late: An examination of Albania's on and off again experience with Transitional Justice.*

The lecture provides a brief overview of the legacy of Albanian communism and the essential need for a comprehensive approach to transitional justice that ultimately never happened. It will further examine the measures and methods applied since 1992 alongside an assessment of the entire process until today. The focus will be on lustration/vetting, file access, missing persons and the role of politics in shaping what was ultimately a fraught and disjointed attempt to create a meaningful reckoning with Albania's communist past.

Robert Austin, Professor and Associate Director, Centre for European, Russian, and Eurasian Studies, Munk School of Global Affairs & Public Policy, University of Toronto.

Robert C Austin (Centre for European, Russian and Eurasian Studies, Munk School of Global Affairs & Public Policy, University of Toronto), is a specialist on East Central and South-eastern Europe in historic and contemporary perspective. In the past, Austin was a Tirana-based correspondent for Radio Free Europe/Radio Liberty; a Slovak-based correspondent with The Economist Group of Publications; and a news writer with the Canadian Broadcasting Corporation in Toronto. Austin has written articles for The Globe and Mail, The Toronto Star, Southeast European Times, Orbis, East European Politics and Societies and East European Quarterly along with numerous book chapters. His first book, "Founding a Balkan State," assessed Albania's experiment with democracy between 1920 and 1925. In 2019, he published "Making and Remaking the Balkans: Nations and States since 1878." In April 2021, he published an Albanian translation of the revised and expanded edition of the book as "Bërja dhe Ribërja e Ballkanit: Kombet dhe shtetet që nga viti 1878" with Koha. His latest book, "A History of Central Europe – Nations and States since 1848," appeared in November 2021 with Palgrave Macmillan. He is now writing a historical fiction centred on the life of Albania's King Zog.

13:15 – 14:00 Lunch Break

14:00 – 16:00 Panel I: *Transitional Justice, Missing Persons and Memory Politics in Albania today*

Memory and narratives on coming to terms with legacies of violence and human rights violations influence and even shape the debates on politics and justice in societies transitioning from authoritarian regimes, armed conflict, and colonialism, calling for condemnation, apology, reconciliation, and justice for the victims and their relatives. This panel will analyse the debates on memorialising the abusive past, and how transitional justice mechanisms have been used and misused in helping societies in transition to cope with their past marked by massive human rights violations. The case of Albania will be presented and contextualised with other countries dealing with their past, and particularly with Western Balkans countries that have or have not dealt with their past, to show how past keeps returning, how past is weaponized in the political debate, how it has become controversial and contested, and why addressing the issue of the missing is important for the identity of the countries in transition. It will also offer a reflection on the particular meaning and potentials of memorial sites for the process of dealing with violence-burdened past in Albania and elsewhere. Additionally, the panel will look into digital mapping of memories as a tool to enable the collection of all archival, historical, oral documents and to reproduce a memory of places of suffering, a memory of people who suffer in them and burial sites of missing victims.

Moderator: **Andi Pinari**, Vice Dean and Lecturer in Modern European History at the Department of History, Faculty of History and Philology of the University of Tirana.

Florian Bieber, Director of Centre for Southeast European Studies, University of Graz.

Florian Bieber is Professor for Southeast European History and Politics at the University of Graz, Austria. He is also Vice President of Association for the Study of Nationalities and coordinates the work of the Balkans in Europe Policy Advisory Group. He is the coordinator of the Balkans in Europe Policy Advisory Group (BiEPAG) and has been providing policy advice to international organisations, foreign ministries, donors and private investor. His research interests include democratization, institutional design in multi-ethnic states, nationalism and ethnic conflict, as well as the political systems of South-Eastern Europe. He has authored and co-authored dozens of books, journal articles and news columns, including in the field of nationalism and ethnic conflict in the South-eastern Europe (especially Western Balkans).

Enriketa Pandelejmoni, Associate Professor at the Department of History, Faculty of History and Philology of the University of Tirana

Ms. Pandelejmoni is also Associate Professor at the Department of History, Faculty of History and Philology, University of Tirana. She has been a researcher at the Center for Southeast History at the University of Graz in the period 2000-2007. At the center of her studies and publications is the modern history of Albania and the relationship between history and memory, with a special focus

on the communist past in Albania. She is the author of the monograph *Shkodra: Familja dhe Jeta urbane (1918 - 1939)*, Lit Verlag, Vienna 2019, as well as co-author of the volume *“Shqipëria. Familja, shoqëria dhe kultura në shekullin e 20-të”*, Lit Verlag, Münster, 2012.

Jörg Lüer, Secretary General of the Deutsche Kommission Justitia et Pax, Germany

Mr. Lüer is an historian. Since 2009 he is Vice-Chairman of the Maximilian-Kolbe-Foundation. Since 2013 he is member of the Council to the Government of the Federal Republic of Germany on crisis prevention, conflict management and peace policy. Since 2010 he is member of the board of trustees of the national foundation “Flight, Deportation, Reconciliation”.

Gentiana Sula, Head of the Authority for Information on Former State Security Documents (AIDSSH)

Gentiana Sula is the Head of the Authority for Information on Former State Security Documents (AIDSSH) since its creation in 2017. Its main focus has been collecting, declassification and digitally organizing 2 km of Sigurimi archives allowing full access for the affected individuals and their families, institutions (related to vetting) and researchers. AIDSSH is running an oral history collection related to those files, and facilitate research and civil education in support to reconciliation, peace and democracy. Her continuous interest has been truth-seeking and enabling social justice. From 1998 till 2012 designed or appraised projects for the World Bank and UNICEF which related to human resource development, education, child protection, and human rights in fragile societies. Some countries of experience were Albania, Kosovo¹, North Macedonia, Georgia, Uzbekistan and Yemen. She holds a PhD in education equity and has published several articles and reports on the matter. Served as Deputy Minister of Social Welfare and Youth (MoSWY) from 2013 until spring 2016 and provided political leadership in reforming vocational education and public employment services. At the same time, coming from a family persecuted by the Albanian communist regime, she was engaged in issues of transitional justice, which gradually became that included fairer policies for the moral and financial rehabilitation of former political prisoners, the creation of conditions for the transparency of dictatorship crimes by pushing legislation allowing opening of the files of communism, and the recovery of the remains of the missing during 1944-1991. She represents Albania in the European Network of Remembrance and Solidarity and is a member of its advisory board.

Çelo Hoxha, Head of the Institute for Study of Crimes and Consequences of Communism in Albania

Çelo Hoxha has been an employee of the Institute for the Study of the Crimes and Consequences of Communism in Albania (ISKK) since its establishment (2010).

¹ All references to Kosovo, whether to the territory, institutions or population, should be understood in full compliance with United Nations Security Council Resolution 1244

He has worked as a journalist and columnist for several newspapers, the crimes of communism have been a constant concern in his articles. He studied at the master's and doctoral level at the Institute of History, Academy of Albanological Studies, Tirana. His master's and doctoral theses were themed from the period of the communist regime in Albania. He is the author of several studies, many scientific articles, all on the topic of the history of the communist regime, and one of the leaders and authors of the 10-volume project, "Encyclopedia of Victims of Communist Terror", published by ISKK. His book "Crimes of the Communists during the War, 1941-45" (2014) has been one of the most debated study books in the post-communist period.

Erald Kapri

Erald Kapri is an Albanian author, journalist and researcher. He studied journalism at University of Tirana and communication at University of Westminster in London. Since 2014 he is lecturing communication at University of Tirana. He published "Secrets of the War", a book on Second World War in Albania and "King Zog, behind closed doors" for same period. He contributes at Kujto.al, an online archive on communism crimes and he is head of scientific board in Albanian public Institute for Studying Consequences and Communism Crimes, Erald shares a wide interest on "culture of memory" and modern history.

16:00 – 16: 20 Discussion

16:20 – 17:20 Papers Presentations

Natalia Mahecha Arango: *"An archive of unknown human remains: The disposal of N.N bodies in cemeteries in Colombia, 1990-2020"*

Alba Jakupi, Egzona Bexheti: *"Missing persons, right to know and democratic consolidation in Kosovo"*

Ardita Repishti: *"Public communication on sensitive and classified findings and testimonies on the missing, in the context of collective memory and education for democracy"*

Valbona Pllaha: *"Analyze the speech/language of informants, collaborators, investigators, judges by researching in Former State Security Sigurimi Documents 1944-1991"*

Anjeza Xhaferraj, Alban Reli: *"A Discourse Analysis of Strategies pursued by the PLA to Normalize People Disappearances in Albania during Communism"*

17:20 – 17:40 Discussion

14 December

9:00 – 9:30 Registration

9:30 - 10:15 Keynote Speech: *The truth, justice, reparation and memory as victim's rights and state's obligations*

Time cannot heal the wounds of enforced disappearances, the truth, justice and reparation can. The keynote speech will address these elements in view of the existing international context of enforced disappearances and its contemporary forms, while identifying the challenges faced by dealing with past disappearances. The Albanian context will be illustrated to put into evidence the rights of the victims of enforced disappearances and the obligations of the States, at the domestic and international level.

Dr. Suela Janina, Member of the Committee on Enforced Disappearance

Dr. Suela Janina is a member of the United Nations Committee on Enforced Disappearances. She has been among the first members of the Committee from 2011 and has exercised the functions of Vice Chair and Chair during two mandates. Ms. Janina is a career diplomat. She joined the Albanian Ministry of Foreign Affairs in 1999, where she had previously a number of diplomatic appointments. Currently, serves as Ambassador of the Republic of Albania to the European Union since 2014, as well as Ambassador to Belgium and Luxembourg. Ambassador Janina has a wide experience with international organizations.

10:15 – 10:30 Coffee Break

10:30 – 12:30 Panel II: *Domestic and International Obligations to Investigate Cases of Enforced Disappearance.*

The State's obligation to conduct effective investigations regarding missing persons is either inferred from or recognized domestically as well as in a number of international instruments, including the International Covenant on Civil and Political Rights, the European Convention on Human Rights and Fundamental Freedoms, the American Convention on Human Rights, and the African Charter on Human and Peoples' Rights, sub specie of right to life, right to the truth and the right to justice. Additionally, specialized international bodies such as the Working Group on Enforced or Involuntary Disappearances and the Committee on Enforced Disappearances monitor the implementation of the Declaration on the Protection of All Persons from Enforced Disappearance and the International Convention for the Protection of All Persons from Enforced Disappearance, respectively. And yet, despite such structured legal framework, there is still insufficient awareness of the competent institutions of the international human rights obligations in the field. This panel will analyze modes, processes and practices in enquiring and investigating the fate of missing persons, including - when possible - criminal investigations, from a domestic and international perspective.

Moderator, **Remzije Istrefi-Peci**, Judge at the Constitutional Court of Kosovo², Professor of International Law at the Faculty of Law of the University of Prishtina.

Mirela Bogdani, Associate Professor of Law at the Faculty of Law of the University of Tirana.

Ms. Bogdani teaches Legal and Political Institutions of the World and Legal Research and Writing at Law Faculty of the University of Tirana. She has attended several specialization courses in country and abroad, including at the Queen Mary University of London and at the Washington College of Law, American University. She works as researcher at the Centre for Justice and Transformation, University of Tirana. She serves as HELP [Human Rights Education for Legal Professionals – CoE Project] Focal Point for Albania. She is also a trainer in the Continuous Training Program for legal research and writing modules at the Albanian School of Magistrates.

Sokol Stojani, Director of the Directorate of Institutional Coordination, Decriminalization Sector, at the General Prosecutor's Office, Albania.

Mr. Stojani was appointed as prosecutor to the General Prosecutor's Office in 2008 and since then he headed the main directorates of the institution. He has pursued a number of postgraduate qualifications in the field of justice. Throughout his long career, he has provided prominent contribution to the Albanian prosecution system and has been highly praised by local and international law stakeholder.

Nadia Rusi, Professor of Law at University of Tirana, Albania

Nadia Rusi possesses an extensive academic background coupled with a strong legal counseling experience in the area of human rights and gender equality, working as coordinator and/or external expert in several international and national projects in collaboration with the Center of Legal Civic Initiative in Albania, Un Women, ERRC, PNUD etc. Her current research interests include international human rights law and gender equality in which she has authored several articles in Albania and internationally. She has been part of many international and national conferences within her fields of interest.

Bogusław Tomasz Czerwiński, Prosecutor at the Commission for the Prosecution of Crimes Against the Polish Nation, Institute of National Remembrance of Warsaw, Poland

Mr. Czerwiński conducts and supervises the most important investigations against communist or German Nazi perpetrators such as the martial law cases, the killing of Polish citizens on former Czechoslovak and Austrian border, KL Auschwitz investigation and KL Stutthof investigation. He is IPN coordinator of the investigations concerning German Nazi concentration camps as well as

² All references to Kosovo, whether to the territory, institutions or population, should be understood in full compliance with United Nations Security Council Resolution 1244

the contact point of the 'Eurojust' Genocide Network. He is author of articles regarding the crimes committed during Nazi and communist regime in Poland.

Albert Dervishaj, Deputy General Director of the Albanian State Police

Since August 2020. Mr. Albert Dervishaj performs the duty of the Deputy General Director of the State Police, with the police rank of "Senior Officer". Mr. Dervishaj has completed courses, training programs, seminars inside and outside the country, such as in Louisiana (USA), Rome (Italy), etc., for which he is certified in terms of strategic management, management, planning and supervision of the police organization, the role of the police in crisis management and terrorist acts, for teaching gender perspective in policing, data protection, immigration management and cooperation in the Balkans, on the investigation of international crime, etc. During his career, he has taught at the Tirana School of Magistrates, the Security Academy and several private law universities. He is the author and co-author of professional articles and texts, such as: "Police in the face of reality", 2003; "Tirana, Capital in order of European parameters", 2006. "Police Law", 2004; DPQ Tirana Guide, 2005, etc.

Dragana Spencer, Senior Lecturer in Law at the University of Greenwich, UK

Ms. Spencer is has published widely in international journals on various aspects of international and transitional criminal justice, including articles in the International Criminal Law Review, International Journal for the Semiotics of Law and the European Journal of Crime, Criminal Law and Criminal Justice. Her research interests and teaching practice lie in international criminal law, public international law, human rights and public law. Throughout her career, she has advised governmental bodies and non-governmental agencies in the UK and abroad on implementation of procedural human rights and law reform.

12:30 – 13:10 Expert Speech: *Enforced Disappearances: 40 years of United Nations action to combat impunity.*

The lecture will address the historical and normative framework of enforced disappearances as an international crime and a human rights violation. It will also discuss the scope of States legal obligations, including in the particular context of transitional justice processes. In addition, it will analyze how the United Nations' Working Group on Enforced or Involuntary Disappearances has influenced the evolution of human rights norms in this specific area of international law.

Prof. Bernard Duhaime, Professor on International Law at the Faculty of Political Science and Law of the University of Quebec in Montreal.

Prof. Duhaime – former member and Chair of the UN Working Group on Enforced or Involuntary Disappearances - teaches international human rights law and specializes in the inter-American system for the protection of human rights. He is a Trudeau Foundation Fellow, a Visiting Professor at Paris II University,

an Associate Research Fellow at the Geneva Academy and a Senior Fellow at the Raoul Wallenberg Center on Human Rights. He is a senior counsel of the Quebec Bar. He has been contributing to the promotion and defense of human rights since 1996, having worked or collaborated with various international and national human rights agencies, having taken part in multiple observation and training missions in the field and having produced numerous institutional reports. Prof. Duhaime advises or has advised several human rights and indigenous peoples' organizations, human rights lawyers and defenders, international organizations and states. He represents and assists many victims and human rights defenders in contentious cases before the Inter-American System for the Protection of Human Rights, specialized UN agencies and mechanisms, the European Court of Human Rights, etc.

13:10 – 13:20 Discussion

13:20 – 14:20 Lunch Break

14:20 – 15:50 Panel III: *Institutional Setting and Identification Processes.*

The issue of missing persons during the period of communism is a painful one that is still causing debate in Albania. There are many institutional, organizational and procedural gaps to be filled, including the role of state institutions in identifying these remains. In a comparative perspective with countries in the region that have a longer and consolidated experience in the field, the panel will analyze tasks, responsibilities and capacities of the institutions involved in the process, to find ways to achieve coordination of work between them, as well as recommend policies on how to improve this process. In addition, representatives of relatives of missing persons will talk about their experience unveiling the truth about the disappearances of their beloved ones.

Moderator, **Luigj Ndou**, Head of Government Relations (Pristina, Tirana), International Commission on Missing Persons

Alma Mele, Director for Coordination and Monitoring of Prefectures., Ministry of Interior

Ms. Alma Bime Mele is part of the management staff in the Albanian Ministry of Interior since 2014. She currently holds the position of Director for Coordination and Monitoring of Prefectures. She previously worked in the private sector and the State Police. In addition to many professional trainings, in November 2021 she completed the Senior Security and Defense Course at the Armed Forces Academy, accredited by NATO. Since 2015 she is the First National Trainer for Asylum Issues in the Republic of Albania. From 2015 to 2017 she was also one of the negotiators of chapter 24 for Albania in the EU, on asylum and migration issues. From 2018 she is also part of the Team of Albanian Experts "On the search, exhumation, identification, and reburial of Greek soldiers who fell in the war, in Albania, during the Greco-Italian war, 1940-1941, and the construction of a shelter for them in the territory of the Republic of Albania."

Bledar Xhemali, Director of the Albanian Institute of Forensic Medicine

Since 2004, Mr. Xhemali has been working as medicolegal expert in the Institute of Forensic Medicine and from 2013 he is Director of the Institute. He is also Lecturer of Legal Medicine in the University of Medicine in Tirana. Mr. Xhemali has actively participated in several conferences and is author or co-author of several publications in the field of legal medicine, anthropology and forensic toxicology. Mr. Xhemali is also member of the Balkan Academy of Forensic Sciences. From 2017 he is leader of the Albanian group for research and exhumation of fallen Greek soldiers in Albania during the Greek-Italian War in 1940-1941, based on the agreement between Greece and Albania in 2017.

Arsim Gerxhaliu, Director of the Department of Forensic Medicine, Kosovo³

Mr. Gerxhaliu is member of the Kosovo⁴ Commission for Missing Persons as well as head of the sub-working on Dialogue with Serbia State for Missing Persons. He teaches Forensic Medicine at the Faculty of Medicine at the University of Prishtina. In 2003 he joined OMPF – UNMIK and in from 2008 he cooperates with the EULEX forensics experts. Over more than twenty years, Mr. Gerxhaliu has worked on more than 6000 missing persons cases, conducting examinations, inspections, exhumations and meetings with the representatives of the missing persons' families.

Amor Masovic, Member of the International Association of Genocide Scholars, former Chairman of the Bosnian Federal Commission for Missing Persons.

Mr. Masovic is a Member of Parliament of the Federation of Bosnia and Herzegovina and a former Chairman of the Commission for Missing Persons. Under his leadership the Commission's investigative teams had as of 30 December 2007 located over 370 mass graves and over 3,000 joint and individual graves and the exhumation of the remains of some 18,000 missing war victims.

Susana Matejić, Representative of the Missing Persons Institute of Serbia.

Ms. Matejić (PhD) is Full Professor of Forensic Medicine at the Faculty of Medicine of the University of Banja Luka. She is Deputy Chairman of the Serbian working group for negotiations on resolving the fate of missing persons in the dialogue between Belgrade and Pristina as well as Head of the forensic experts' team for investigation of the fate of missing persons in the conflict in the Former Republic of Yugoslavia. Ms. Matejić has authored a number of academic papers, including in the field of forensic investigation, legal-economic aspects of clarifying the fate of missing persons, and the role of importance of forensic teams in clarifying the fate of missing persons through governmental and nongovernmental institutions.

3 All references to Kosovo, whether to the territory, institutions or population, should be understood in full compliance with United Nations Security Council Resolution 1244

4 All references to Kosovo, whether to the territory, institutions or population, should be understood in full compliance with United Nations Security Council Resolution 1244

Hamza Kazazi, relative of seven missing persons, victims of the communist regime.

Mr. Hamza Kazazi was born in Shkodra in 1941. His father, Jup Kazazi was awarded by the President of the Republic of Albania the high "Golden Eagle Decoration". Mr. Kazazi's father did not surrender and killed himself on 17/09/1946 following the Postriba Uprising. He and his two brothers still do not have a grave. There are seven missing persons from Mr. Kazazi family. Since 1991 Mr. Kazazi lives in Turin, Italy

15:50 – 16:00 Discussion

15 December

9:00 – 9:15 Registration

9:15 - 10:00 Keynote Speech: *Disappearance, a catastrophe for identity and language.*

Based on sociological research developed first in Argentina and Uruguay and then in other countries of Latin America and Europe, the lecture seeks to build a universal definition of disappearance, understood as a phenomenon that breaks the possibility of identity and language.

Gabriel Gatti, Professor in the Department of Sociology at the University of the Basque Country, Spain

Mr. Gatti coordinates the research program Mundo(s) de Víctimas, where he has been the Principal Investigator of Mundo(s) de víctimas and Desapariciones projects. He is the Editor-in-chief of Papeles del CEIC, International Journal on Collective Identity Research, and he was the Director of the doctoral program in Models and Areas of Social Science Research. He is author of a number of books, including *Surviving forced disappearance in Argentina and Uruguay* (Palgrave Macmillan, New York), *Identidades desaparecidas* (Prometeo, Buenos Aires, 2011), *El detenido-desaparecido. Narrativas posibles para una catástrofe de la identidad* (Trilce, Montevideo, 2008; Uruguay's Social Science National Award, 2010).

10:00 – 10:15 Coffee Break

10:15 – 12:00 Panel IV: *Enforced Disappearances and their Impact on Individuals and the Society*

Enforced disappearances generate multiple and interrelated effects over individual victim, his or her relatives, the communities in which they belong, and ultimately the society as a whole. Be that individually or collectively, those effects range from antagonism and distrust of state authorities to group polarization at both political and socio-cultural level, demand for exercising a right to truth, and may go as far as to put into question the identity foundations of the individual and the society, and to break the

conventional relations between social reality and the language used to express feelings of sorrow and void. The panel will analyze some of those effects. It will also discuss how tireless efforts to clarify the fate of the disappeared vis-à-vis a hesitant State engagement affect the life of the relatives of the missing and the society as a whole. Moreover, it will provide examples of how transitional justice processes leads to civic engagement to reveal the remains of disappeared persons and to trigger collective public actions to find them and to hold victimizers accountable. And finally, in a forward-looking perspective, the panel will discuss new disappearances in post-dictatorial regimes, focusing on their relations with older forms, on what they have in common and what they differ, and how those new forms sometimes help display about older forms.

Moderator: **Kristina Voko**, Executive Director of BIRN Albania

Jonila Godole, Executive Director of the Institute for Democracy, Media and Culture, Albania.

Ms. Godole is Lecturer at the Department of Journalism and Communication of University of Tirana. She holds a PhD in journalism culture in the post-communist Albania at the University of Tirana. She was one of the first journalists after 1990, especially well-known for her interviews of high-level politicians and political articles. Her research interests include comparative media systems, journalism education in transitional countries, political communication, media and memory studies etc. Since 2014 she is the director of the Institute for Democracy, Media and Culture, whose focus, among others, is raising the awareness of the youth on the country's communist past

Anja Mihr, DAAD long term Associate Professor (LZD) at the OSCE Academy.

Ms. Mihr is political scientist and human rights researcher. She is an internationally known academic who has taught in various universities in Germany, the United States, Italy, China and the Netherlands. Her main work focuses on human rights, governance and transitional justice, looking at the interlinkage between institutions, organizations and the way human rights realization can be leveraged. In her book on 'Regime Consolidation and Transitional Justice', she develops a theory to explain the impact of Transitional Justice measures in the context of political regime consolidations.

Teuta Starova, Lecturer of Sociology at the University of Tirana

Ms. Starova's scientific activity is focused on the field of sociological studies and research. She has participated in national and international scientific conferences, has worked in national and international scientific research teams, and co-authored reports and expertise for organizations such as UNDP, Council of Europe, World Bank, etc. She has also been engaged in the field of Albanian translation of books, textbooks for students of Sociology and Political Science. She worked as a diplomat at the Embassy of the Republic of Albania in the United Kingdom.

Merita Poni, Lecturer at the University in the Department of Sociology of Tirana
Ms. Poni teaches and conducts research in the field of gender sociology, education, crime, terrorism and violent extremism, transitional justice and research methods. She has published articles in gender journals on gender, education, crime, culture, and research methods. He currently directs the Professional Master of Criminology (Administration of Social Institutions in the Justice System) and student internships in law enforcement and education institutions. She has long experience in defending human rights as an activist and researcher.

Jovan Plaku, relative of a person victim of the communist regime.

Mr. Plaku – whose father was sentenced to death in a closed-door trial two years after he was arrested in 1975 - managed to find the remains of 13 people in a forest, after tirelessly searching for documentary evidence and digging the mountains above Tirana.

Maria Martinez, Associate Professor at the Department of Sociology III (Social Tendencies) at the UNED, Spain

Ms. Martinez is currently associate professor at the Department of Sociology III (Social Tendencies) at the UNED (Open University), in Madrid (Spain). She is also member of the Collective Identity Research Center of the University of the Basque Country and has been a postdoctoral fellow at the University of California, Santa Barbara (USA). In the last decade, she has been linked to research projects (funded by the Spanish research agency) on victims and disappearances. In the last research, she focused on new forms of disappearance, more precisely she undertook an empirical research on migrant disappearances and victims of sex trafficking. She also works on feminisms, vulnerability and (collective) agency, having recently published the book *Identidades en proceso. Una propuesta a partir del análisis de las movilizaciones feministas contemporáneas* (CIS, 2019).

12:00 – 12:20 Discussion

12:20 – 13:00 Paper Presentation

Elisenda Calvet Martínez : *"Searching for the disappeared children: analysis of the truth-seeking initiatives developed in Latin America"*

Mina Rauschenbach, Alejandro Jimenez, Bronwen Webster: *"Exploring the value of social recognition of enforced disappearance for the relatives of the disappeared: a multi-disciplinary analysis of the experiences and perceptions of relatives, activists and practitioners in Colombia and El Salvador"*

13:00 – 13:20 Discussion

13.20 – 13:30 Closing Remarks

Bernard Dosti, Vice Rector of University of Tirana

Clarisse Pasztory, Deputy Head of PiA

13.30 – 14:30 Lunch

Robert C AUSTIN

Professor and Associate Director, Centre for European, Russian, and Eurasian Studies, Munk School of Global Affairs & Public Policy, University of Toronto

NEVER TOO LATE: AN EXAMINATION OF ALBANIA'S ON AND OFF AGAIN EXPERIENCE WITH TRANSITIONAL JUSTICE.

Good afternoon to Tirana but good morning from Toronto!

I wish I could have joined everyone in a city that is very dear to me. Special thanks to the OSCE office in Tirana and Claudio Pala at the OSCE for inviting me to give this lecture. I appreciate it very much that the OSCE keeps the focus on rule of law issues.

This is a topic that is always on my mind, and it is important for me to revisit these issues within the context of this ongoing interest in transitional justice in Albania and elsewhere. Since state-sponsored violence continues unabated in the world, transitional justice will remain central to anyone who cares about human rights and democracy.

The theme of the lecture is to offer some analysis of the process in Albania, largely focusing on the years that mattered most: 1991 to 1997. My earlier thoughts on these issues have not changed much since I wrote some early pieces on this topic several years ago.

You will note that my question is a bit more generic than, for example, why TJ failed in Albania as I believe it did. But calling it a failure makes it a normative argument and I want to avoid that. There are different paths to truth and understanding.

This explains, I hope, why I have this quote from George Orwell.

One could say that almost all transitional justice efforts fail to a degree, just not in the same way.

That said, I continue to believe this process still has a place in Albanian society, hence the notion of "never too late." I also want to say that I am by no means singling out Albania as a laggard. If you examine transitional justice efforts in post-communist Europe, there are no total success stories.

The Czech Republic is often held out as the gold standard but even it has shortcomings. At the other end, is Bulgaria and Romania. If you are making a placement on a scale, Albania falls closer to the bottom than the top and why is that the case?

But let's be clear, in general, across post-communist Europe, with 30 plus years of reflection, former communist leaders did get off relatively easily and more could and should have been done. Hence, in my opinion, shortcomings in transitional justice help explain the many cases and indeed the persistence of very low-quality democracies.

As a side note, the best confirmation of the assumption of the link between Transitional Justice and building a stable and legitimate democracy in post-communist Europe is again the Czech Republic, where the negative trends we see in Hungary and Poland, to say nothing of the Western Balkans, are less pronounced and the resilience of Czech democracy, whether in the form of its vulnerability to foreign influence or the population's willingness to embrace and not question the events of 1989.

But where does that leave us now, as we approach nearly 30 years since Albania's first democratic elections? I think my main assumption is that delayed transitional justice is better than no transitional justice at all and that transitional justice has an important place yet to be filled in national curricula.

As to structure, I will spend roughly 10 minutes on each section then make some brief concluding remarks. My intention is to leave some time for questions.

Unlike Hungary and Poland, where 1989 is hotly contested even within the realm of transitional justice, this is not the case in Albania, which in the years 1990 – 1992 did not experience a revolution and so the course of transitional justice mechanisms was determined at that moment. Like all countries in this moment, Albania had to find the space between violent retribution and doing nothing.

Now to the legacy with some thoughts on the twentieth century.

State-sponsored violence has a deep history in Albania that predates the communist period, although the communists did take it to entirely new levels. We could easily start the story with Avni Rustemi's assassination of Esad Pasha in 1920, as a kind of early international justice and certainly a reaction to oppression. Rustemi certainly inspired a few others seeking humanitarian justice. Everyone here may well recall that Rustemi's trial in Paris put Esad Pasha and French foreign policy on trial.

Unfortunately, in the long run, Rustemi's act did not have the desired outcome. What followed in Albania after that was an extraordinary number of state-sponsored assassinations in the framework of Zog's autocratic state. I do not need to list victims here, but the fates of Avni Rustemi, Luigi Gurakuqi, Bajram Curri and Hassan Prishtina come to mind, but there are others. Fan Noli was spared only because he moved to the United States.

I do not think it is necessary for this audience to discuss the legacy of Albanian communism, especially when we see the persistence of some of the issues related to the past, but we can likely agree that reckoning with the past was half-hearted and largely left to providing former political prisoners with often meagre forms of compensation or using them as props to make it look like something was being done.

Because of the nature of the regime, with its extremely violent consolidation of power,

pervasive executions, secret police, internal exiles, prisons, and regular purges, Albanian society remained in a constant state of permanent fear. More recently, we see the issue of missing people, some 6000, who remain unaccounted for as emblematic of the wider problem of dealing with the past effectively.

Suffice to say that Albania needed, maybe more than many countries in communist Europe, a sustained and thoughtful re-assessment of the past and not just the communist past but a much wider arc of political violence that started far earlier. This did not happen, and in fact, I would argue that the crimes of the previous regime were hardly explored or explained in a way that provided a kind of mass understanding. I do note new research coming out that assesses, among other things, the nature of Politburo decision making.

* * *

I have tried to think about new approaches to what happened in Albania in 1991 and after and I come back to the same conclusion:

The Albanian political elite, and I include both major parties, purposefully sought to derail the process for a variety of what to me are obvious reasons. But let me not single out Albania for this. The use of transitional justice for purely political aims is found, to varying degrees, in all post-communist countries. What matters is the extent of the politicization.

The period between the first elections in March 1991, which I do not deem fair, and the second in 1992, are fundamental, but the period between 1992 and 1997 is even more decisive as a government that understood democracy in only a very rudimentary way pursued a process that represented the needs of the governing elite, not the very urgent needs of the population.

Point 1)

The former Party of Labor's conversion to a mainstream Socialist Party lacked a serious assessment of the past and this conversion was at best superficial. I think the absence of internal party discussion meant that the party underwent what was commonly referred to as "elite reproduction" as opposed to "elite replacement".

The June 1991 Congress is an example of this, as while hardliners in the party were defeated, there was no meaningful criticism of the preceding 45 years. You cannot even compare what happened then to the depth of criticism made of Stalin in Khrushchev's Secret Speech in 1956. This shortcoming was not just an Albanian phenomenon but a region-wide problem that you can see elsewhere. Hungary is an equally good example of this tendency. But, keep in mind that Hungary was exiting from Goulash Communism and was not at all comparable to the type of system the Albanians endured, especially under the catastrophic period of self-reliance.

Point 2)

The Ruli Report of summer 1991 is another major setback as it was hardly an example of transitional justice, but it is a watershed in the process. I consider the Ruli report to be a major turning point that in a way made a meaningful conversation about the past nearly impossible. I get the reasons for this approach then, in a country that was quite understandably shocked by the affluence of the communist elite, but it struck me very much as a cynical mobilizational tool as opposed to a serious way to start not just transitional justice but an all encompassing assessment of what happened in Albania.

Point 3)

The trial against Fatos Nano further muddied the waters. Again, this was hardly in keeping with the needs of the time.

Taken together, these first three initiatives were entirely top-down and failed to engage the population in a way that did not entail a true national conversation that would like at the big and little stories of the communist past. That is why I laud what Gentiana Sula is doing as many of these micro-stories can be told within the context of the Sigurimi's impact on everyday lives. It is in the stories of everyday lives that we can continue to have an impact.

Moreover, to find useable history in Albania's very traumatic twentieth century, there was a tendency to force a new narrative on a population that was very much not ready for such abrupt changes of direction. I note especially the re-casting of the interwar period.

Even more simply put, by the summer of 1991, a process that was vital was hijacked entirely by politics and delivered by a political class that did not really understand what transitional justice was for or how important it was for building institutional trust.

A big question, since all transitional justice scholars seem to accept that the process is vital for the durability of a new and democratic government, is how many of the shortcomings in Albanian democracy today and in the 1990s can be blamed on the early missteps of Albania's first post-communist governments?

The gap between 1991 and 1992 was extremely dangerous for the fate of the secret police files. The files were likely doctored or stolen and often became dubious sources of information about the past and largely fell into the wrong hands and used often for political purposes.

Now, let's look at the specific measures to confirm this hypothesis:

First, to Lustration.

Albania, along with the Czech Republic, received high praise for its aggressive approach towards the public service, but the comparison is superficial insofar as the process in Albania could easily be deemed arbitrary.

After 1992, Albania witnessed a massive purge within the framework of a new and controversial law that was designed almost exclusively to weaken and even destroy the opposition. This was not transitional justice, but a kind of vengeance wrought by a new political class that was unsure even of its own credentials. If you contrast the Albanian case with the Czech case, massive differences appear, especially in regard to how decisions were made and how decisions could be appealed. This was not an initiative based on law.

What followed was the inappropriately named Genocide Law, which sought, in a way, to undo the legacy of the Ruli Report by putting Albania's former top communists back at center stage. This law came far too late, and the ageing politburo elite could have been dealt with in 1991, but even more so in 1992. There were no good reasons to put this off until the law of 1995. Leaving this so late again had consequences for the process. My conclusions always seemed to suggest that transitional justice was almost always tied to Albania's electoral process. The dates when the key legislation appeared confirm that. The Genocide Law was entirely unsuccessful in exposing the essence of the regime and the decisions it took. That alone is its most fundamental failure.

As everyone here knows, the transitional justice process was largely associated with the Democratic Party. At the risk of generalizing, the Socialist Party never had the stomach nor the credentials to take the process at all seriously. Both parties discredited themselves and betrayed the population.

Later, it fell to smaller parties, sometimes for the right reasons and sometimes not, to attempt to inject new vigor into the debate, particularly around file access.

Let me add just a few comments on what happened after the Democratic Party victory in 2005. Former President Berisha remarked that had the Socialists implemented the 1995 laws, Albania would have been a "different country." New legislation in 2008 brought back "political" lustration and file access. The legislation was widely condemned and failed. Although the government's failure was a success for other parts of Albanian society.

Conclusion

I come back to one central question: If we assume that there is a link between assuming or reckoning with the past and building a stable and legitimate democracy, then how many of the shortcomings in Albanian democracy are to blame for failing to pursue transitional justice and embrace a truly national conversation about the past?

This is a question, as I said, that demands further research.

But I also think that the time for certain transitional justice measures has expiration dates and for some, they may have passed. We saw how, after 1997, the process almost completely fell off the table and the previous legislation was allowed to die quietly. As we saw, the issue came back briefly in 2005 and 2009, both election years. It again disappeared largely because the new wave of transitional justice was deemed entirely political in orientation. To its credit, Albanian society and its institutions had changed enough to recognize that what was on offer then was not transitional justice but simply party politics and revenge with a much wider agenda than dealing with the communist past.

This means that while we no longer need to view the past as an us versus them struggle, instead we now move to assess and re-assess the role of the past and transitional justice in education at all levels. The national conversation that I alluded to in my remarks, which was missed by design in some ways, is still a real possibility.

The issue of missing people puts these issues front and center again, which tells us that more needs to be done. The issue reminds me of the fact that the case is not closed and that we cannot draw a thick line with the past. It also reminds me how often unrepentant the Albanian communists were and how few apologies appeared.

Now, nearly 30 years after the 1992 elections, Albania still has options to ensure that the past is understood, which need not imply vengeance.

Panel I:

Transitional Justice, Missing Persons and Memory Politics in Albania today

Prof. Asoc. Dr. Enriketa PANDELEJMONI

Associate Professor at the Department of History, Faculty of History and Philology of the University of Tirana

CONTROVERSIES ON TRANSITIONAL JUSTICE AND COMMUNIST PAST IN ALBANIA TODAY.

As of today, one of the fundamental challenges of contemporary history in post-communist countries is how to deal with the narratives of the totalitarian regime and the violence perpetrated throughout such regime. Searching for truth within the field of transitional justice has been a major concern since the 1980s, not only through the opening of official files and truth commissions, but also through the development of anti-narratives on what happened during communism. Searching for truth in many cases has, nevertheless, been politicized and aligned with political agendas.

In 2021, Albania entered the 30th year of the post-communist era, an anniversary that dates back on 31 March 1991. In the case of post-communist Albania, in my view, there are three main aspects on how we are studying the communist past and on how we are dealing with this past today:

- 1) Review of school and university curricula on the communism time
- 2) Application of transitional justice
- 3) Social reconciliation of a post-traumatic society today.

What will be addressed in the framework and subject matter of this meeting has to do with the ways we approach the objective elucidation of violence, terror, persecution and the historical narrative on them. In his study on transitional justice and truth commissions in South Africa, Paul Gready¹ underlines the need to see truth as justice, acceptance, and naming.

From this point of view, what has been done in Albania in these 30 years of post-communism, in terms of bringing justice to the crimes of communism and those who ordered, implemented, and executed the "enemies of communism"? Has the terror and violence of communism seen any admission of "guilt"? Do people feel "ashamed" of what they did during communism? Does the Albanian society today know the names of criminals, executors, collaborators of the proletariat dictatorship machinery?

All these questions are inextricably linked to the transitional justice process, which involves the establishment of a number of mechanisms (justice, truth, compensation,

¹ Paul Gready, "Truth as Genre" in Paul Gready, *The Era of Transitional Justice: The Aftermath of the Truth and Reconciliation Commission in South Africa and Beyond* (2011).

etc.) to bring about social change, which will enable social reconciliation, democracy and the protection of human rights. This is achieved first by establishing legal institutions and socio-economic policies that enable precisely the administration of justice and social reconciliation in post-traumatic societies.

Thus, in search of historical truth regarding the transitional justice mechanisms, other questions arise as follows:

- What are the different ways that enable us to reveal the “truth” about abusive stories?
- How can truths help a nation come to terms with the past?
- Are the processes of seeking the truth opposed to denying it?
- Does revealing and documenting the truth lead to national reconciliation?

I think that all the above questions are related to the policies that the Albanian government has drafted in these 30 years of transition within the transitional justice. The case of Albania may be considered as a case where *sui generis* post-communist politics undertakes efforts to administer a kind of transitional justice, but without engaging deeply in drafting a politically equitable process. An aspect of transitional justice through lustration, which in Albania has been applied at certain stages of its post-communist history, has to do with free access to the files of the former secret police (State Security) for those people who have been persecuted or free access for all citizens of the country.

Transitional justice is also concerned with setting up so-called truth commissions, making public apologies for the crimes of communism, punishing the crimes of communism, returning property, and compensating for previous expropriations performed during the communist regime, rewriting the history of communism in Albania, rehabilitation of former politically persecuted persons, application of compensation schemes, as well as sponsorship of memorabilia projects, related to the memory of the communist past, in the form of erection of monuments, anniversaries, exhibitions or museums on that period, civil society projects, projects of foreign donors or governmental projects.

This is a controversial process, but the purpose and context in which transitional justice is to be applied should be ultimately looked into. The reopening of the current debate in Albania on the symbols of communism, decommunization, gives rise to some questions about the approaches to the application of Transitional Justice in Albania. Should we approach the truth on a macro level, i.e. analyze and clarify the context, investigate and study the extent of human rights violations during the communist dictatorship, as well as the causes and patterns of the violence exercised? Or, should we focus lustration at the micro level, on certain events during the communist period, on pointing the finger at certain individuals, on special occasions?

Gentiana SULA, Phd, Chairwoman

Head of the Authority for Information on Former State Security Documents (AIDSSH)

SIGURIMI FILES AUTHORITY ROLE IN DEALING WITH THE MISSING OF COMMUNIST PAST



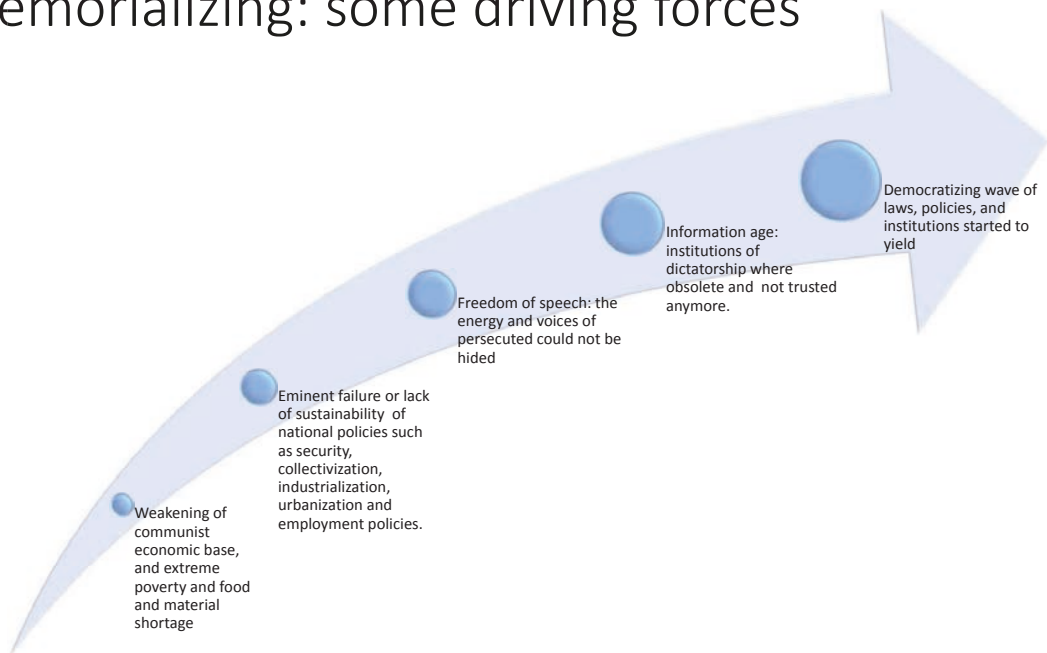
Key topics

- Transition versus transformation
- Waves on memorializing the abusive past and how transitional justice/treating the missing mechanisms progressed in Albania
- Sigurimi Files Authority (AIDSSH) on the missing
 - Profile of the missing
 - What do we know of causes and whereabouts of the missing
- AIDSSH references –the need for a paradigm shift
- A mid term approach to the missing for AIDSSH

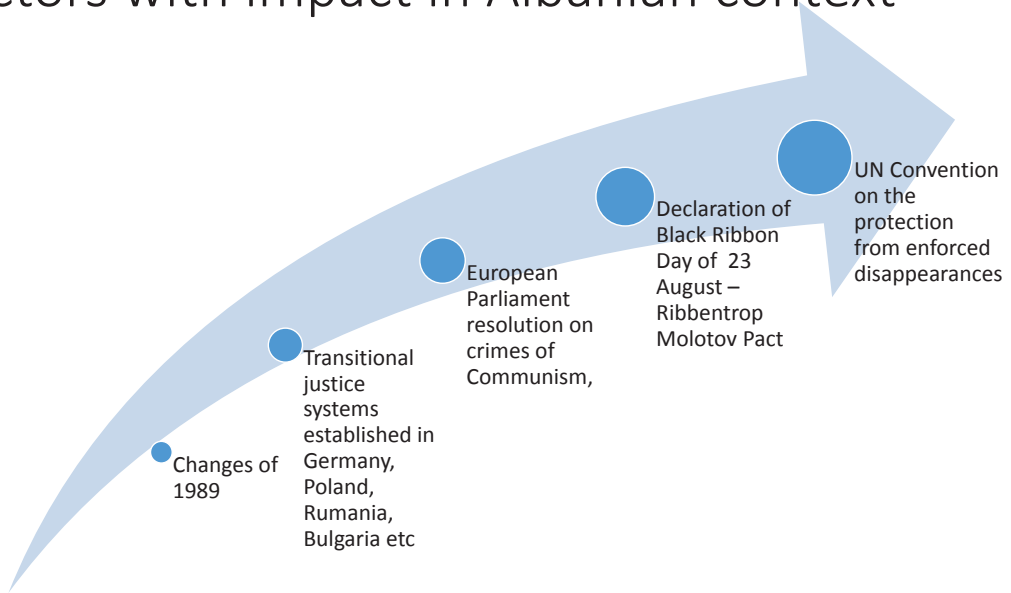
Transition versus transformation

- Transition – as change processes
 - Redressing mechanisms for the victims – return in the previous state as much as possible
 - Compensation
 - Property restitutions
 - Recover the missing
 - Building democratic institutions
 - Eliminate/ diminish obstacles to transition
 - Information to allow for vetting and moral lustration
- Transformation as improved version of our self (Constitution, Law 45/15, resolution)
 - Functional democracy and rule of law
 - Human rights
 - Peace and reconciliation

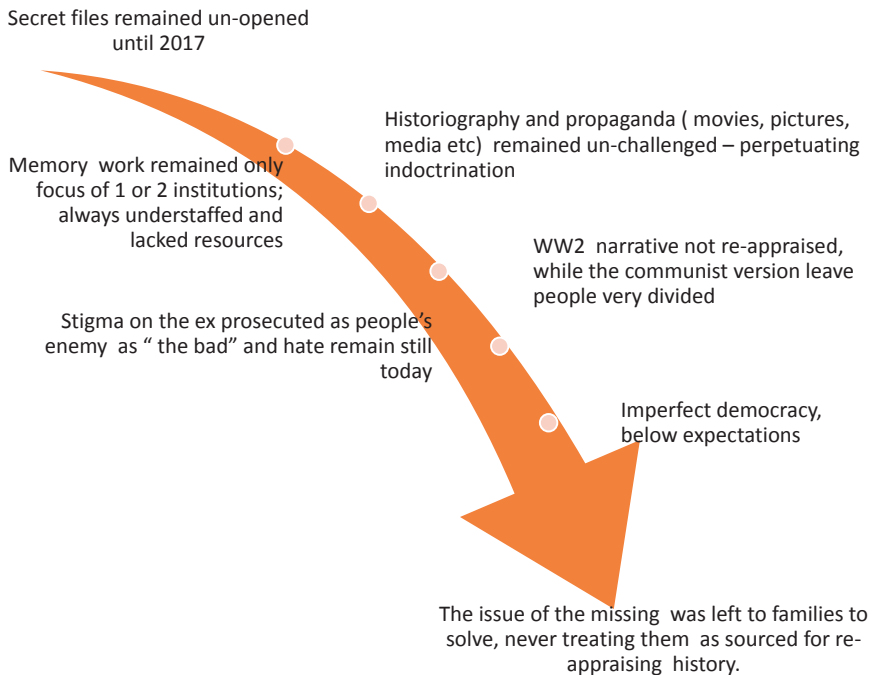
Memorializing: some driving forces



Debates on memorializing- International key factors with impact in Albanian context



Barriers on memorializing-



Bases of the work of Sigurimi Files Authority on the missing

- Relationship with the families of the missing, demanding to clarify the fate of their family members
- Activism of families so far– their own investigations and accounts
- Possession of important archive collections
- Previous work of IIPP, ISKK and media
 - Accounting and documenting for hundreds of cases of the missing
 - Places of burial and executions as reported by the families
 - Full accounts of data on people holding status of the ex-presecuted as reported in '90
- International expertise of ICMP and its partnership with Albanian parliament and central government
 - Allowing for specialized advice
 - DNA identification
 - Potential for use of data software

Legal Definition

The definition of the missing as per Law 45/15 article 4: "A missing person is a person arrested, imprisoned, kidnapped or deprived of his/her freedom in any other form by state agents or other persons or groups of persons, who have acted with authorization, support or approval of the state, followed by denial of admission of liberty deprivation or concealment of the fate of the missing person or where he/she is located, disconnecting him from the protection of the law."

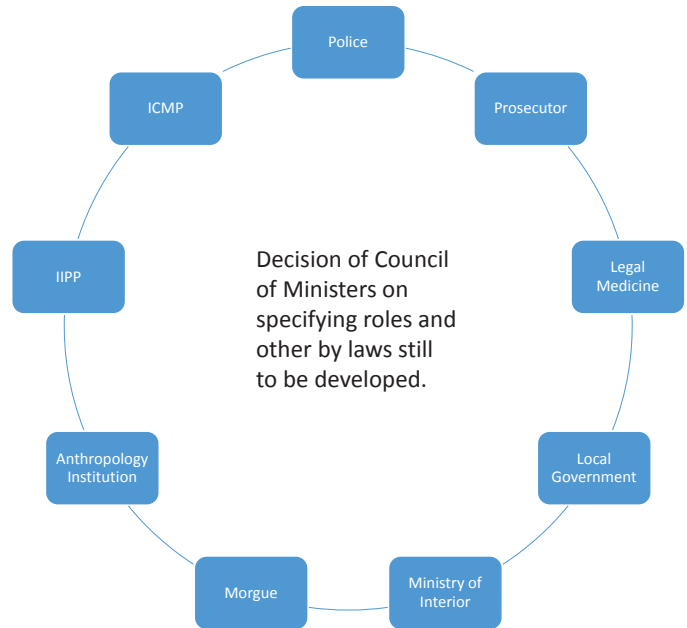
Neni 4 I ligjit 45/15 përcakton se "një person i zhdukur është një person i arrestuar, burgosur, rrëmbyer ose privuar nga liria e tij/saj në ndonjë formë tjetër nga agjentët e shtetit ose nga persona të tjerë ose grupe personash, të cilët kanë vepruar me autorizimin, mbështetjen ose miratimin e shtet, i ndjekur nga mohimi i pranimit të heqjes së lirisë ose fshehja e fatit të personit të zhdukur ose vendit ku ai/ajo ndodhet, duke e shkëputur atë nga mbrojtja e ligjit."

Big step:

1. law on clemency (7514/'91) was limited only to those victims who where tried during communism for some political, leaving untreated many other cases related as example to extrajudicial killings

The role of AIDSSH

1. Help clarifying the fate of the missing and help locating the place
 - I. thru archival investigation or research
 - II. collecting family accounts (Even walls Have Ears oral history)
2. Refer the cases and coordinate families with other law enforcing agencies
3. Coordinate with local government about suspected burial and execution places in order to protect them from any development without proper verification
4. Support research and civic education
 1. Expo on profile for the missing
 2. Expo “ Sigurimi with its own words
 3. Guide for the rights of the families of the missing



Typology of the missing – processes

- Extrajudicial executions
 - “Disarmament” campaign (Valmira case)
 - Elimination campaign towards war and pre-war elites (the case of Hamz Kazazi)
 - Purge (the infamous case of Sabiha Kasimati and 21 other intellectuals, the case of Galip Hatibi)
- Death penalties
 - Political trials (as described by the law of clemency, rehabilitation... no 7514, 1991
- Death in interrogation rooms
 - From torture
 - Suicide
 - Lack of food or living conditions
- Death in prisons or labour camps
 - Lack of proper health care (epidemic), working accidents, and inadequate living conditions (the infamous case of Tepelena camp death of children)
- Death in hospitals
- Killings at the boarder (Durres, Saranda seaside, Shkoder and Pogradec lakes, Librazhd, Kolonje, Gramoz, Vermosh, Lepushe, etc.

Whereabouts – places of burials – what is known so far

- A map is compiled with around 75 places identified
 - Close to prisons and camps (Ballsh)
 - Known un-marked execution and burial sites (Rrmaje, Menik, Dajt)
 - Close to public cemeteries – un marked
 - Morgue – used for anatomy lessons
 - Individual hidden location
 - Evidence of changes of burial places (Tepelena) or burial close to rivers
- Some thousands of cases are treated by families themselves in early years of transition.
- There is a recent legal provision to protect execution and burial places as cultural heritage sites.
- Active protection of those places by ordinary citizens are noted and awarded recently

Profiles of the missing

- Historical figures
 - Political elites pre-war and war by stereotyping them as collaborators
 - Opposition figures of 1st parliament (MPs trial and execution)
 - Victims of the power struggle within communists elite
 - Clergy (all religious)
 - Non communist intellectuals, artists, poets, sport figures,
 - Engineers, executives of grandiose projects,
- Entrepreneurs, land owners, business people,
- Kulaks
- Family members of above, collected in camps
- Children (Tepelena)

Sources of information – clarifying fate and whereabouts

- Archives
- Testimonials – by families and by those who have information
- Human remains

Source of info: Archives

- Ministry of Interior and its branches (Daily Communication of Ministry of Interior with its Branches
- Sigurimi
- Boarder' sections
- Police (execution of penal decisions)
- Judiciary
- Prosecution
- Ministry of Defence, Radiograms of Ministry of defense with its actors in terrain
- National Archives
- Hospitals
- Interrogation and trial file of the missing
- Surveillance file of the person
- History of Sigurimi as written by Sigurimi itself
- Party files
- Prisons and camps files

Source of info: Testimonials

- Family members
 - Investigation by family members for whereabouts and fate
 - Family archive for re-dimensioning of the missing person – restoring dignity
 - Possessions of archival value of the missing person (photo, diary, letters)
 - Genealogy of the family and the missing
- Ordinary citizens ocular witnesses of execution or burial
 - A friend
 - A young boy hearing the noises
 - A neighbor whose land remained un touched to honor the un-marked grave
 - A tract driver opening virgin lands who informed the affected families
- The execution team (medical doctor, prosecutor, police)

Source of info: Human remains -

- Useful for identification thru DNA
- Source of info for profile of the missing, time, status at the moment of death, what exactly happened (letter to the wife of Mr. Shllaku, Sign with personal name)
- Treatment before and after death
- Causes of death
- Status of grave; place, condition, circumstances
- To be noted, thousands of cases have been dealt by families, with no chance for proper investigation

References – need for a paradigm shift

Issues	Questions
Archival sources as means of politics and ideology are found full of hatred, manipulation and falsity. There is eminent risk of recycling narratives without verification	How is avoided perpetuating without reflection? Is there enough context?
Massive propaganda and censure produced for 50 years many publications are still today filling-up un-challenged and un-commented the libraries and media. They remain reference for who ever wants to use it, by pushing for nostalgia and denial	How can freedom of speech prevail and at the same time we stop denials of wrongdoings and re-victimization of affected people. How to ensure careful usage of those materials as reference? Is there room for cancel culture? Or can someone produce comments or wavers on so many publications of communisms, including movies and other art forms? Who could do it?
Oral accounts of the affected are hardly and slowly collected. They need not be used for sensational media, but treated with responsibility and care (authorship and authenticity)	Can this be done faster and better, so we do not loose important references? How to keep their credibility high? How to fight with time? How to make sure that the information collected is used by institutions for the best interest of the families and the missing ?
The unmarked graves have been dig by families with no proper investigation of causes of death wtc, losing important facts for families to clarify fate and for justice to be made.	Can we facilitate fully the plea from the families and ensure proper investigation of the cases so human rights are ensured and historical evidence is not lost

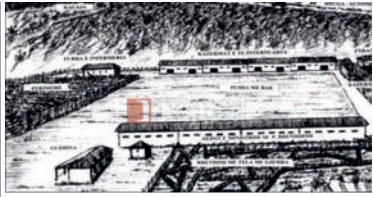
Sigurimi Files Authority mid term approach on the missing

- The authority will plan and make all efforts to enable **sufficient human resources** to coordinate activities related to investigations and identification of all persons missing from the communist period in Albania.
- Further improvement of the **legal basis and sublegal acts** in order to achieve full legislation, in accordance with international standards, for the protection of the rights of families of missing persons.
- On the basis of the current practice, will demand and contribute that a **centralized mechanism of inter-institutional co-operation** for the missing during the communist period is created and consolidated
- - The creation and updating of the **unique data-base** for the missing, harmonized and comprehensive, which can help trace the cases and produce accurate and reliable information about the cases of missing. The database will constitute the essential aspect in strengthening the state administration's capacity to find the missing and allow families to register missing relatives and exercise their social and economic rights.
- Increasing the activities and role of the Authority **to sensitize** Albanian society, especially in relation to the families of the missing during the communist regime
- Allocating **sufficient resources** for the examination and identification of cases of missing persons, in accordance with international standards of legal medicine and for the proper preservation of human remains until their burial

Erald KAPRI

Albanian author, journalist and researcher

THE MEMORY MAP AS AN INSTRUMENT FOR NOT TO FORGET



THE MEMORY MAP AS AN INSTRUMENT FOR NOT TO FORGET

Albania under dictatorship had a high number of prisons, internment camps, temporary labor camps or permanent internment sites (nearly 100). Most of them no longer exist except for public works constructed from the slave labor of former political prisoners. The Memory Map (hartaekujteses.al) is an instrument created by the Kujto Foundation that enables the collection of all archival, historical, oral, family, research and through digital technology to reproduce a memory of places of suffering, a memory of people who suffered in them and burial sites of missing victims. Furthermore, the Memory Map and Kujto.al provide comprehensive information for anyone interested in the process of a transitional justice.

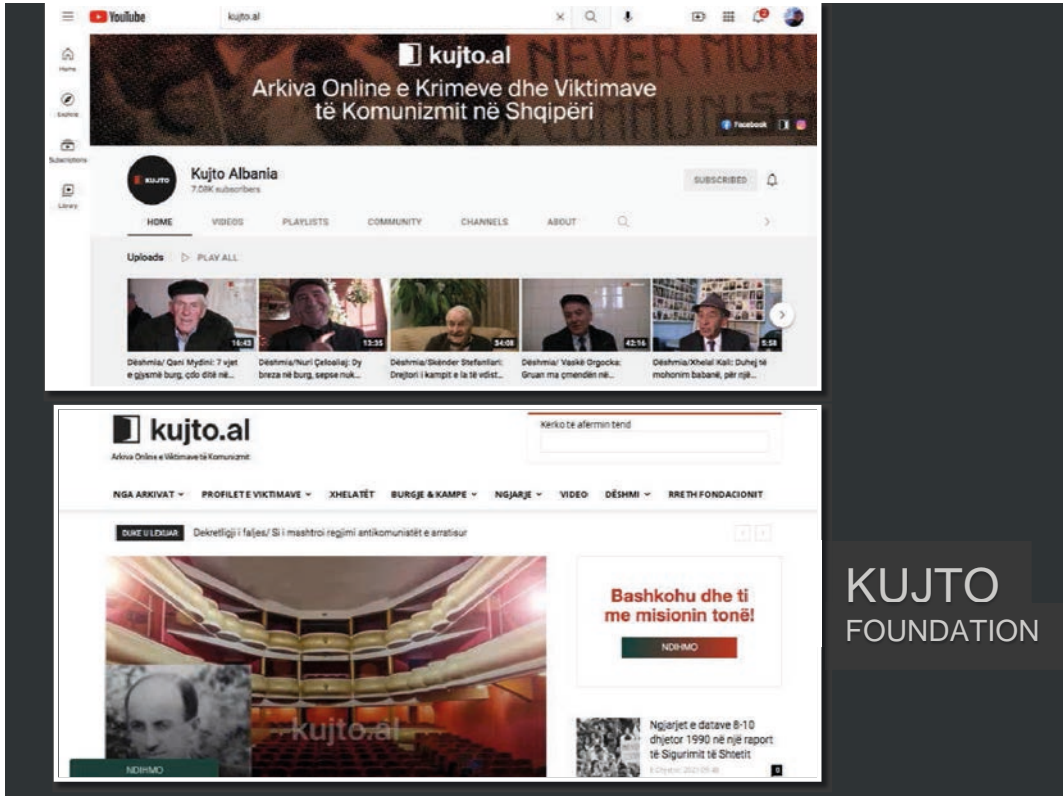
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Homepage Prisons Temporary labor camps Internment Sites Archive Project Presentation Kujto.al Follow AL / EN

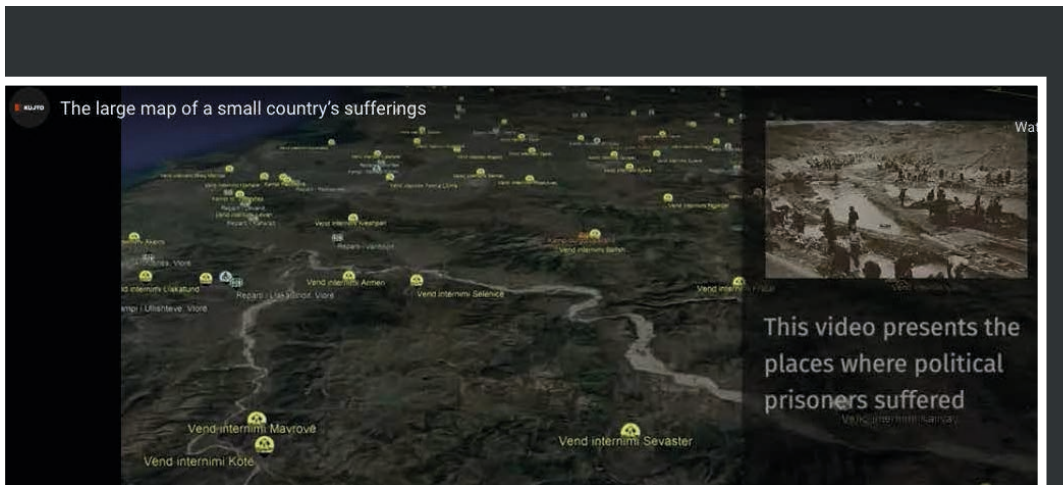
1947 -

- Maliq Camp: Vloçisht

First Camps ... Temporary labor camps



KUJTO
FOUNDATION



The digital map

Harta e Kujtesës.al
November 29 at 5:43 PM · 🌐

"Burgu "Shtëpia e Adem Vllës"
Ky burg ka pasur një kapacitet prej 100 vetësh dhe është përdorur si qendër hetuese dhe torturash. Ka funksionuar në vitet 1945-1954
https://hartaekujteses.al/bur-_burgu-shtepia-e-adem-vlles/

"Adem Vila's Home" Prison
Prison in Korça. This prison had a capacity of 100 persons and has been used as inquest and tortures center and has functioned in years 1945-1954
https://hartaekujteses.al/_burgu-shtepia-e-adem-vlles/

Mbështetur nga:
Konrad-Adenauer-Stiftung Albanien
kujo.al - Arkiva Online e Krimeve dhe Viktimave të Komunistit në Shqipëri



"Rinas Unit"
On 14 - 15 korrik 1955 reparti nr 2 u zhvendos në Rinas të Tiranës. Këtu mori emrin reparti 303. Këtu ndërtohej aerodromi i ri i Tiranës, një prej veprave më të mëdha të regjimit. Reparti nr.303 punoi këtu për 4 vjet deri në vitin 1959.
<https://hartaekujteses.al/burg-kamp/reparti-303-rinas/>

"Rinas Unit"
On 14 - 15 July 1955, Unit No. 2 was moved to Rinas, Tirana, where it was named Unit 303. The new Tirana Airport was being constructed here, which was one of the regime's most prominent works. Unit No. 303 operated here for four years until 1959.
<https://hartaekujteses.al/en/burg-kamp/reparti-303-rinas/>


Mbështetur nga:
Konrad-Adenauer-Stiftung Albanien
kujo.al - Arkiva Online e Krimeve dhe Viktimave të Komunistit në Shqipëri



"Burgu "Metropolisë"
Ky burg u quajt i tillë, se një pjesë e Mitropolisë së Korçës u përshtat si burg. Gjatë periudhës 1946-1953, në burg kanë gjetur vdekjen nga tortura më tepër se 30 veta.
https://hartaekujteses.al/_burgu-i-mitropolisne-ne-korce/

"Prison of "Metropolis"
This prison was called so because a part of Metropolis of Korça was adjusted like prison. During 1946-1953 in this inquest prison have found death from tortures more than 30 persons.
https://hartaekujteses.al/_burgu-i-mitropolisne-ne-korce/

Mbështetur nga:
Konrad-Adenauer-Stiftung Albanien
kujo.al - Arkiva Online e Krimeve dhe Viktimave të Komunistit në Shqipëri



Prisons

Archive documents, photos, testimonies, research

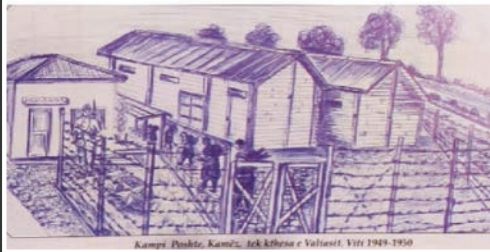
***Kampi i Mesit, Valias**
Ky kamp shërbeu për të vendosur të internuarit që punuan në bonifikim e fushës së Kamzës dhe Valiasit. Në të u sistemuan familjet e para që erdhën nga Kruja.
<https://hartaekujteses.al/burg-kamp/kampi-i-mesit-valias/>

***Valias Middle Camp... See more**



***Kampi i Poshtëm, Kamzë**
Kampi i Poshtëm të kthesa e Valiasit. Kampi kishte në përbërjen e tij vetëm tre baraka nga të cilat një ishte për komandën e dy për të internuarit.
<https://hartaekujteses.al/burg-kamp/kampi-i-poshtem-kamez/>

***Kamza Lower Camp**
The Lower camp was placed at the Valias turn. The camp had in its composition only three barracks of which one was for the command of two for the internees.... See more



Design Prisons

Archive documents, photos, testimonies, research

Labor Camps

*Kampi "Lufta e Vlorës", Llakatund
Ka funksionuar gjatë vitit 1950 si kamp i përkohshëm pune. Në fund të vitit 1953 aty janë vendosur emigrantët jugosllavë, përfshirë këtu në pjesën më të madhe shqiptarët nga Kosova.
<https://hartakujteses.al/.../kampi-lufta-e-vlores.../>

**Vlorë War' Camp, Llakatund... See more



Kampi i Ngurrëzit

Në këtë kamp u vendosën 3 familje, për të cilat nuk u gjend dot strehim në Savër. Familja...

BY **INDRIT DERVISHI** · 13 NËNTOR, 2021



Kampi i Paprit

Të internuarit u vendosën në një ngrehinë njëkatëshe në formë stalle dhe për periudhën njëvjeçare që qëndruan aty,...

BY **INDRIT DERVISHI** · 13 NËNTOR, 2021

Testimony



ARRIVA, DËSHMI

Të varrosur të gjallë në kampin e Vloçishtit

Pjesë nga dëshmia e ish-të dënuarit të kampit të Vloçishtit, Skënder Dumes, publikuar në gazetën "Flamuri" në Romë,....

BY **HARTA E KULTESËS** · 6 NËNTOR, 2021

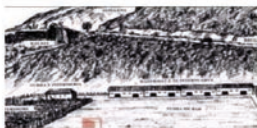


DËSHMI

"Universiteti" i Burrelit

Kuzinet, bucat, intelektualët, librat, ndonimet. Një përshkrim i burgut të Burrelit, përmes kujtimeve të Ullan Kostreck, mëtyer Erakit,...

BY **HARTA E KULTESËS** · 28 NËNTOR, 2021



DËSHMI, NGA ARRIVAT

Jeta e 1500 familjeve në kampin shfarosës të Tepelenës

Dami Merika, djali i Sulejman Merikës, shaxhat të Mustafa Krujës, ishte 4 vjeç kur u internuan për herë...



DËSHMI

Verbimi i të burgosurve në kampin e Lekajt

Dëshmia e Beogr Ajazit nga kampi i Besënit, ku punonin për tharjen e këmbës së Zhatzakut, një grup,...

BY **HARTA E KULTESËS** · 17 NËNTOR, 2021

Archive research

ARKIVA, DOKUMENTE

Një nga dokumentet e rralla të internimeve për në Kampin e Beratit

Ndërsa dokumentet e internimeve të periudhës 1945-1953 janë tejet të rralla, sjellim një të tillë të datës 28.9.1946...

BY HARTA E KUJTESES · 8 NENTOR, 2021

ARKIVA, DOKUMENTE

Dokumenti që nënshkruanin të internuarit

Një biletë nga Tirana në fshatin Gjorm të Vlorës, vetëm vajtje Internimi niste me një dokument, me anë...

More research

<https://hartaekujteses.al/bug-kamp/kampi-i-bedenit/>

Kampi i Bedenit



I dënuar i vranë në kampin e Bedenit "në tentativë arratisjeje"

Natalia Mahecha ARANGO

Ph.D. student in the history program at New York University

AN ARCHIVE OF UNKNOWN HUMAN REMAINS: THE DISPOSAL OF UNIDENTIFIED DEAD BODIES IN CEMETERIES IN COLOMBIA, 1990-2021.

On 17 October 2015, amidst the peace negotiations taking place between the Government and the Revolutionary Armed Forces of Colombia (FARC), both parties released the Press Statement N° 62 about the situation of missing people and their relatives. While the negotiations were still underway, the Government and the FARC announced the immediate implementation of humanitarian measures to search, locate and identify disappeared people, and create the Special Unit for Searching Missing Persons (UBP-D).¹ Among the humanitarian efforts, the parties agreed that the state ought to “speed up the identification and dignified return of the human remains of victims and people killed in military operations, who were buried as unidentified corpses (N.N)² in cemeteries of the regions most affected by the conflict.”³ In this setting, several state institutions undertook to implement a project called “Cemetery Plan,” which by the year 2016 reported the finding of 24,482 N.N bodies in 318 cemeteries across the country.⁴

The implementation of the “Cemetery Plan” reveals at least two important facts. Firstly, the Colombian authorities had to search for missing people not only in remote areas and clandestine graves but also in official cemeteries. Secondly, the relevance of graveyards in the process of searching disappeared persons is such that the state and the guerrilla group included these areas in the negotiations that ended more than five decades of confrontations between them. Although the Joint Communiqué N° 62 posits that both parties acknowledged the intricate relationship between forced disappearance, graveyards, and unidentified corpses, this recognition was possible only after a long process of inadequate estate responses, health emergencies, and political advocacy.

1 Colombian Government and the Revolutionary Armed Forces of Colombia, Joint Communiqué N° 62 (17 October 2015), <http://www.centrodememoriahistorica.gov.co/descargas/dialogos-paz-2015/comunicado-62-negociaciones-paz-2015.pdf>

2 N.N. (from the Latin term *nomen nescio*) is an expression used in some Latin American countries to refer to the dead bodies whose identity is unknown. In this article I draw on this concept because it is commonly used in the legal and colloquial discussions on this issue in Colombia.

3 comunicado.

4 “Plan ‘cementerio’ para encontrar desaparecidos,” *Semana*, 10 July 2015, [<https://www.semana.com/nacion/articulo/medicina-legal-se-propone-hallar-desaparecidos-del-conflicto/445281-3>]; “En cementerios del país hallan 24.482 cuerpos sin identificar,” *El Tiempo*, 4 September 2016, [<https://www.eltiempo.com/archivo/documento/CMS-16692109>]; Virginia Bouvier and Lisa Haugaard, *Acuerdo de paz sobre desaparecidos en Colombia*, accessed 27 February 2019, https://www.usip.org/sites/default/files/PB211-Acuerdo-de-paz-sobre-desaparecidos-en-Colombia_0.pdf

This article examines how the conception of cemeteries shifted from being considered as the final destination of human remains of N.Ns to being defined as an archive of unnamed bodies, who could be potential victims of forced disappearance. In so doing, the article analyses the changes in the conceptions of both the N.N bodies and the graveyards. Since the nineties, the unidentified corpses have drawn the attention of the public opinion as they began to appear on a regular basis. Notwithstanding attempts by some state institutions to develop effective programs for identifying these cadavers, many were buried as N.Ns in mass graves inside public cemeteries. As a result of the pressure from relatives of missing persons, NGOs, and international organizations, the Colombian state enacted a normative framework regarding the N.N cadavers and their proper burial in graveyards, in recent years. The discourses of public health and human rights provided information for the content of these regulations; however, only the second perspective managed to reshape the landscape of the cemeteries and the discussion about rights in the afterlife.

The ungovernability of public cemeteries and the mass graves for N.N bodies.

In the early 1990s, the Presidency of the Republic, the National Planning Department (DNP), and the National Fund for Development Project (FONADE) issued a pamphlet addressed to municipal authorities about local cemeteries. This pamphlet provided information on legal, environmental, and architectural parameters for the authorities to assess the infrastructural conditions of the cemeteries and determine the necessary investments.⁵ According to the publication, the burial grounds should meet the basic requirements for the interments, fulfil the relevant sanitary legislation, and ensure access for all “without distinction of socioeconomic conditions.”⁶ This official initiative for organizing local cemeteries contrasts with the way one of the main national newspapers rendered these spaces during the nineties and the early years of the twenty-first century. Problems such as state neglect, shortage of gravesites, increasing insecurity, and activities that undermined the presumed sanctity of these locations were the dominant themes of the articles published in this period. The public cemeteries were specifically the target for these revelations. Due to the lack of financial resources and operational capabilities, the public sector progressively lost ground to the private funeral industry portrayed as the solution to the necropolis’ conundrums. In this way, the public cemetery, a facility that was supposed to be the peaceful final resting place for the dead in this world, became an ungovernable space.

Although the previously mentioned pamphlet was the product of a national initiative, in that period, the state did not have a bureau or agency to oversee the centralized administration of the cemeteries throughout the country. Instead, three types of cemeteries were subject to different administrative frameworks. On the one hand, the private burial grounds had to fulfill minimum operational requirements, including the sanitary condi-

5 Presidency of the Republic, DNP, and FONADE, *Pongámonos al día sobre el 5. Cementerio Municipal* (Bogotá: Imprenta Nacional de Planeación, 1991), 1-3.

6 Presidency of the Republic, DNP and FONADE, *Pongámonos al día*, 4.

tions established in the National Health Code of 1979.⁷ Aside from some directives, the administration of these cemeteries was outside the state's sphere of responsibility. On the other hand, the public cemeteries were administered by the Catholic Church. Under the Concordat of 1887, agreed between the Holy See and the Colombian Congress, the ecclesiastical authorities assumed the administration of public burial grounds. They could "administer and regulate [the cemeteries] independently of civil authorities."⁸ In these cases, the state kept some specific faculties such as the supervision of sanitary conditions, unrestricted access for investigating crimes, and the possibility to "request exceptional burials for abandoned corpses, for instance."⁹ While the Catholic Church continued being the main administrator of public cemeteries, some measures were taken aimed to consolidate the idea of Colombia as a secular state and strengthen the autonomy of municipal authorities with additional tasks concerning cemeteries. For example, the municipalities were responsible for acquiring land to expand the size of graveyards¹⁰ and the "construction, expansion, and maintenance" of these facilities.¹¹ Additionally, recognizing the right to freedom of religion and worship, the state stipulated that municipalities must have at least one cemetery under civil authority where all people could have access irrespective of their beliefs.¹²

Between 1991 and 2010, in the context of this cemetery system, Columbia's influential *El Tiempo*, published a series of articles related to the conditions of public graveyards. These articles share an emphasis on the common problems of these spaces, to the extent that it is possible to suggest that many public cemeteries faced a major crisis in this period. Among the many issues that impacted the burial grounds, the most recurrent were the infrastructural constraints and the lack of graves for incoming corpses. In some cases, the cemeteries had been built on the outskirts of the cities or in rural areas. Still, the steady process of urbanization surrounded them with new neighborhoods thus preventing their expansion.¹³ To illustrate, the cemetery of Yopal (Casanare) exhausted

7 Presidency of the Republic, DNP and FONADE, *Pongámonos al día*, 8; Congress of Colombia, *Law N° 9 providing for the Health Measures*. (16 July 1979), http://www.secretariassenado.gov.co/senado/basedoc/ley_0009_1979.html

8 Presidency of the Republic, DNP and FONADE, *Pongámonos al día*, 5.

9 Presidency of the Republic, DNP and FONADE, *Pongámonos al día*, 5-6.

10 Presidency of the Republic, *Decree N° 1333 enacting the Municipal Regimen Code*, (25 April 1986), <http://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=1234>

11 Congress of Colombia, *Law N° 715 providing for organic norms on the resources and the competences inconformity with articles 151, 288, 356 and 357*. (21 December 2001), https://derechoshumanos.mininterior.gov.co/sites/default/files/guia_normativa-2018_0.pdf

12 The Municipality (*municipio*) is the smallest territorial entity with political, administrative, and fiscal autonomy in Colombia. Congress of Colombia, *Law N° 133 implementing the right to religious freedom and worship, recognized in Article 19 of the Political Constitution*. (23 May 1994), https://www.mininterior.gov.co/sites/default/files/14_ley_133_94.pdf

13 "El cementerio, un mal vecino," *El Tiempo*, 30 January 2004, [<https://www.eltiempo.com/archivo/documento/MAM-1531765>]; Wilson Vega, "Sobrecupo en el cementerio," *El Tiempo*, 23 June 2004, [<https://www.eltiempo.com/archivo/documento/MAM-1505969>]; Toño Sánchez, "Al cementerio de Sahagún no le cabe ni un alma más," *El Tiempo*, 20 December 1993, [<https://www.eltiempo.com/archivo/documento/MAM-277808>]; "El encarte de los cementerios," *El Tiempo*, 9 November 2003, [<https://www.eltiempo.com/archivo/documento/MAM-1038146>]

the graves available for burials in the early 2000s to the point that community members had to postpone the funeral of their dead up to three days, awaiting a space. Alarmed by the situation, the population closed the cemetery down and carried out a peaceful demonstration demanding solutions that ended with an agreement to construct a new graveyard.¹⁴ The Resurrection Cemetery located in Barrancabermeja (Santander) faced a similar situation. However, the local government dismissed either opening new ground or expanding the existing one because they did not have the financial means.¹⁵

The overpopulation of the public burial places was not exclusively related to the growth of the cities and the inability to develop new infrastructure. The very dynamics of the violence scourged in some parts of the country also disrupted these spaces. With the upsurge of drug trafficking in Medellín between the late eighties and the early 2000s, the San José Cemetery “performed up to five funerals on a single day” due to increased violent deaths.¹⁶ In the Universal Cemetery, also located in this city, hired assassins used plots belonging to the graveyard to bury people clandestinely.¹⁷ The gravediggers were the first-hand witnesses of this frenetic arrival of dead bodies in some public burial grounds. In the aftermath of a paramilitary onslaught in Puerto Asís (Putumayo) in 1998, the local gravedigger had to entomb nearly 37 corpses in two weeks. At that time, he said to *El Tiempo*, “I am tired, I have two other boys working with me, and this is not enough. The cemetery has become too small.”¹⁸ Similarly, the current coordinator of gravediggers, who worked as an assistant at the end of the 2000s, recalls that three cemetery employees dug five graves per day. Still, those were not sufficient for all the corpses that arrived: “Although we began to work from 5 am until nighttime, we were not able to deal with everything [...] In one [grave] we could bury seven or ten bodies; the minimum was four,” he points out.¹⁹

Besides the problems of space in the public cemeteries, several of them became the backdrop for activities that undermined the supposedly sacred character of these facilities. According to *El Tiempo*, among these activities, theft affected both the visitors and the residents. The newspaper articles make several references to relatives robbed while paying a visit to their dead; even more common were the cases of disrespect to corps-

14 “El cementerio, un mal vecino.”

15 Vega, “Sobrecupo en el.”

16 “Un cementerio que agoniza,” *El Tiempo*, 28 April 2004, [<https://www.eltiempo.com/archivo/documento/MAM-1533916>]

17 Deicy Pareja, “Medellín inicia plan para buscar a desaparecidos en cementerios,” *El Tiempo*, 22 November 2015, [<https://www.eltiempo.com/archivo/documento/CMS-16438009>]

18 Luis Alberto Miño, “El cementerio se quedó pequeño,” *El Tiempo*, 13 February 1998, [<https://www.eltiempo.com/archivo/documento/MAM-837493>]

19 Guillermo, Reinoso, “La historia de violencia que se oculta en el cementerio de Florencia,” *El Tiempo*, 16 January 2018, [<https://www.eltiempo.com/colombia/otras-ciudades/cuerpos-sin-identificar-en-el-cementerio-de-florencia-una-historia-de-violencia-171774>]

es²⁰ and the stealing of infrastructure, mainly gravestones.²¹ For instance, the newspaper reported the theft of 53 gravestones in Silvia (Cauca), 380 in Palmira (Valle), and 200 in Aguachica (Cesar), leaving some of the now unmarked graves with no trace for identifying the deceased²². In some cases, the robberies affected cemeteries' operation, as was the case with the Albornoz burial ground (Cartagena, Bolívar), where the thieves plundered the necropsy room, and the forensic doctors had to work outdoors.²³ The debate on which authority or agency should be responsible for guarding the cemeteries exacerbated the insecurity problem. Faced with a growing number of holdups, the administrator of the Central Cemetery in Villavicencio sought support from the National Police. Yet, the departmental sub-major pointed out that the city government was in charge of this task: "Imagine if we provided security not only to the living but also to the dead. It is absurd."²⁴ Furthermore, the insecurity was accompanied by the report of witchcraft, Satanic practices, sale and consumption of drugs, sexual acts in public space, and rapes, all of which contributed to the negative image of public cemeteries.²⁵ One of the most dramatic consequences of this situation was the deterioration of sanitary conditions in some of these graveyards. To some extent, the sanitation hazards were related to the urbanization process described above. Sections of the cemeteries still operating in the late twentieth century were built in the previous century to move the corpses from the churches, monasteries, and hospitals to the outskirts of towns.²⁶ The

20 In Colombia the disrespect of corpses is criminalized. Initially, this crime was included in the Decree 100 of 1980 (Article 197) which was repealed by the current Penal Code. The latter also criminalizes the disrespect of corpses but increased the punishment. While before the offender only had to pay a fine, now he/she is sentenced to imprisonment. Presidency of the Republic, *Decree N° 100 enacting the new Penal Code*. (23 January 1980), http://www.secretariassenado.gov.co/senado/basedoc/ley_0599_2000.html

21 William Ahumada, "Cementerio central de Baranoa (Atlántico) ha sido objeto de varios robos en los últimos dos años," *El Tiempo*, 3 April 2007, [<https://www.eltiempo.com/archivo/documento/CMS-3504176>]; "Muere el cementerio de Faca," *El Tiempo*, 5 April 1997, [<https://www.eltiempo.com/archivo/documento/MAM-548385#>]; "Adoradores se toman cementerios," *El Tiempo*, 13 April 1998, [<https://www.eltiempo.com/archivo/documento/MAM-748074>]; "Se roban las lápidas en el cementerio de Tolú," *El Tiempo*, 21 September 2001, [<https://www.eltiempo.com/archivo/documento/MAM-657038>]; "Roban flores en cementerio," *El Tiempo*, 16 February 2005, [<https://www.eltiempo.com/archivo/documento/MAM-1626969>]

22 "Se roban 53 lápidas de cementerio," *El Tiempo*, 18 August 2001, [<https://www.eltiempo.com/archivo/documento/MAM-464624>]; "Vandalismo acorrala cementerio de Palmira," *El Tiempo*, 17 February 1999, [<https://www.eltiempo.com/archivo/documento/MAM-881832>]; Félix Quintero, "Ladrones se han robado 200 lápidas en cementerio de Aguachica (Cesar)," *El Tiempo*, 16 May 2008, [<https://www.eltiempo.com/archivo/documento/CMS-4169686>]

23 "Necropsias al aire libre prenden alarmas en cementerio del barrio Albornoz," *El Tiempo*, 14 October 2008, [<https://www.eltiempo.com/archivo/documento/CMS-4601736>]

24 "Están robando en el cementerio," *El Tiempo*, 7 January 1997, [<https://www.eltiempo.com/archivo/documento/MAM-509841>]

25 Ahumada, "Cementerio central"; "Adoradores se toman"; Carlos Salgado, "Un sancocho en el cementerio," *El Tiempo*, 13 January 2004, [<https://www.eltiempo.com/archivo/documento/MAM-1570750>]

26 Adriana Alzate Echeverri, *Suciedad y orden: reformas sanitarias borbónicas en la Nueva Granada* (Bogotá: Editorial Universidad del Rosario, 2007), 159-169; Alberto Escovar Wilson-White, "Vida, resurrección y muerte en la arquitectura funeraria," in *Las ciudades y los muertos. Cementerios de*

struggle against “the coexistence between living and dead” was based on “a new sensibility towards the cadavers,” where dead bodies were seen as the focus of infections and other threats to human life.²⁷ Nevertheless, with the growth of cities, the former peripheral graveyards became embedded in the urban landscape.²⁸ A portion of these cemeteries, now located within the city perimeter, became sources of water pollution, odors, and vectors of epidemics because of their infrastructural limitations.²⁹ Furthermore, other menaces emerged as a result of a lack of facilities and good practices.³⁰ *El Tiempo* reported on cemeteries with no adequate spaces for the conduct of autopsies and other medicolegal procedures and in need of mortuary chambers to conserve corpses.³¹ Against this backdrop, while the local authorities claimed a “lack of financial resources and support from central government”³², some local communities carried out collective actions to demand appropriate conditions for the disposal of dead bodies.³³

Whereas *El Tiempo* represented the local burial grounds as ungovernable spaces, a flourishing private funerary industry became the solution for all these problems.³⁴ Inspired by the American rural cemetery model,³⁵ the private graveyards provided a modern and organized way of governing the dead. These new cemeteries were built in the urban fringe and had large spaces for green areas and additional facilities (e.g., visitation rooms and chapels).³⁶ In sharp contrast with the public cemeteries, this kind of burial grounds realized the promise of “eternal rest” and was associated with such concepts as “peace, tranquility, [and] solemnity.”³⁷ The funeral industry provided a new

América Latina, ed. Office of the Mayor of Bogotá (Bogotá: Instituto Distrital de Cultura, 2004), 21-22.

27 Alzate Echeverri, *Sociedad y orden*, 160-161, 164.

28 Paula Velásquez López, “Los Cementerios... Territorios Intersticiales.” *Revista Hacia la Promoción de la Salud* 14, no. 2 (2009): 28, <http://www.redalyc.org/articulo.oa?id=309126692009>

29 “Construcción de cementerio en Funza genera roces entre la comunidad y la CAR,” *El Tiempo*, 19 March 2009, [<https://www.eltiempo.com/archivo/documento/CMS-4889814>]; “Cementerio con olores,” *El Tiempo*, 5 June 1997, [<https://www.eltiempo.com/archivo/documento/MAM-589222>]; “Cadáveres contaminan agua,” *El Tiempo*, 6 May 1999, [<https://www.eltiempo.com/archivo/documento/MAM-909962>]

30 “La basura causa lío en cementerio,” *El Tiempo*, 6 January 1995, [<https://www.eltiempo.com/archivo/documento/MAM-306827>]; “Muere el cementerio”; “Nuevo cementerio en Yopal,” *El Tiempo*, 13 July 2004, [<https://www.eltiempo.com/archivo/documento/MAM-1553698>]; “El encarte.”

31 “Cementerio convertido en morgue,” *El Tiempo*, 2 March 1996, [<https://www.eltiempo.com/archivo/documento/MAM-346759>]; “Necropsias al aire”; “Muere el cementerio.”

32 “Cementerio convertido.”

33 “Cementerio con olores”; “Construcción de cementerio”; “El encarte.”

34 Christophe Robert, “Dead zone: pollution, contamination and the neglected dead in post-war Saigon,” in *Governing the Dead: Sovereignty and the Politics of Dead Bodies*, ed. Finn Stepputat (Manchester: Manchester University Press, 2014) 66-68; Henri Myrtilinen, “Claiming the dead, defining the nation: contested narratives of the independence struggle in postconflict Timor,” in *Governing the Dead*, 98.

35 Wilson Pabón Quintero, *La muerte y los muertos en Colombia: Violencia política, víctimas y victimarios* (Bogotá: Editorial Universidad Autónoma de Colombia, 2015) 132.

36 “Curia abandona el Cementerio Central,” *El Tiempo*, 23 December 1994, [<https://www.eltiempo.com/archivo/documento/MAM-270920>]; “Los Olivos construye nuevo cementerio,” *El Tiempo*, 20 August 2004, [<https://www.eltiempo.com/archivo/documento/MAM-1560808>]; “Abren nuevo cementerio,” *El Tiempo*, 29 January 2005, [<https://www.eltiempo.com/archivo/documento/MAM-1694172>]

37 Velásquez López, “Los Cementerios... Territorios”, 28-29.

alternative to the disposal of dead bodies and a wide range of mortuary services. Indeed, the funeral homes capitalized on all aspects of this rite of passage to the extent that they offered, among others, funeral merchandise, aftercare programs, insurances, and assistance in bureaucratic procedures.³⁸

Beyond the imaginaries about these graveyards, private and public cemeteries differed radically in their conditions of access to users. On average, the private cemeteries had higher prices than the public ones, a difference more pronounced in the bigger cities.³⁹ For example, in the early 2000s, in Bogotá, burying someone in a private cemetery could be twice more expensive than in a public ground, an expense that increased with the cost of other mortuary services.⁴⁰ In this way, the gap between private and public cemeteries was related to different treatments of the dead and the economic capacity of the surviving bereaved.⁴¹

Unknown corpses were definitively excluded from burial in private grounds because, in principle, they did not have mourners who could afford their burial services. The fact that the disposal of unnamed bodies did not match the economic logic of the burgeoning funeral industry was exacerbated by the lack of pertinent policies. Thus, the responsibility for burying these bodies remained vague.⁴² The absence of identity and of relatives responsible for their care led to the consolidation of public cemeteries as the space par excellence for N.Ns. In many instances, the so-called “popular cemeteries” or “cemeteries for the poor” became the burial site for unidentified deceased as well. For example, in Medellín and Cartagena, the Universal Cemetery and the Albornoz’ Cemetery were respectively the final resting place for the corpses of low-income people, indigents, and N.Ns.⁴³ In the socio-economically more diverse public graveyards, the unnamed bodies

38 “Los 25 años del parque cimiterio,” *El Tiempo*, 27 October 1995, [<https://www.eltiempo.com/archivo/documento/MAM-436364>]

39 Gisselle Torres, “La muerte está por las nubes,” *El Tiempo*, 17 February 1999, [<https://www.eltiempo.com/archivo/documento/MAM-874768>]

40 “El Cementerio Central se quedó sin bóvedas,” *El Tiempo*, 23 January 2000, [<https://www.eltiempo.com/archivo/documento/MAM-1275055>]; “Serafín, nuevo cementerio público del sur,” *El Tiempo*, 8 July 2001, [<https://www.eltiempo.com/archivo/documento/MAM-427575>]

41 “Piden cementerio para enterrar a los pensionados,” *El Tiempo*, 14 July 1997, [<https://www.eltiempo.com/archivo/documento/MAM-607539>]; Jhon Zuluaga, “Las personas de escasos recursos en Armenia, tendrán cementerio,” *El Tiempo*, 24 November 2006, [<https://www.eltiempo.com/archivo/documento/CMS-3340190>]; “Los cementerios del Distrito ofrecerán tarifas más económicas a estratos 1, 2 y 3,” *El Tiempo*, 16 September 2009, [<https://www.eltiempo.com/archivo/documento/CMS-6126351>]; “Debate por costos en cementerios de los municipios,” *El Tiempo*, 27 September 2017, [<https://www.eltiempo.com/archivo/documento/CMS-16388640>]

42 “Los muertos sin identificar demoran su descanso,” *El Tiempo*, 28 July 2005, [<https://www.eltiempo.com/archivo/documento/MAM-1678891>]

43 “Cementerio popular,” *El Tiempo*, October 04, 1991, [<https://www.eltiempo.com/archivo/documento/MAM-179203>]; Marcela Han, “Un nombre menos en la lista de los muertos que nadie reclama,” *El Tiempo*, 28 December 2018, [<https://www.eltiempo.com/justicia/investigacion/historia-de-identificacion-de-desaparecido-en-colombia-gonzalo-delgado-309010>]; “Otro cementerio para Bogotá,” *El Tiempo*, 11 November 2000, [<https://www.eltiempo.com/archivo/documento/MAM-1242320>]; “Los rostros de los desaparecidos del Cementerio Universal,” *El Colombiano*, 19 February 2017, [<https://www.elcolombiano.com/colombia/desaparecidos-del-cementerio-universal-de-medellin-FF5979564>]

occupied specific burial zones so visitors could distinguish the N.N. bodies from the rest of the cemetery's population.⁴⁴ Nonetheless, some cemeteries turned into the epicenter of N.N.'s burials regardless of their socio-economic composition. Such was the case with the graveyards in the riverside municipalities of Puerto Berrío (Antioquia) and Marsella (Risaralda), where unidentified corpses arrived following the currents of the rivers Magdalena and Cauca, respectively.⁴⁵

The assignment of public cemeteries as the burial site for unnamed corpses was accompanied by the definition of a particular form of interment for these deceased. While there were exceptions to this practice,⁴⁶ N.N. bodies were generally buried in massive graves inside the public graveyards.⁴⁷ In a way similar to the pauper cemeteries and potter's fields in the U.S. and Sao Paulo,⁴⁸ the unidentified bodies were not interred individually, and their graves were usually unmarked. Sometimes, the N.Ns had to share the space of the mass graves with unclaimed dead, body parts, and hospital waste.⁴⁹

44 "Vandalismo acorrala cementerio de Palmira," *El Tiempo*, 17 February 1999, [<https://www.eltiempo.com/archivo/documento/MAM-881832>]; "Siguiendo el rastro de un no identificado," *El Tiempo*, 12 December, 2012, [https://www.eltiempo.com/Multimedia/especiales/muertos-nn-colombia/ARTICULO-WEB-NOTA_INTERIOR_MULTIMEDIA-12445849.html]

45 Freddy Arango, "Los muertos olvidados del cementerio de Marsella," *El Tiempo*, 1 April 2004, [<https://www.eltiempo.com/archivo/documento/MAM-1580334>]; "Cruzada por los NN del río Cauca," *El Tiempo*, 29 October 2009, [<https://www.eltiempo.com/archivo/documento/MAM-3692118>]; Catalina Oquendo, "En Puerto Berrío cada NN tiene su padrino," *El Tiempo*, 22 October 2006, [<https://www.eltiempo.com/archivo/documento/MAM-2245401>]; Angie Quiñones, "Puerto Berrío sigue adoptando muertos sin nombre que trae el Magdalena," *El Tiempo*, 28 December 2018, [<https://www.eltiempo.com/justicia/servicios/en-puerto-berrio-ven-como-santos-a-los-cuerpos-no-identificados-264804>]

46 Arango, "Los muertos olvidados"; Nicolas Rapold, "Tending to Colombia's Disappeared and Their Final Homes," *New York Times*, 13 October 2013, [<https://www.nytimes.com/2013/10/08/movies/requiem-nn-portrays-a-second-life-for-unknown-dead.html>]

47 "Construirán pabellón para cadáveres N.N.," *El Tiempo*, 11 August 1993, [<https://www.eltiempo.com/archivo/documento/MAM-192788>]; "N.N. no deben estar en las fosas comunes," *El Tiempo*, 7 September 1994, [<https://www.eltiempo.com/archivo/documento/MAM-211119>]; Jorge Mahecha, "Muertos que no tienen rostro," *El Tiempo*, 18 October 2003, [<https://www.eltiempo.com/archivo/documento/MAM-1003127>]; "Colombia busca y exhuma a sus desaparecidos," *El País*, 21 December 2018, [https://elpais.com/internacional/2018/12/21/colombia/1545351284_299300.html]

48 Jason Summerfield, "Comments on the Potter's Field: The Future of Mass Graves," *Quinnipiac Probate Law Journal* 23, no. 1 (2014): 34-38, <http://search.ebscohost.com.proxy.library.nyu.edu/login.aspx?direct=true&db=edshol&AN=edshol.hein.journals.qplj28.7&site=eds-live>; Graham Denyer Willis, "The Potter's Field," *Comparative Studies in Society and History* 60, no. 3 (2018): 550-568. doi:10.1017/S001041751800018X

49 Mayor's Office of Bogotá, *Decree N° 367 adopting the regulation for the granting of administration, operation, maintenance of the cemetery and the cremation chamber that are property of the Capital District*. (July 2007, 1005), [<https://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=1834>]; "Cementerio Central," *El Tiempo*, 8 September 1998, [<https://www.eltiempo.com/archivo/documento/MAM-838219>]; Luz Martínez, "Estudiantes de Arquitectura quieren 'revivir' Cementerio Central de Sincelejo," *El Tiempo*, 20 June 2009, [<https://www.eltiempo.com/archivo/documento/CMS-5492327>]; International Committee of the Red Cross, "Desaparecer dos veces: el drama de muertos sin nombre en cementerios de Colombia," last modified 10 December 2015, [<https://www.icrc.org/es/document/desaparecer-dos-veces-el-drama-de-muertos-sin-nombre-en-cementerios-de-colombia>]; Ruth Agudelo, Maritza Loaiza, and Carolina Montes, "Gestión de los residuos sólidos médico-forenses en el Instituto Nacional de Medicina Legal y Ciencias Forenses, Medellín, Colombia, 2001," *Revista Facultad Nacional de Salud Pública* 20, no. 2 (2002): 7,

According to Wilson Pabón, the creation of mass graves in Colombian cemeteries performed the purpose for which they were historically created, that is to say, for burying poor people and victims of epidemic outbreaks. Nonetheless, the author points out that with the “arriv[al] of an endless number of N.N. people [who were] products of violence, the ritual geography of the cemeteries changed during the second half of the twentieth century.”⁵⁰

Indeed, as shown in the next section, the escalation of the violent dynamics beginning in this period reshaped not only the landscape of cemeteries and of the mass graves inside them but also the conceptions that the Colombian state and society had regarding the unidentified corpses. The disposal of N.Ns in these conditions would be contested by different stakeholders demanding a hygienic treatment of the dead and proper individualization of would-be victims of forced disappearance.

The N.N bodies become visible, and the initial state response.

On 24 January 1991, some students and workers discovered an unidentified dead body abandoned in a barren field in northern Bogotá. The investigation judge # 78 ordered the corpse’s removal. The official leading the process described the deceased as a woman, approximately 60 years old, with grey hair, who had been shot in the head. The authorities brought the corpse to the National Institute of Legal Medicine and Forensic Sciences (INMLCF), where forensic doctors conducted the autopsy, made a dental chart, and took fingerprints. The INMLCF could not establish the woman’s identity, and the corpse was finally buried in a mass grave for 200 N.Ns in the Southern Cemetery. Four months earlier, Marina Montoya, a woman with the same characteristics described by the official, had been kidnapped in a restaurant she owned in Bogotá. The disappearance of Marina, who was the sister of the former General Secretary of the Presidency, Germán Montoya, was part of a series of kidnappings committed by “Los Extraditables”⁵¹, whose victims were members of powerful Colombian families.

“Los Extraditables” used these kidnappings and many other strategies to wage war against the Colombian state, avoid their extradition to the U.S, and change the national legislation about this issue.⁵² By the end of January, “Los Extraditables” released a statement admitting that they ordered the assassination of Marina Montoya allegedly because their organization was the target of persecution and attacks by the National Police. After the press release, the INMLCF’s forensic doctors began to suspect that the corpse of Marina Montoya could be the N.N. body of the older woman buried recently. A judge

<https://www.redalyc.org/html/120/12020203/>

50 Pabón, “La muerte y los muertos,” 133-134.

51 “Los extraditables” was the name of a criminal organization that congregated the most prominent drug lords of the Medellín Cartel between the 80s and 90s. Pablo Escobar, Carlos Lehder and the Ochoa brothers were some of the members.

52 Gabriel García Márquez, *Noticia de un secuestro* (Bogotá: Editorial Norma, 1996), 143-174; Fernando Salamanca Roza, *CSI Colombia: Radiografía forense de los crímenes más impactantes de la historia reciente de Colombia* (Bogotá: Editorial Aguilar, 2018); Astrid Legarda Martínez, *El verdadero Pablo: sangre, traición y muerte* (Bogotá: Ediciones Gato Azul, 2005), 226-234.

ordered the exhumation of the corpse from the mass grave; it was found naked and without any identifying information (e.g., the autopsy number). Finally, Marina's relatives recognized her, and she was reburied in a private cemetery on the outskirts of the city.⁵³

Although Marina Montoya was not the first case of an unknown corpse buried after an ineffective identification, the confrontation between the government and the drug trafficking mafias put it at the forefront of public opinion. Her murder unleashed a significant controversy as to which state agency was responsible for identifying corpses and how N.Ns should be inhumated in public cemeteries. Only 24 hours after Marina Montoya's investigation ended, the National Criminal Investigation Department director announced a national program to identify N.N bodies and prosecute the alleged perpetrators of their killings. According to the director, the plan included a detailed allocation of institutional responsibilities and the setting up of a national information system on N.Ns and missing people.⁵⁴ Although this proposal appeared to be a suitable solution, its implementation encountered substantial difficulties. The then-director of the INMLCF's regional headquarters in Cundinamarca, Mario Hernández, outlined some of them in an article published in *El Tiempo* about the constant discovery of N.N bodies in Bogotá and its surrounding areas. Hernández suggested that a significant portion of these deceased were victims of violent deaths. The perpetrators deliberately sought to hamper any identification attempt. Therefore, forensic experts only managed to successfully diagnose 20 percent of cases. Nonetheless, the director pointed out that "the problem [...] was also related to the fact that we are accepting bodies but not identifying them. The authorities are more interested in receiving N.N. cadavers, carrying out autopsies, and burying them."⁵⁵

In this context, the N.Ns gained a higher profile because they were progressively more visible. These bodies appeared in highways, rivers, and landfills, some in full sight of the local communities.⁵⁶ Consequently, the Attorney General's Office (FGN) and the INMLCF formulated strategies to address this issue. In contrast to the national scope proposed by the National Criminal Investigation Department director, the rising institutional response covered specific regions, and was coordinated from regional headquarters in

53 "Extraditables ordenaron ejecutar a Marina Montoya," *El Tiempo*, 31 January 1991, [<https://www.eltiempo.com/archivo/documento/MAM-18518>]; "Hallan cadáver de Marina Montoya," *El Tiempo*, 1 February 1991, [<https://www.eltiempo.com/archivo/documento/MAM-18228>]; "Second hostage killed by Colombian ring," *New York Times*, 1 February 1991, [<https://www.nytimes.com/1991/02/01/world/2d-hostage-killed-by-colombian-ring.html>]; Salamanca, "CSI Colombia."

54 Edgar Torres, "Habrá un archivo nacional para NN," *El Tiempo*, 2 February 1991, [<https://www.eltiempo.com/archivo/documento/MAM-19568>]

55 "Se busca nombre para 150 muertos," *El Tiempo*, 5 August 1991, [<https://www.eltiempo.com/archivo/documento/MAM-132317>]

56 *El Tiempo*. (1993, 03 de marzo). "Aumenta número de NN". Recupero el 23 de abril de 2019 del sitio web del periódico El Tiempo: [<https://www.eltiempo.com/archivo/documento/MAM-61222>]; "Encuentran NN," *El Tiempo*, 15 September 1998, [<https://www.eltiempo.com/archivo/documento/MAM-825381>]; "Hallazgos de N.N. alarman a Palmaseca," *El Tiempo*, 9 October 1996, [<https://www.eltiempo.com/archivo/documento/MAM-534037>]; "Cementerio macabro," *El Tiempo*, 31 January 1996, [<https://www.eltiempo.com/archivo/documento/MAM-363623>]

major cities like Bogotá, Medellín, and Cali.⁵⁷ The regional headquarters of the FGN and the INMLCF made advances in the standardization of forensic methods and data triangulation regarding N.N. corpses.⁵⁸ The coroners used techniques that included visual identification,⁵⁹ fingerprint analysis, and facial reconstruction, and promoted the implementation of new methods such as dental charts and DNA tests.⁶⁰ Simultaneously, these institutions sought a greater involvement of missing people's families to report the disappeared, support strategies for relatives and acquaintances who performed visual identifications, and partnerships with national and regional media to broadcast information about corpses found by authorities.⁶¹ In some instances, these programs helped increase the percentage of identifications, as was the case in Medellín, Cali, and Barranquilla.⁶²

Despite the advance of these programs to mitigate the critical situation of N.Ns, the institutional response was insufficient. For example, between 1991 and 1996, the INMLCF's regional headquarters in Cali received 1,969 N.N. bodies, of whom 1,309 were identified, partly thanks to the work of the Technical Identification Office of Disappeared and N.N. and the Inter-institutional Committee for the Search for Missing People and N.N. Identification.⁶³ Although about two-thirds of the corpses had their identities established, the remaining 660 unnamed bodies were interred mainly in the mass grave of Siloé Cemetery.⁶⁴ While there is no available national data about the number of unidentified decedents for this period, the situation in Cali points to the potential magnitude of the issue of N.Ns, especially if one considers that institutional action in many parts of the country was not as effective as in this city. Faced with this situation, the local representatives of the FGN and the INMLCF argued that the absence of necessary

57 "Desaparecidos y N.N. serán investigados," *El Tiempo*, 22 February 1995, [<https://m.eltiempo.com/archivo/documento/MAM-291133>]; "Fiscalía tras desaparecidos y NN," *El Tiempo*, 26 April 1997, [<https://www.eltiempo.com/archivo/documento/MAM-572577>]; "Dónde están los que desaparecen," *El Tiempo*, 8 June 1996, [<https://www.eltiempo.com/archivo/documento/MAM-311851>]

58 "Antioquia: fin al drama de los N.N.," *El Tiempo*, 2 August 1992, [<https://www.eltiempo.com/archivo/documento/MAM-170377>]; "Unir criterios para identidad de N.N.," *El Tiempo*, 15 June 1996, [<https://www.eltiempo.com/archivo/documento/MAM-458083>]; Fredy Moreno, "Red para acabar con los N.N.," *El Tiempo*, 1 April 1995, [<https://www.eltiempo.com/archivo/documento/MAM-285541>]; "Plan para identificar N.N. en Urabá," *El Tiempo*, 25 September 1992, [<https://www.eltiempo.com/archivo/documento/MAM-209709>]

59 This method is "performed by relatives or friends who officially are considered "responsible" for this identification (of the corpse) on a *bona fide* basis". Cristina Cattaneo, Danilo De Angelis, Davide Porta, and Marco Grandi, "Personal Identification of Cadavers and Human Remains," in *Forensic Anthropology and Medicine Complementary Sciences: From Recovery to Cause of Death*, eds. Aurore Schmitt, Eugenia Cunha, and João Pinheiro (Totowa: Humana Press, 2006), 360.

60 "Antioquia: fin al."

61 "Antioquia: fin al"; "Dónde están los"; Orlando Restrepo, "En Medellín, los N.N. se identifican en videos," *El Tiempo*, 9 October 1995, [<https://www.eltiempo.com/archivo/documento/MAM-418290>]

62 "¿Quiénes son los N.N.?", *Semana*, 18 January 1993, [<https://www.semana.com/especiales/articulo/quienes-son-los-nn/19132-3>]; Roberto Llanos, "Disminuyen N.N. en Barranquilla," *El Tiempo*, Diciembre 10, 1996, [<https://www.eltiempo.com/archivo/documento/MAM-643230>]; "Tras el rastro de los desaparecidos," *El Tiempo*, 1 August 1998, [<https://www.eltiempo.com/archivo/documento/MAM-807219>]

63 "Desaparecidos y N.N."; "Fiscalía tras desaparecidos."

64 "A la fosa común no solo van N.N.," *El Tiempo*, 20 January 1997, [<https://www.eltiempo.com/archivo/documento/MAM-535417>]; "Fiscalía tras desaparecidos."

infrastructures such as mortuaries, facilities for autopsies, and refrigerators, and the limited access to unified information about the corpses, coupled with the challenges of bodily decomposition formed the main obstacles to managing the identification of N.N. decedents.⁶⁵ The limitations alleged by these institutions may not be ignored; yet, their explanations assumed that these constraints would be overcome with the improvement of technological capabilities and the exclusive emphasis on the technical limitations for identifying unnamed corpses apparently concealed other elements at stake.⁶⁶

The inability to establish the identity of a significant part of the N.N. decedents led to the normalization of the interments in mass graves inside public cemeteries. In some cases, after forensic experts performed autopsies and identification techniques without any success, the corpses were taken to the burial grounds.⁶⁷ However, the authorities did not keep consistent records on the location of the unnamed decedents, to allow for their future recovery.⁶⁸ Additionally, the agencies engaged in the identification process did not have unified guidelines about the treatment and conservation of N.N. bodies, so each local headquarters addressed these tasks according to their particular resources. For instance, while the city of Cali had mortuary refrigerators to store up to 40 corpses for fifteen days, other municipalities like Facatativá and Girardot (both located in Cundinamarca) did not have facilities to preserve already decomposing bodies.⁶⁹ Thus, this shortage or total lack of spaces for storing N.Ns accelerated their transfer to mass graves. Even in successful cases, where an unidentified body was exhumed from the cemetery and subsequently identified, the results were more the product of endeavors from missing people's relatives, who were devoted to searching for their loved ones.⁷⁰ These efforts were made, for example, in Bogotá's Southern Cemetery, where family members paid funeral homes or private individuals for recovering N.N. bodies from the mass graves. Those who could not afford these external services had to leave their relatives in the mass graves for unknown bodies, even if they had some clues for their identification.⁷¹ Regarding the no intervention of officials in the exhumation of those formerly buried as N.Ns, one may understand the disposal of unnamed bodies in these collective burial as the way for state institutions to finalize their involvement in the identification process.

While the regulations for burying the N.N. bodies in public cemeteries remained vague, the undeniable presence of unnamed decedents made room for independent endeavors. These initiatives had in common the idea of mass graves as places where the N.Ns

65 "Antioquia: fin al"; "Fiscalía tras desaparecidos"; "Identificación de N.N.," *El Tiempo*, 23 July 1996, [<https://www.eltiempo.com/archivo/documento/MAM-426045>]; "¿Quiénes son los?"

66 Sarah Wagner, *To Know where He Lies. DNA Technology and the Search for Sebrenica's Missing* (Berkeley: University of California Press, 2011), 85-90, 98-122.

67 "Desaparecidos," *El Tiempo*, 12 November 1996, [<https://www.eltiempo.com/archivo/documento/MAM-598500>]

68 "Antioquia: fin al."

69 "A la fosa común"; "Muere el cementerio"; "Cementerio convertido en."

70 Martín Parra, "El río Cauca, un cementerio," *El Tiempo*, 8 March 1992, [<https://www.eltiempo.com/archivo/documento/MAM-57907>]

71 Olga González, "Cruces para los NN," *El Tiempo*, 3 April 1994, [<https://www.eltiempo.com/archivo/documento/MAM-91436>]

could not be buried with the dignity they deserved. On the one hand, some people with no religious affiliations fostered individual interments of unnamed bodies and subsidized funeral expenses. One such initiative was the one in Riohacha (La Guajira), when Sonia Bermúdez, the forensic assistant of the INMLCF's regional headquarters, built with her own resources a cemetery for interring N.N corpses, homeless decedents, and those dead whose surviving relatives could not afford a regular mortuary service. Concerning the unnamed decedents, Bermúdez began with constructing 36 spaces in the Central Cemetery's public mausoleum of the municipality. According to her, the original idea was to avoid interments in the mass grave, but these spaces were used up quickly. Then Bermúdez and her family founded the graveyard "Gente como nosotros" (people like us), and they performed autopsies and burials. In addition, Bermúdez became the adoptive mother for the unidentified deceased, as she suggested in an interview with *El Tiempo*: "this is the place (the cemetery) where I have my dead as I want, I don't want anybody to disturb them. I prefer to be the only one who can care, love, and indulge them how they deserve. They aren't N.N. They are people with no remembrance. They need to be treated as children, and, for me, they are my children. I take care of them, and I love them in the same way I love myself."⁷²

On the other hand, members of the Catholic Church promoted initiatives for funeral assistance of N.Ns inspired by the Christian charity meant for the poor. The long-standing intervention of the Church in the administration of charitable programs in Colombia also included its participation in the realm of mortuary practices⁷³. Specifically, the Church facilitated burial grounds and some complimentary funeral rites for the so-called "pobres de solemnidad" (poverty-stricken persons).⁷⁴ While the *pobres de solemnidad* deserved charitable support because they lacked material means, the N.Ns needed it because they did not have any bereaved. The Montfortian priest Oswaldo Jaramillo was the pioneer of one of these programs in Bogotá, which coordinated with the INMLCF. Private benefactors supported the work of the priest Jaramillo by donating the elements needed to guarantee the interments, particularly the coffins. Among the donors, in 1998, the Italian fashion brand Benetton sent to Bogotá 90 garments for the N.N corpses. For Jaramillo, the Benetton contribution was worthwhile because "the violence of death cannot be accompanied by the violence of burying a naked body."⁷⁵ According to the priest, the proper burial of unnamed decedents was a way to be more humane toward both the corpses deprived of their own story and the families that lost the opportunity to mourn their dead.⁷⁶

72 Paola Benjumea, "Mujer creó 'cementerio' en Riohacha para sepultar a los NN," *El Tiempo*, 1 April 2008, [<https://www.eltiempo.com/archivo/documento/CMS-4062451>]; Paola Benjumea, "Pleito por cementerio no deja descansar en paz a NN," *El Tiempo*, 4 March 2009, [<https://www.eltiempo.com/archivo/documento/MAM-3344822>]; María Camargo, "La mujer que se enamoró de 'sus muertos,'" *El Tiempo*, 18 November 2014, [<https://www.eltiempo.com/archivo/documento/CMS-14850280>]

73 Mario Hernández Álvarez, "La fractura originaria en la organización de los servicios de la salud en Colombia 1910-1946," *Anuario Colombiano de Historia Social y de la Cultura*, no. 27 (2000): 7, <https://revistas.unal.edu.co/index.php/achsc/article/view/16847/19201>

74 Alzate Echeverri, "Suciedad y orden," 174, 198.

75 José Navia, "Los NN ya tienen su padre," *El Tiempo*, 17 June 1998, [<https://www.eltiempo.com/archivo/documento/MAM-782537>]

76 "Entierro digno a los NN busca el sacerdote Oswaldo Jaramillo en Villavicencio," *El Tiempo*, 18

The idea of the N.Ns as decedents that deserved dignified treatment also resonated in the legal domain, but in this case, the conceptualization drew on the human rights discourse. In 1998, Ricardo Guerrero Hernández, a lawyer and legal prosecutor from the Office of the Prosecutor-General of the Nation, published a report about the judicial investigation of murders of unidentified victims. More specifically, Guerrero developed this research because of the escalation of the violent deaths in Bogotá between 1990 and 1996 and the high impunity rate in those cases in which the casualties were unnamed persons. Based on the findings of two years of fieldwork, the author concluded that most of the unnamed decedents were people who suffered socio-economic marginalization and, therefore, the society in general had naturalized these events.⁷⁷ In the words of Guerrero, “in an indifferent society it is common to find a dead Colombian on the public road, a waste dump, in front of a house. We know neither their identity nor the causes of the homicide. We only know that this person was a victim of violence. We are in the face of an N.N, and that person is brought to the INMLCF with this denomination. Then the body is buried in a mass grave, and six months later, the FGN closes the investigation due to lack of evidence.”⁷⁸

For Guerrero, the unsuccessful identification of N.Ns was a problem of indifference and failure to protect rights. The lawyer argued the right to identity after death was connected to the right to legal personhood and the definition of Colombian citizens as subjects of rights, both elements recognized by the recently promulgated Constitution.⁷⁹ Consequently, the state responsibility towards the N.Ns did not cease, even when the institutions involved in the identification and prosecution argued they had exhausted all efforts. Although Guerrero acknowledged that these institutions confronted technical limitations, the lawyer pointed out that the lack of political will was also a substantial obstacle for addressing the issue of N.Ns.⁸⁰ In the following years, several actors, mainly from the civil society, promoted understandings of the N.Ns similar to those presented by Guerrero in his report. They fought for effective solutions and insisted on the responsibility of the Colombian state in the process. As a result of these demands, the conceptions of the N.N bodies and the role of public cemeteries would change.

The emergence of new legislation on the N.Ns: from unhealthy bodies to victims of forced disappearance

In the book *This Republic of Suffering: Death and the American Civil War*, the historian Drew Gilpin Faust suggests that this conflict had profound effects on the antebellum US attitudes towards death and the mortuary practices of the communities involved in the fight. Among these transformations, the author stresses the emergence of state and private endeavors to establish the identity of combatants who died on the battlefield. Rather than being interred as “unknown” decedents, they could be buried in marked

August 2008, [<https://www.eltiempo.com/archivo/documento/CMS-4453741>]

77 Ricardo Guerrero Hernández, *El Derecho a la Identidad Después de la Muerte. Preliminares por Homicidios de NN: Archivo y Olvido* (Bogotá: Empresa Editorial de Cundinamarca Guerrero, 1998), 15-17.

78 Guerrero, *El Derecho a la Identidad*, 39.

79 Guerrero, *El Derecho a la Identidad*, 27-30.

80 Guerrero, *El Derecho a la Identidad*, 32-47.

graves.⁸¹ According to Faust, the massive scale of war casualties “redefined the nation’s obligation to its fallen, as well as the meaning of both names and bodies as enduring repositories of the human self.”⁸² Similarly, the ongoing internal armed conflict in Colombia has also reshaped the experience of death and the conceptions of the unidentified bodies. However, the complexity and duration of the conflict make it difficult to distinguish the unnamed victims of war from those whose deaths were caused by other forms of structural violence (e.g., poverty, destitution, crimes unrelated to the conflict). Also, the diversity of modalities of violence and armed actors involved in the war makes it impossible to understand the treatment of N.Ns exclusively in terms of patriotism and respect to the fallen soldiers. In the Colombian context, the consolidation of a political agenda regarding state obligations towards the unnamed decedents had to encompass the changing understandings of N.Ns. Hence, the state and other stakeholders broached the issue of the unnamed bodies from different perspectives that led to the formulation of two normative guidelines informed by the logic of public health and transitional justice, respectively.

Although sanitary problems were not a novelty in the public cemeteries, since the 2000s, several graveyards manifested a severe deterioration of their already precarious conditions. The sources suggest that this situation was worse in those cemeteries where the steady arrival of N.Ns was precisely related to the dynamics of the armed conflict. These facilities reported the exhaustion of the available space for interments of unnamed bodies and the shortage or total lack of mortuary refrigerators for their proper conservation.⁸³ For instance, the Central Cemetery of Villavicencio (Meta) had a health emergency due to the increase in the number of unnamed victims of massacres. The city only had one morgue in this burial ground, so the N.N corpses began to deteriorate while awaiting autopsies.⁸⁴ The natural decomposition process of the human remains became an additional constraint on the implementation of forensic protocols; therefore, the infrastructural conditions of the cemeteries hampered, even more, the state’s ability to identify N.N bodies. The inhumations of N.Ns in collective graves continued to be the most common practice in the public cemeteries even when the local authorities had a budget designated for these interments. It was the case of Bucaramanga (Santander), where the department of health was responsible for N.Ns burials “because - in the words of the regional director of the INMLCF - if we do not bury them they can turn into a sanitary problem.”⁸⁵

The conception of the N.N. corpses as sources of biological hazards in public cemeteries defined them simultaneously as a threat to the health of the living. In 2001, while

81 Drew Gilpin Faust, *This republic of suffering: death and the American Civil War* (New York: Alfred A. Knopf, 2008), 103-136.

82 Faust, *This republic of suffering*, 136.

83 Reinoso, “La historia de violencia”; “El cementerio, un mal vecino”; “Los muertos olvidados; Javier Amaya, “Alarma por N.N. en Tolima,” *El Tiempo*, 28 April 2004, [<https://www.eltiempo.com/archivo/documento/MAM-1533920>]

84 “Delinquentes se ocultan en el cementerio,” *El Tiempo*, 26 January 2001, [<https://www.eltiempo.com/archivo/documento/MAM-610965>]

85 “Los muertos sin identificar demoran su descanso,” *El Tiempo*, 28 July 2005, [<https://www.eltiempo.com/archivo/documento/MAM-1678891>]

doing ethnographic fieldwork in Cali, the anthropologist Michael Taussig accompanied a prosecutor and members of the Technical Investigation Corps (CTI) to examine a dead body found on the city's streets. The author recounts that, at the end of the judicial process, "[o]ne of the CTI guys suddenly says 'we should take the body to the cemetery - [...] the cemetery where the marginal people are allocated [...] because the hospital has no refrigeration for corpses and you can't leave an N.N [...] for two weeks in such a state. The body will decompose, and N.N.s tend to be *diseased* and *dangerous*,'" he says."⁸⁶ The CTI agent described the unnamed corpses in a way that exemplifies the hygienist approach that began to operate concerning these bodies. To some extent, the definition of N.Ns as "diseased" and "dangerous" foregrounded the biological dimension of their deaths, leaving less room for their social significance.⁸⁷

Even though the state did not have an accurate and centralized record of the unidentified decedents, an article published by *El Tiempo* in 2003 reports that nearly 1.000 N.Ns were buried every year in mass graves within graveyards throughout the country.⁸⁸ The same year, several cemeteries located in seven departments throughout the country experienced imminent health and environmental hazards, and some of them had to declare a sanitary crisis. The communities and local authorities had to face this critical situation with their own means and resources, with no clear guidelines from the national authorities. Indeed, while the state institutions responsible for public health issues did not have solutions for this problem, in some of the affected municipalities, the people drew on different strategies to demand accountability concerning graveyards and morgues. To address the problem, a representative of the Ministry of Health and Social Protection pointed out that this office had a draft decree "to regulate the location and operation of cemeteries to protect the public health."⁸⁹ This proposal became the Resolution 1447 of 2009 and the Resolution 5194 of 2010 that regulated the provision of services in cemeteries, the inhumation, exhumation, and cremation of dead bodies.⁹⁰

Through these provisions, the Ministry of Health and Social Protection laid out a set of measures "to control in the cemeteries any sanitary risk to human health or the well-being of the community."⁹¹ In this vein, the state, for the first time, dictated regulations at the national level about the disposal of N.N. bodies, which included references to the mass graves inside the burial grounds. Although these burial grounds had been the conventional way to inter unidentified corpses in many municipalities, the new directives explicitly banned this practice. Instead, the resolutions dictated that all the graveyards

86 Michael Taussig, *Law in a Lawless Land: Diary of a Limpieza in Colombia* (Chicago: University of Chicago Press, 2003), 46.

87 Ginna Paola Camacho Cortés, "Usos del cuerpo humano muerto: dispositivos de biopoder y tanatopolítica en la época contemporánea" (Master thesis, Pontificia Universidad Javeriana, 2016), p. 23.

88 Mahecha, "Muertos que no tienen."

89 El encarte de los cementerios."

90 Ministry of Health and Social Protection, *Resolution N° 1447 regulating the provision of funeral services, inhumations, exhumations, and cremations* (11 May 2009), https://www.minsalud.gov.co/Normatividad_Nuevo/RESOLUCI%C3%93N%201447%20DE%202009.pdf; Ministry of Health and Social Protection, *Resolution N° 5194 regulating the provision of funeral services, inhumations, exhumations, and cremations* (16 December 2010), https://www.ohchr.org/Documents/HRBodies/CED/StatesReportsarticle29/Colombia_Annex5.pdf

91 Ministry of Health and Social Protection, *Resolution N° 5194*.

must provide a specific area for the burial of unnamed decedents, the interments had to be in individual graves, and the cemetery's administrators needed to mark the graves with basic information such as the number and date of the autopsy protocols. Moreover, these corpses had to be interred with the clothes they originally wore, and they only could be exhumed or cremated with legal authorization⁹². With these measures, the Ministry of Health attempted to bring order to the ungovernable and unhealthy space of the gravesites. Both resolutions posited a reconfiguration of the very landscape of the cemeteries⁹³ that not only dismantled the mass graves area but also rearranged the distribution of N.N bodies to avoid sanitary hazards.

Despite the apparent novelty of these regulations, organizations of relatives of disappeared people and allies from other institutions had been working on a policy to regulate the burial of unnamed corpses in cemeteries. Even though the family associations had existed since the eighties, their advocacy work changed radically in the 2000s after the promulgation of a new body of laws about missing people. The point of departure of these transformations was the recognition of forced disappearance as a crime under Colombian criminal legislation.⁹⁴ According to the National Center for Historical Memory (CNMH), the process that led to defining this form of violence as an offense had to overcome a great deal of opposition, particularly from some sectors that sought to protect the armed forces. Although it was not possible to understand forced disappearance as an action exclusively committed by state agents in Colombia, at the international level, this crime had been defined mainly based on the experience of the right-wing military dictatorships in the Southern Cone.⁹⁵ For that reason, the Congress had to adjust the previous legislation to Colombian circumstances, so the range of possible perpetrators included any actor within the conflict, in both legal and illegal roles.⁹⁶ Subsequently, the Constitutional Court ratified Congress' legislation and the international treaties signed by Colombia. The Court underscored that "forced disappearance ought to be considered a crime of continued or permanent execution while the whereabouts of the victim remains unclarified."⁹⁷

The criminal classification of forced disappearance mobilized the relatives' organizations politically and opened up space for the establishment of public policy.⁹⁸ One of

92 Ministry of Health and Social Protection, *Resolution N° 1447*; Ministry of Health and Social Protection, *Resolution N° 5194*.

93 Katherine Verdery, *The Political Lives of Dead Bodies. Reburial and Postcolonial Change* (New York: University of Columbia Press, 1999), 39-40.

94 Congress of Colombia, *Law N° 589 which defines the crimes of genocide, enforced disappearance, forced displacement, torture and other dispositions* (6 July 2000), http://www.secretariassenado.gov.co/senado/basedoc/ley_0589_2000.html

95 National Center for Historical Memory, *Desaparición forzada Tomo I: Normas y dimensiones de la desaparición forzada en Colombia* (Bogotá: Imprenta Nacional de Colombia, 2014), 100-110, 129.

96 Congress of Colombia, *Law N° 589*.

97 Constitutional Court, *Sentence C-580/02* (31 July 2002), <http://www.corteconstitucional.gov.co/relatoria/2002/C-580-02.htm>

98 National Center for Historical Memory, *Desaparición forzada Tomo I*, 129-130; National Center for Historical Memory, *Desaparición forzada tomo IV: Balance de la acción del Estado colombiano frente a la desaparición forzada de personas* (Bogotá: Imprenta Nacional de Colombia, 2014), 58, 63, 74, 89, 94-95.

the platforms for its advocacy was the Commission for Searching for Missing Persons (CBPD). This agency was made up of, among others, representatives of The Association of Families of Detained and Disappeared Persons (ASFADDES), the NGO Colombian Commission of Jurists (CCJ), the Human Rights Ombudsman, the FGN, and the INMLCF. As part of its core mandate, in 2007, the CBPD formulated the *National Plan for the Search for Missing People*. It pointed out that the state should search for the victims of forced disappearance not only in clandestine graves in some undesignated land but also in clandestine graves inside municipal cemeteries. In addition to proper interments (e.g., adequate localization and marked graves), the CBPD also insisted that the N.Ns must have dignified burials.⁹⁹ Along these lines, a set of family organizations like ASFADDES, the Nydia Erika Bautista Foundation, the Association of Disappeared People's Relatives for the Mutual Support, and others, promoted the approval of new legislation that condensed the recommendations of the *National Plan* and other concerns that stemmed from the relatives' political agenda.¹⁰⁰

While not all the N.N bodies were related to the dynamics of the internal armed conflict, this problem produced the most consistent effort to change the treatment of unnamed corpses in the public cemeteries. The definition of forced disappearance as an "ongoing event"¹⁰¹ opened space to consider unidentified decedents as potential victims of this crime and whose "unknown" character should be a transitory condition that the state had to resolve. By the end of 2009, the approach promoted by the organizations of relatives and NGO partners gained a greater political impetus due to a scandal that unveiled the interweaving of graveyards, unidentified corpses, and missing people. Based on the testimonies of the local population, the Office of the Prosecutor-General of the Nation denounced the possible existence of the largest mass grave within a cemetery in the municipality of La Macarena (Meta). In the report, the Prosecutor-General suggested that approximately 2,000 N.N. decedents could have been buried in this area.¹⁰² La Macarena's cemetery drew the attention of public opinion and some international organizations because it is located in one of the regions most affected by the armed conflict, in particular by the dispute between the state and the insurgency. Additionally, the United Nations expressed its concern because the burial ground was adjacent to a military base. Hence, the "lack of information about the origins, identity, and the circumstances of the death of the people buried as N.N" recalled the *modus operandi* of the extrajudicial executions in which Colombian state agents murdered civilians and reported them as guerrilla members killed in combat.¹⁰³

99 Commission for Searching of Missing Persons, *Plan Nacional de Búsqueda* (Bogotá: CBPD, 2012), 15, 21, 23-24, 27, https://tbinternet.ohchr.org/Treaties/CED/Shared%20Documents/COL/INT_CED_ADR_COL_22512_S.pdf

100 National Center for Historical Memory, *Hasta encontrarlos. El drama de la desaparición forzada en Colombia* (Bogotá: Imprenta Nacional de Colombia, 2016), 60.

101 Isaias Rojas-Perez, *Mourning Remains. State Atrocity, Exhumations, and Governing the Disappeared in Peru's Postwar Andes* (Stanford: Stanford University Press, 2017), 108-109.

102 "Rastrear 2.000 N.N. en La Macarena," *El Tiempo*, 12 December 2009, [<https://www.eltiempo.com/archivo/documento/MAM-3757799>]; "Centenares de cadáveres sin nombre en cementerio de La Macarena," *Semana*, 23 July 2007, [<https://www.semana.com/nacion/conflicto-armado/articulo/centenares-cadaveres-nombre-cementerio-la-macarena/119648-3>]

103 United Nations, *Informe de la Oficina en Colombia del Alto Comisionado de las Naciones Unidas*

The situation of La Macarena's cemetery unleashed a dispute over whether or not the mass grave existed and how many unidentified bodies were buried in the area.¹⁰⁴ The discussions included holding a public hearing in the municipality, attended by nine Euro-deputies, and a debate in Congress.¹⁰⁵ Although the state institutions, civil society organizations, and international agencies did not agree about the number of N.N. decedents,¹⁰⁶ some actors scaled up the issue to the national level. While organizations such as ASFADDES and the CCJ had long been demanding from the state a census on N.N. bodies in local cemeteries, only in this context did the FGN begin this exercise, reporting the partial number of 8,019 N.Ns buried in 245 municipalities.¹⁰⁷ Furthermore, the FGN, the INMLCF, the Ministry of Interior, and some NGOs undertook an exhumation and identification process in those graveyards with more unnamed corpses.¹⁰⁸ In late 2010, these efforts concluded with the approval by Congress of Law No 1408, which "pays tribute to the victims of forced disappearance and establishes measures for their location and identification."¹⁰⁹ This law and its regulatory decree¹¹⁰ were the first ordinances to focus specifically on the victims of this crime, and they were the first to present an approach to the N.Ns that differed from the notion of these bodies as a public health issue.

Law No 1408 established a bank of genetic profiles, the mapping of places where bodies and remains of missing people were presumed to be, and the declaration of Memory Sanctuaries.¹¹¹ Regarding the unidentified decedents, this law expanded and modified the regulations stipulated by the Ministry of Health because it adopted the definition of the N.Ns as potential victims of forced disappearance. Under this understanding, the cemeteries' administrators must "preserve the N.Ns [...] until they can be delivered to

para los Derechos Humanos Cementerio de La Macarena, Departamento del Meta (7 September 2010), 2-5, 9-13, 22-26, <https://www.acnur.org/fileadmin/Documentos/BDL/2010/7389.pdf>;

104 Jineith Bedoya, "En La Macarena hay 461 N.N.," *El Tiempo*, 29 August 2010, [<https://www.eltiempo.com/archivo/documento/MAM-4118002>]; "Comisión para investigar cementerio de NNs en La Macarena," *El Tiempo*, 19 April 2010, [<https://www.eltiempo.com/archivo/documento/CMS-7626689>]

105 "Cementerio de La Macarena provoca nuevo debate," *El Tiempo*, 23 July 2010, [<https://www.eltiempo.com/archivo/documento/CMS-7822087>]; "Supuesta fosa es un cementerio," *El Tiempo*, 26 August 2010, [<https://www.eltiempo.com/archivo/documento/MAM-4113982>]

106 For example, the Mayor of La Macarena calculated 386 N.Ns, the FGN 459 N.Ns. and the UN 446 N.Ns. "Centenares de cadáveres"; "Cementerios de N. N.," *El Tiempo*, 9 September 2010, [<https://www.eltiempo.com/archivo/documento/CMS-7899487>]

107 "Alcaldías han reportado que 8.019 cuerpos han sido enterrados como N.N.," *Verdad Abierta*, 13 September 2010, [<https://verdadabierta.com/alcaldias-han-reportado-que-8019-cuerpos-han-sido-enterrados-como-nn/>]

108 "¿Cómo se hace la exhumación de NN en los cementerios de Colombia?," *El Tiempo*, 16 July 2015, [<https://www.eltiempo.com/archivo/documento/CMS-16104297>]; "No puede haber más sepultados como N. N.," *El Tiempo*, 10 November 2010, [<https://www.eltiempo.com/archivo/documento/MAM-4246118>]

109 National Center for Historical Memory. *Desaparición forzada tomo IV*, 146-147; Congress of Colombia, *Law N° 1408 which pays tribute to the victims of the he crime of enforced disappearance and establishes measures for its location and identification* (20 August 2010), https://derechoshumanos.mininterior.gov.co/sites/default/files/guia_normativa-2018_0.pdf

110 Presidency of the Republic, *Decree N° 303 regulating the Law N° 1408 of 2010* (20 February 2015), https://derechoshumanos.mininterior.gov.co/sites/default/files/guia_normativa-2018_0.pdf

111 Congress of Colombia, *Law N° 1408*.

their family members [and] treat the cadavers with respect and according to principles of humanity.”¹¹² This legal approach defined the N.Ns as dead bodies with rights - mainly the right to an identity - and connected them to the surviving relatives’ rights to truth, justice, and reparation. For this purpose, Law No 1408 and its regulatory decree required individual interment with personal possessions and clothing; banned the burials in mass graves, common ossuaries, and cremations; stipulated the mandatory performance of autopsies, the collection of biological samples for DNA identification, and the marking of the graves with all of the deceased’s information. Moreover, the legislation foregrounded the importance of keeping burial records to track the whereabouts of N.Ns inside the cemeteries¹¹³.

A comparison between the Resolutions 1447 and 5194 and Law No 1408 demonstrates that the latter did more than merely adding regulations about treating unidentified dead people. Instead, this law linked the N.N issue to a broader policy for assisting victims of forced disappearance. The new legislation managed to establish that the state had responsibilities toward N.N bodies and their relatives, which did not end with the technical constraints for determining the deceased’s identity. Beyond the aim of ordering the unhealthy and chaotic gravesites, Law No 1408 sought to reconfigure the space of the cemetery radically. With measures such as the prohibition of mass graves and the implementation of records with detailed information about the N.N bodies, the cemeteries moved from being the ultimate fate of unnamed corpses to being the “repository and custodian” of human remains whose identities should be restored.¹¹⁴ In doing so, these regulations “reimagined” the cemeteries as an archive of potential victims of forced disappearance, whose identification was necessary to guarantee the rights of the living and the dead.¹¹⁵

Concluding Remarks

In March 2018, a local television station invited Carlos Váldez, the national director of the INMLCF, to talk about the work of this institution in identifying N.N corpses and the situation of these bodies in the cemeteries. According to Váldez, “the graveyards’ administrators do not keep an adequate record on the inhumations, [and] in the majority of cases the N.N cadavers were not buried in the best areas. [...] What did we find? Those administrators do not know where the N.Ns are, how many there are, the dates on which they were buried [...]. We found that cemeteries have caused a *second disappearance* under these conditions.”¹¹⁶ Although the response is not univocal, this article explored how public graveyards might have become a favorable space for the “second disappearance” referred to by Valdéz. Even if the project “Cemetery Plan” has

112 Presidency of the Republic, *Decree N° 303*.

113 Presidency of the Republic, *Decree N° 303*.

114 Ministry of Interior, *Circular Externa OF17-37585-DDH-2400 de 2017* (3 October, 2017), https://derechoshumanos.mininterior.gov.co/sites/default/files/guia_normativa-2018_0.pdf

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reported the finding of 24,482 N.N. bodies in 318 cemeteries throughout the country, the INMLCF points out that this number can rise to 200,000.¹¹⁷ In light of this, much remains to be done to pay back the historical debt the Colombian society owes to the victims of forced disappearance.

However, it is also necessary to acknowledge the recent changes. Previously, the burial of N.N. people in the mass graves of cemeteries resulted from the state's inability to identify them; therefore, the state exhausted its responsibilities towards these corpses. The recognition of the "ongoing nature of the disappearance," and the "intimate relationship" between missing people and N.Ns changed the role of local cemeteries as the final destination of unnamed bodies.¹¹⁸ In the new circumstances, the relatives of missing persons, NGOs, and international organizations have more legal tools to demand from the state the exhumation of N.N. bodies, the identification of victims, and the adequate reparation of relatives. Even though there are many challenges that the Colombian state must overcome, the parties concerned with the role of local cemeteries in the dynamics of enforced disappearance managed to put these issues at the forefront of judicial and humanitarian investigations.

Recently, the changes referred to in this article have had crucial reverberations. The Special Jurisdiction of Peace (JEP), the transitional judiciary system created as the result of the Peace Agreements between the Colombian government and the FARC, has paid particular attention to the situation of unidentified dead bodies buried in cemeteries because of their connection with potential victims of forced disappearance and extrajudicial killings. As part of its jurisdiction, the JEP has adopted precautionary measures over cemeteries, mass graves, and other areas of forensic interest. In the particular case of cemeteries, the JEP opted to protect burial grounds where the interments of unidentified dead bodies were common, and their presence can be related to the internal armed conflict. Between 2020 and 2021, this tribunal has intervened and safeguarded at least 20 graveyards, a number that can increase in the future.

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Alba JAKUPI

Alba Jakupi holds a BA in Political Science and is currently obtaining her Master's degree in Transitional Justice, Human Rights, and Rule of Law in Geneva, Switzerland.

Egzona BEXHETI

Egzona Bexheti holds a Master's degree in International Law, Law Faculty, University of Pristina, and was recently engaged as a legal intern at the Office of the Prosecutor at the UN International Residual Mechanism for Criminal Tribunals. We are thankful to Prof. Dr. Remzije Istrefi, Associated Professor, International Law Department, University of Pristina, for all her advice and guidance in compiling this article.

MISSING PERSONS, RIGHT TO KNOW AND DEMOCRATIC CONSOLIDATION IN KOSOVO¹

Abstract

Twenty-two years have passed since the war in Kosovo, but as many as 1,637 families still do not know the fate of their loved ones. Left without any knowledge of their whereabouts or fate, the families face the agony of uncertainty every day. The families of missing persons are persistently searching for information until they know for sure whether their relatives are alive or dead. In line with the international humanitarian law and the Kosovo legislation, families have the right to know what has happened to their loved ones, and the authorities are obliged to provide them with answers and support. The major obstacle to establishing the fate and whereabouts of missing persons in Kosovo remains the lack of precise information on the locations of undiscovered gravesites. Sometimes information about the missing is withheld or manipulated to exert pressure on the enemy, to leave the enemy population in ignorance and distress, to avoid criticism from the party's own population for losses suffered, or to maintain hatred of the other party and its national or ethnic exclusion. For years leaders, whose power is based on hatred of another community have an incentive to withhold answers indefinitely and to abstain from adequate cooperation in search for the fate of missing persons. The case of a missing person from the 1999 Kosovo war exemplifies this situation.

This article analyzes the impact of the right to know on the fate of the missing persons in Kosovo and its impact on democratic consolidation. Considering that more than two decades after the Kosovo war, the investigations have shown limited results, the article recommends that the Pristina–Belgrade dialogue be utilized to disclose the truth about missing persons in Kosovo.

¹ All references to Kosovo in this paper, whether to the territory, institutions or population, should be understood in full compliance with United Nations Security Council Resolution 1244

Key words: *missing persons, right to know, democratic consolidation, Kosovo, human rights*

Introduction

The Kosovo conflict was part of the ongoing tragedy of Yugoslavia's collapse. Following the loss of Kosovo's autonomy in 1989, Belgrade embarked on a campaign aimed at changing Kosovo's ethnic composition and establishing an apartheid-like society. Even though governments and international institutions have been aware of the repressive Milosevic regime and the looming conflict in Kosovo, it is questionable whether they took sufficient precautions to prevent the catastrophe of the upcoming widespread and systematic human rights violations.

The situation in Kosovo escalated further when Yugoslav and Serbian forces carried out numerous massacres against Kosovo Albanians, which have been documented by international organizations present in Kosovo.² The international community launched a 78-day NATO bombing over the territory of the former Yugoslavia in order to end the systematic and widespread human rights violations. This was prompted by events on the ground, widespread killings and displacements, the exhaustion of diplomatic revenues, but also the fresh memories of the happenings in BiH. With the signing of the Military Technical Agreement³ the international community paved the way for diplomatic and peaceful undertakings in order to restore the societal and institutional life in Kosovo. On 10 June 1999, the UN Security Council adopted the UN Security Council Resolution 1244⁴, which placed Kosovo under the provisional administration of the United Nations (UNMIK) and the NATO-led peacekeeping force known as Kosovo Forces (KFOR). Resolution 1244 provides for Kosovo to have autonomy within the Federal Republic of Yugoslavia and affirms the territorial integrity of Yugoslavia. International negotiations began in 2006 to determine Kosovo's final status, as provided for in the UN Security Council Resolution 1244. The UN-backed talks, led by UN special envoy Martti Ahtisaari, began in February 2006.⁵ As progress was made on technical issues, the parties remained diametrically opposed to the status issue itself. Kosovo declared independence from Serbia on 17 February 2008. On 8 October 2008, the UN General Assembly, on the proposal of Serbia, requested an advisory opinion from the International Court of Justice on the legality of Kosovo's declaration of independence. The advisory

2 See Organization for Security and Cooperation in Europe, *Human Rights in Kosovo: As Seen, As Told*. Volume I, October 1998 - June 1999, 5 November 1999. On the casualties and repression in Kosovo see: Lavinia Stan and Nadia Nedelsky eds., *Encyclopaedia of Transitional Justice 2* (New York: Cambridge University Press, 2013), 266– 279; Independent International Commission on Kosovo, *The Kosovo Independent Report: Conflict, International Response, Lessons Learned* (Oxford: Oxford University Press, 2004).

3 Military Technical Agreement between the International Security Force (KFOR) and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia, 15 June 1999, https://peacemaker.un.org/sites/peacemaker.un.org/files/990615_MilitaryTechnicalAgreementKFORYugoslaviaSerbia.pdf.

4 "Resolution 1244 (1999)". BBC News. 17 June 1999. <http://news.bbc.co.uk/2/hi/europe/371562.stm>.

5 UN Office of the Special Envoy for Kosovo, *Comprehensive Proposal for the Kosovo Status Settlement*, <http://www.unosek.org/unosek/en/statusproposal.html>.

opinion was delivered on 22 July 2010, finding that the declaration of independence of Kosovo did not violate the general principles of international law, which do not preclude unilateral declarations of independence, nor of specific international law - in particular UNSCR 1244 - which neither defines the final status process nor reserves the result in a Security Council decision.⁶ The Kosovo Ministry of Foreign Affairs reports that to date, 117 states have recognized Kosovo⁷, including all of its neighbours, with the exception of Serbia.

In the wake of state building and peacebuilding process, its position in international relations, and its EU integrative efforts, Kosovo authorities and society have to deal with their violent past. The legacies of the past, and in particular the fate of the missing persons, affect the daily life and have an impact on its democratic consolidation. As such, the fate of the missing persons remains an open wound that causes constant pain.

To date, it is hard to establish the exact number of killed and missing people from the 1998-99 war and its aftermath. The numbers vary depending on the source of information⁸. It is estimated that 10,000 people were killed between 24 March, 1999, and 19 June, 1999, with the vast majority of the fatalities being Kosovar Albanians killed by FRY forces.⁹ Today, twenty-three years after the war, the number of missing persons is estimated to be over 1,600 persons.¹⁰ Based on the information provided by the Commission on Missing Persons in Kosovo, the number of missing persons, including all ethnic groups, is 1637.¹¹ On the other hand, the International Committee of the Red Cross in Kosovo which is playing an important role in the issue, states a number of 1622

6 International Court of Justice, Accordance with international law of the unilateral declaration of independence in respect of Kosovo, 22 July 2010, <https://www.icj-cij.org/en/case/141> Accessed 11 November 2021.

7 Kosovo Ministry of Foreign Affairs, List of Recognition, <https://www.mfa-ks.net/en/politika/484/lista-e-njohjeve/484>, Accessed 12 November 2021.

8 Humanitarian Law Center office in Pristina states that: "31,600 documents undoubtedly confirm the death or disappearance of 13,535 individuals during war in Kosovo", See Humanitarian Law Center, Kosovo Memory Book, <http://www.hlc-rdc.org/?cat=218&lang=de>, Accessed 11 November 2021; The International Commission on Missing Persons reports that: "By the end of the Kosovo conflict in June 1999, it was estimated that 4,400 to 4,500 persons were missing. Today, about 1,700 remain unaccounted for." See ICMP webpage at <https://www.icmp.int/where-we-work/europe/western-balkans/kosovo/> Accessed 11 November 2021.

9 The Kosovo Independent Report: Conflict, International Response, Lessons Learned (Oxford: Oxford University Press, 2004). It is estimated that around 40 000 persons went missing due to the armed conflicts of the 1990s in the Western Balkans, involving Bosnia and Herzegovina, Croatia, Montenegro, Kosovo, Serbia and "the former Yugoslav Republic of Macedonia". Thanks to the assistance of the International Committee of the Red Cross (ICRC) and the International Commission on Missing Persons (ICMP), the fates and whereabouts of 70% of these persons are now known. According to the ICRC, as of June 2015, the families of 10 824 missing persons across the region are still looking for them. On the issue of missing persons Europe see: Council of Europe, Commissioner for Human Rights, Missing Persons and Victims of Enforced Disappearance in Europe, <https://rm.coe.int/missing-persons-and-victims-of-enforced-disappearance-in-europe-issue-/16806daa1c>.

10 ICRC, 23 years on, more than 1,600 people still missing in Kosovo, <https://reliefweb.int/report/serbia/23-years-more-1600-people-still-missing-kosovo>.

11 This number can be found in the website of the government's Commission on Missing Persons. Available at: <https://missingpersons-ks.com/>

missing persons.¹² And in the last report for Kosovo by the European Commission, the number is estimated to be 1639.¹³

Efforts have been made by the authorities of both Kosovo and international community to search for and identify the missing. The right to know encompasses the unalienable right of every person who has suffered atrocities to know who is responsible for the suffering; any family whose members have disappeared has the basic right to know their fate and whereabouts; and every society where these crimes have taken place has the right to learn their past without lies or denial. According to *International Humanitarian Law (Rule 117)*, each party to the conflict must take all feasible measures to account for persons reported missing as a result of armed conflict and must provide any information they have regarding their fate to their family members. . State practice establishes this rule as a norm of customary international law, applicable in both international and non-international armed conflicts. Practice indicates that these standards are motivated by the right of families to know the fate of their missing relatives.

Even though in Kosovo, processes of exhumation and identification of mortal remains are ongoing, a lack of knowledge about new gravesites, a lack of strategies to address this issue, and a decrease in the financial and human resources devoted to these tasks have slowed progress. It has been noted that “if the identification of remains in Kosovo continues at the present rate, it may take up to 30 years to solve all cases of missing persons”¹⁴ Up to the present moment, the families of more than 1,600 are left in limbo, stuck in the past, unable to either grieve or plan or look at the future. Indeed, the issue of missing persons and the pleas of the families of missing persons remain a very important part of the political, legal, and social transition processes in Kosovo.

The following sections analyze how the lack of information (right to know) and the unresolved fate of the missing persons affects the democratic consolidation of Kosovo. The article unfolds as follows: At first, the (i) *International Legal Framework and Institutions on Missing Persons* will be presented, and then the (ii) *Kosovo Legal Framework and the role of international actors and domestic authorities* will be analyzed. The relevance of memorialization and the work of NGOs towards the missing persons will be recognized as well (iii). *The impact and consequences of the lack of knowledge on the whereabouts of the missing persons (violation of the right to know) on the democratic consolidation will be discussed* (iv). The study will conclude with the recommendations that the EU-mediated Pristina - Belgrade dialogue should be utilized in realizing the right to know for the families of missing persons and Kosovo society in general.

12 The information was requested for the purpose of the research, as there is no details of number on the ICRC website

13 2021 Communication on EU Enlargement Policy, European Commission, Strasbourg, 19.10.2021,

14 Council of Europe, Commissioner for Human Rights, Missing Persons and Victims of Enforced Disappearance in Europe, <https://rm.coe.int/missing-persons-and-victims-of-enforced-disappearance-in-europe-issue-/16806daa1c>, Accessed 12 November 2021, at footnote 20.

I. **International Legal Framework and Institutions on Missing Persons**

Enforced disappearances are a crime under international law and a violation of multiple human rights, including the right to personal liberty and security, the right to recognition as a person before the law, the right not to be subjected to torture or other cruel, inhumane, or degrading treatment or punishment, the right to a fair trial, and above all, the right to life. Enforced disappearance also violates the economic, social, and cultural rights of the disappeared person and his or her family.¹⁵ When committed as part of a widespread or systematic attack against any civilian population, enforced disappearance is a crime against humanity.¹⁶ The prohibition of enforced disappearance and the corresponding obligation of states to investigate and punish those responsible have attained the status of *ius cogens*.¹⁷ International humanitarian law and human rights standards have a common goal that aims to prevent situations of missing persons because of an armed conflict or internal violence. Respecting the principles of international law means to respect the integrity and dignity of all human beings. If civilians and members of armed forces or armed groups who are sick, wounded, captured, deceased, or deprived of their liberty were treated in accordance with these rules, there would be fewer missing persons and fewer families left in the dark about their fate.¹⁸ According to the International Humanitarian Law (Rule 117), “each party to the conflict must take all feasible measures to account for persons reported missing as a result of armed conflict and must provide their family members with any information it has on their fate.” Going through international instruments relevant to the issue, it is important to mention, among the first, the Rome Statute of the International Criminal Court, which listed enforced disappearance of persons “when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”¹⁹ as a crime against humanity. And it defines enforced disappearance as “the arrest, detention, or abduction of persons by, or with the authorization, support, or acquiescence of, a state or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of

15 Working Group on Enforced or Involuntary Disappearances (WGEID), “Study on enforced or involuntary disappearances and economic, social and cultural rights”, doc. A/HRC/30/38/Add.5, 9 July 2015 (<http://bit.ly/1PdBBYw>).

16 See WGEID, General Comment on enforced disappearances as a crime against humanity (<http://bit.ly/1TA6fHI>).

17 Inter-American Court of Human Rights (IACtHR), *Goiburú and Others v. Paraguay*, judgment of 22 September 2006, para. 84; Sarkin J. (2012), “Why the prohibition of enforced disappearance has attained the status of *ius cogens* in international law”, *Nordic Journal of International Law*, No. 81, pp. 537-84.

18 GUIDING PRINCIPLES / MODEL LAW ON THE MISSING, Principles for Legislating the Situation of Persons Missing as a Result of Armed Conflict or Internal Violence: Measures to prevent persons from going missing and to protect the rights and interests of the missing and their families, International Committee of the Red Cross, February 2009.

19 Article 7, Rome Statute.

time.”²⁰

On 18 December 1992, the General Assembly adopted resolution 47/133, *the Declaration on the Protection of All Persons from Enforced Disappearance*. The declaration considers any act of enforced disappearance an offence to human dignity and a flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights.²¹ This declaration was later recalled in the International Convention for the Protection of All Persons from Enforced Disappearance of 2006. The Convention emphasized the fact that no one shall be subjected to enforced disappearance and that there are no exceptional circumstances whatsoever, whether a state of war, or a threat of war, internal political instability, or any other public emergency, that may be invoked as a justification for enforced disappearance.²² It also defines 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 by 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 places such a person outside the protection of the law”.²³

The international humanitarian law obliges parties to search for the missing persons. Whether it is an international conflict or an internal one, under international law, each party to the conflict should, as soon as circumstances permit and at the latest from the end of active hostilities, search for persons reported missing by an adverse party and require the adverse party to transmit all relevant information concerning such persons in order to facilitate similar searches.²⁴ Article 26 of the Fourth Geneva Convention obliges parties to the conflict to facilitate enquiries made by members of families dispersed owing to the war, with the object of renewing contact with one another and of meeting, if possible.²⁵ Article 32 of the Additional Protocol I to the four Geneva Conventions specifically phrases that the activities of the High Contracting Parties, of the Parties to the conflict and of the international humanitarian organizations mentioned in the Conventions and in this Protocol shall be prompted mainly by the right of families to know the fate of their relatives.²⁶

International institutions and organizations play an important role as well. With the initiative of the United Nations Commission on Human Rights, in 1980, a Working

20 Ibid, Article 7.2.i.

21 Article 1 of the Declaration on the Protection of all Persons from Enforced Disappearance, adopted by the General Assembly on 18 December 1992.

22 Article 1 of the International Convention for the Protection of All Persons from Enforced Disappearance, adopted by the UN General Assembly by Resolution 61/177 in December 2006.

23 Ibid, Article 2.

24 Article 33 of the [Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts \(Protocol I\)](#), 8 June 1977.

25 Article 26 of Geneva Convention Relative to the Protection of Civilian Persons in time of war of 12 August 1949

26 Article 3 - General principle of the [Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts \(Protocol I\)](#), 8 June 1977.

Group on Enforced or Involuntary Disappearances was established. The Working Group had a mandate to assist families of disappeared persons in determining the fate or whereabouts of their family members. The International Committee of the Red Cross (ICRC) remains the most active organization that operates in situations of armed conflicts and other situations affected by violence, and is focused to ensure that people are protected from any threat to their lives, physical integrity or dignity, to prevent people from going missing, to restore and maintain contact between family members, to reunite families and to elucidate the fate of people whose whereabouts are unknown to their families.²⁷

In 1996, at the G-7 Summit in Lyon, France, with the initiative of the US President Bill Clinton, the International Commission on Missing Persons was established. The Commission is a treaty-based international organization and, in the beginning, its mandate was to help account for the persons who were missing as a result of the fighting from 1991 to 1995 in former Yugoslavia. Nowadays, its mandate is to secure the cooperation of governments and others in locating missing persons from conflict, human rights abuse, and other cases causing disappearance. Moreover, as the only international organization that is exclusively tasked to address this issue, the ICMP is actively engaged in developing institutions and civil society capacity, promoting legislation, fostering social and political advocacy, and developing and providing technical expertise to locate and identify the missing.²⁸

Despite the global organizations mentioned above, regional organizations have played a major role in preventing and dealing with the disappearances. The Organization for Security and Co-operation in Europe (OSCE) is proactively engaged in the Balkans on missing persons' issues and cooperates closely with the ICRC. While the ICRC centralizes data on missing persons, the OSCE focuses on more technical areas, such as identifying human remains and taking care to work all the while in close coordination with the ICRC.²⁹ OSCE discusses individual cases of missing persons (names, circumstances and place of the disappearance) in several of its official publications and it has also helped publish a book containing pictures of clothes and other personal belongings found on unidentified bodies in Bosnia and Kosovo.³⁰

The Council of Europe deals with the missing persons' issue as well, but at different levels. Several reports, resolutions, and recommendations have been adopted relating to particular countries and regions in Europe.³¹ The European Court of Human Rights

27 Missing persons and their families, Advisory Service on International Humanitarian Law, ICRC.

28 About us, ICMP. Available at: <https://www.icmp.int/about-us/>.

29 Study of existing mechanisms to clarify the fate of missing people, Jean-François Rioux, 2003.

30 The Missing: Action to resolve the problem of people unaccounted for as a result of armed conflict or internal violence and to assist their families. 06-12-2003 Report, Report prepared by the International Committee of the Red Cross, 28th International Conference of the Red Cross and Red Crescent, Geneva, 2 to 6 December 2003.

31 For a comprehensive analyses and reporting on missing persons in Europe see: Council of

has dealt with a number of applications related to missing persons and enforced disappearances, mainly brought against Bosnia and Herzegovina, Croatia, Cyprus, Russia and Turkey.³²

II. Legal Framework, International Missions and Kosovo Mechanism on Missing Persons

The missing persons issue combines a violation of multiple human rights such as the right to life, prohibition of torture, the right to personal liberty and security, the right to a fair trial, and other rights which are all guaranteed under the Constitution of the Republic of Kosovo. The Constitution of Kosovo provides for the direct application of the European Convention on Human Rights and major international human rights treaties in Kosovo and their priority over domestic law. Among the international agreements and instruments ratified and directly applicable in Kosovo, unfortunately, Geneva Conventions of 1949 and their protocols are yet to be ratified.³³

Regarding the legal framework on missing persons, in 2011, the Assembly of Kosovo approved the Law on Missing Persons, which protects the rights and interests of missing persons and their family members, in particular the right of family members to know about the fate of missing persons who were reported missing during the period 1 January 1998 – 31 December 2000, as a consequence of the war in Kosovo.³⁴ For the purpose of the law under Article 2, it defines the term “missing person” as “*a person whose whereabouts is unknown to his/her family members and seekers, who based on reliable information, was reported missing during the period 1 January 1998 – 31 December 2000, as a consequence of the war in Kosovo during 1998-1999.*” In situations where people are missing after an armed conflict, it is very important to know the fate of those persons, especially for their families. Article 5 of Law on Missing Persons recognizes the right of family members to get informed on the fate of missing persons: “*Everyone shall have the right to know about the fate of his or her missing family member(s), including the whereabouts, or in case they are deceased, the circumstances of their death and location of burial, if such location is known, and they shall also have the right to recover the mortal remains.*” The law also defines the responsibilities of the Governmental Commission on Missing Persons³⁵, which is a governmental body focused on the clarification of the fate

Europe, Commissioner for Human Rights, Missing persons and victims of enforced disappearance in Europe, Supra note 12.

32 See European Court for Human Rights, HUDOC web page. <https://hudoc.echr.coe.int/> .

33 See for more the ratified international instruments at the article 24[Direct Applicability of International Agreements and Instruments] of the Constitution of the Republic of Kosovo, 2008.

34 Law No .04/L –023, Law on Missing Persons, Assembly of Republic of Kosovo, 2011, Article 1.

35 The Prime Minister’s Office, Government Commission on Missing Persons, <https://kryeministri.rks-gov.net/en/the-prime-minister-office/offices/office-of-central-administration-oca/>.

of missing persons as a result of the armed conflict that occurred in Kosovo from 1998 until 1999. As the Commission is an important mechanism, Regulation No. 15/2012 on the Work of the Government Commission on Missing Persons was adopted as well to define the Commission's responsibilities, scope, rules and procedures, including the organization of the Commission's administrative unit.³⁶ As the issue affects the families of the missing persons, in 2011, the Assembly of Kosovo adopted Law No. 04/L-054,³⁷ which determines the status and financial support through pensions and special benefits for several categories of the war, one of which is the category of missing persons. In the case of missing persons, there is a family pension to the benefit of the close family of martyrs and persons that went missing during the armed conflict in Kosovo from 1997 to 1999. The Law on Forensic treats the issue as well; it sets the responsibilities of the Institute of Medicine Forensic on searching, finding, and exhumation as well as determination of the fate, identification, and handover of human remains of missing persons related to the war in Kosovo; another activity is to maintain contact with families of missing persons and cooperate with local and international institutions and organizations involved in the process of clarifying the fate of the missing persons.³⁸

Despite the abovementioned laws, it was determined that the current legal framework does not completely fulfill the needs of the missing persons' families nor addresses their concerns.³⁹ In addition, in 2019, the government approved a concept document for missing persons that came from a need for equal treatment of different war categories.

Going through the current legal framework, it is quite obvious that the laws are quite new, adopted merely 10 years ago. All this is for the reason that, right after the armed conflict, the issue of missing persons was an exclusive competence of the international missions operating in Kosovo from June 1999 until 2018, when Kosovo declared its independence. Initially, the task of locating and recovering missing persons was undertaken by the International Criminal Tribunal for the former Yugoslavia (ICTY), which operated in Kosovo from 1999 to 2000.⁴⁰

While under the UNMIK administration, there was a Unit for Missing Persons that was responsible for dealing with the issue of missing persons. The Missing Persons Unit, jointly with the Central Criminal Investigation Unit of the UNMIK Police, and later a dedicated War Crimes Investigation Unit, were responsible for the criminal aspects of missing persons' cases in Kosovo. The Unit was responsible for seeking court orders authorizing exhumations and for conducting exhumations, along with forensic

36 Regulation No. 15/2012 on the Work of the Government Commission on Missing Persons, Assembly of Republic of Kosovo, 2011, Article 1.

37 Law No. 04/L-054, Law on the Status and Rights of the Martyrs, Invalids, Veterans, Members of Kosovo Liberation Army, Civilian Victims of War and their Families.

38 LAW No. 05/L - 060 on Forensic Medicine, Article 15, Official Gazette of the Republic of Kosovo, 6 APRIL 2016,

39 Koncept Dokumenti për Personat e Zhdukur, Qeveria e Kosovës, 18 qershor 2019.

40 Support to resolving missing-persons cases - breaking the impasse, Missing persons from the Kosovo conflict and its aftermath: A stocktaking, 2017

archaeologists and/or anthropologists.⁴¹ Later, in 2002, UNMIK established the Office on Missing Persons and Forensics (OMPF) in the UNMIK Department of Justice (DOJ). The office had the mandate to determine the whereabouts of missing persons, identify their mortal remains, and return them to their families.

In 2008, the mandate of UNMIK ended, so the responsibilities were transferred to the EU-led European Rule of Law Mission (EULEX).⁴² However, UNMIK continues to support Kosovo in the process. UNMIK Human Rights Section supports a victim-centered approach on missing persons, bolstered through the establishment of the Missing Persons Resource Center (MPRC) in Pristina for the families of victims from all communities.⁴³

From the beginning of the EULEX's mandate until 14 June 2021, EULEX has conducted 669 field operations to locate missing persons, including 172 exhumations. The remains of 470 individuals have been identified, including 327 missing persons.⁴⁴ As in 2018 the mandate of EULEX has changed, and now it continues to contribute to the issue by offering expertise and advices for the identification of potential graves and the identification of bodies.

Despite international missions operating in Kosovo during the post-conflict period, in 2004, a Working Group on Missing Persons and the Office of Missing Persons, which later became the Commission on Missing Persons, were established as mechanisms.,. The working group is now chaired by the International Committee of the Red Cross. The Working Group holds regular sessions at which the delegations from Pristina and Belgrade exchange information and plan activities aimed at clarifying the fate and whereabouts of persons who went missing as a result of the 1998-1999 events in Kosovo.⁴⁵ The ICRC plays an important role in Kosovo, and in an effort to resolve the issue of missing persons, it primarily assists the families in their quest to ascertain the fate and whereabouts of their missing family members.⁴⁶ Last year, in 2020, the ICRC launched its five-year strategy on missing people as a consequence of the armed conflicts in the countries of the former Yugoslavia in the 1990s. The strategy has the objective of exploring all feasible avenues to clarify the fate and whereabouts of as many missing persons as possible in order to finally bring closure to their families and communities in Bosnia-Herzegovina (BiH), Croatia, Kosovo, and Serbia.⁴⁷ Recently, the ICRC mission in Kosovo signed a Memorandum of Understanding with the Governmental Commission of Missing Persons of Kosovo, with the aim of helping to know the fate and whereabouts of the missing persons from the armed conflict in Kosovo.

41 Ibid.

42 COUNCIL JOINT ACTION 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO.

43 Transitional Justice, UNMIK. Available at: <https://unmik.unmissions.org/transitional-justice> .

44 Operations support, EULEX. Available at : <https://www.eulex-kosovo.eu/?page=2,59>.

45 Report on the issue of missing persons in Kosovo, UN Working Group on Enforced or Involuntary Disappearances (WGEID), 2019.

46 Kosovo, ICRC. Available at: <https://www.icrc.org/en/where-we-work/europe-central-asia/kosovo>.

47 ICRC five-year strategy on the missing in former Yugoslavia, ICRC. Available at: <https://www.icrc.org/en/document/missing-bosnia-herzegovina-croatia-serbia-kosovo>.

The International Commission on Missing Persons (ICMP) is another international organization highly engaged in the process since 1999. In recent years, it has signed a cooperation agreement with Kosovo government. The ICMP took the responsibility of providing assistance to Kosovo in forensics archaeology and anthropology, DNA-led human identification, database informative and data processing, knowledge transfer and training, accounting for persons who remain missing, while also helping to strengthen regional cooperation to investigate missing persons' cases.⁴⁸

The issue was raised in July 2018, in the framework of the Berlin Process as well. Kosovo and other Western Balkan countries signed a joint declaration on Missing Persons and War Crimes.⁴⁹ Having into consideration the role of the Berlin Process in enhancing cooperation between the Western Balkan countries, this joint declaration aims to contribute to shedding light on missing persons through inter-state cooperation.

Currently, at the national level in Kosovo, there are two institutional mechanisms responsible for the issue of missing persons. The Commission on Missing Persons is a governmental body which heads, supervises, harmonizes, and coordinates the activities with local and international institutions, as well as cooperates with institutions and international organizations and other stakeholders with regards to the clarification of the fate of missing persons as a result of the 1998-1999 war, regardless of their ethnic background, religion, or military or civil status.⁵⁰ The other one is the previously mentioned Working Group for Missing People.

III. Role of Memorialization and the work of NGOs concerning missing persons

One of the most challenging issues faced by civilizations transitioning from wars and conflicts to peaceful living is dealing with a legacy of human rights violations. To reinstate fundamental confidence and responsibility in society, it is necessary to openly identify the abuses that have occurred, hold those responsible who have planned, ordered, and perpetrated such crimes accountable, and rehabilitate and recompense the victims. Civil society efforts are critical to achieving transitional justice aims (such as memory preservation) and responding to and acting in dynamic and diverse situations. Méndez and Bariffi⁵¹ propose a three-tiered method of truth-finding, in which victims and society's needs for structural truth, individualized truth, and victim engagement are addressed.

48 Scope of cooperation, Article 3, Agreement on Cooperation between Kosovo government and ICMP, 2020.

49 Joint Declaration on Missing Persons in the Framework of the Berlin Process, Western Balkans Summit, London 2018.

50 Law No. 04/L –023, Law on Missing Persons, Assembly of Republic of Kosovo, 2011, Article 8.

51 Méndez, Juan E, and Francisco J Bariffi. "Truth, Right to, International Protection." Oxford Public International Law, <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1742?prd=EPIL>, Accessed 10 November 2021

Institutions such as truth commissions, commissions of inquiry, recording, and archiving are intended to help in fact-finding and reporting on a bureaucratic level. One such initiative for the Western Balkans is RECOM⁵² or the Intergovernmental Regional Commission tasked with establishing the facts about all victims of war crimes and other serious human rights violations committed in the territory of the former Yugoslavia, from 1 January 1991 to 31 December 2001.

Truth-finding requires that efforts be taken to investigate, locate, and return missing persons in accordance with legal mechanisms. This can be done through bespoke mechanisms or a combination of institutions, as in Kosovo, where from 1999 onwards, a number of actors, including the ICMP, the ICRC, and the International Criminal Tribunal for the former Yugoslavia (ICTY) were collecting information from families and lobbying relevant authorities to release information disclosing missing persons' whereabouts. However, according to Amnesty International, the United Nations Mission in Kosovo (UNMIK), which was in charge of government affairs until Kosovo's declaration of independence in 2008, *"failed to fulfill their obligation to inform the family members of disappeared and abducted persons about the conduct of the investigations"*, as required by Article 2 of the applicable European Convention on Human Rights (ECHR). For example, Ferdonije (see below) and other Querkezi family members who were affected by her initial comments to UNMIK police were not approached by them for several years. In other situations, they had not been kept up to date on the investigation's progress.

After becoming frustrated with the poor legal process, some women who had lost family members took action on their own hands. "Mothers Calling" is a non-governmental organization in Gjakova, Kosovo, that gathered numerous and meticulously detailed accounts from the surviving relatives of men kidnapped from their homes in Gjakova, in spring 1999, a period marked by systematic, and grave human-rights violations, documented by the OSCE Verification Mission.

In 2016, Kosovo-American photographer Artan Korenica, published a portrait of a lone woman sitting at a family dinner table. Six chairs are arranged around the table. Six plates of stew and some bread are on the table. Except for the five empty chairs, this scene emanates normalcy, portraying what would appear to be an ordinary, every-day moment. The story of Ferdonije Querkezi, one of the founders of the NGO "Mothers Calling" of Gjakova, Kosovo, whose husband, four boys, and six other relatives were abducted from her home in spring 1998, is remembered through her tale, advocacy, and ongoing memorialization activities. Despite the exhumation of the bodies of two of her boys in 2000, Ferdonije believed that inadequate action had been taken (Amnesty International 2009, 35-6). In 2005, the bones of the two exhumed sons were ultimately handed to the Red Cross. She is still waiting for official word on the other family members who have gone missing. Ferdonije has dedicated her private residence to the memory of these lost family members since 2007. She recounts the horrible events she witnessed to local, national, and international tourists.

52 RECOM - https://www.europarl.europa.eu/doceo/document/E-9-2019-002353_EN.html .

On the other hand, in May 1997, Mrs. Natasa Kandic, a well-known human rights activist, founded in Pristina the Humanitarian Law Center Kosovo (HLC) as a branch office of the Humanitarian Law Center. Since April 2011, the Humanitarian Law Center Kosovo (HLC Kosovo) has been operating as an autonomous organization. The HLC Kosovo continues to support Kosovo's ability to establish the rule of law and implement transitional justice systems in order to build a just society that acknowledges the past while respecting each citizen's rights. The Kosovo Human Rights Commission is working to compile facts that may assist Kosovo society in dealing with its terrible past. However, these two organizations are not the only ones that are working in this area. The work of the Centre for Research, Documentation, and Publication in Kosovo is another example that supports the memorialization and documentation of the legacies of its past.⁵³ Many other governmental and non-governmental actors are working hard to provide a solution for the families who lost their beloved ones.

IV. The impact of the unsolved fates of missing persons on democratic consolidation in Kosovo

Since the Cold War, the realism school of international relations theory has held that state conduct is essentially determined by the balance of power among adversaries in the international system, influencing both academia and politics. Throughout history, mechanisms of transitional justice and new policies have been developed in order to reduce human rights violations and strengthen democracy. Many hypotheses about democratic peace focus on political leaders' socialization within their domestic political milieu.

Local civil society organizations working on reconciliation in the former Yugoslavia blame the poor development on a continued political deadlock in bilateral relations between Belgrade and Pristina, as well as the low capacity of domestic institutions. They emphasize how a lack of political will to adequately share information has hampered efforts to uncover the truth about missing persons and prosecute perpetrators. The displaced people of a society are often utilised as a war or conflict tactic. On the other hand, many people go missing during wartime, causing grief and concern for their loved ones. People have a right to know what happened to their relatives who have gone missing. Governments, military forces, and armed organizations have a responsibility to share information and assist in the reunification of families. Not only have millions of Kosovo Albanians been displaced, but a lot of people have gone missing in Kosovo. Families of almost 1,600 missing people are living in agony, still searching for information concerning their loved ones' fates and locations. Belgrade is tight-lipped on the whereabouts of Albanian Kosovars who are supposed to be buried in Serbia.

53 See activities of the Centre for Research, Documentation and Publication in Kosovo <https://www.peaceinsight.org/en/organisations/crdp/?location=western-balkans&theme>.

In recent Balkan history, many politicians have chosen the easy path of symbolic politics based on the humiliation of their neighbours.. Politics based on human and minority rights, multiethnicity, and cooperative economic prosperity is more challenging than stronger nationalistic ideas. In the end, this is the thin line that separates peace from conflict. The EU-sponsored dialogue between Pristina and Belgrade has reached a turning point. The two negotiating parties must decide whether to stick to the established discourse agenda or change it. Albin Kurti, Kosovo's new prime minister, appears to want to change not only the tone, but also the substance of the discussions, claiming that "Kosovars should be recognized as equals by the Serbs" —. However, as Harry Truman famously said, the absence of war is not peace. In September 2021, delegations from Kosovo and Serbia met with Miroslav Lajcak, the European Union's Special Envoy. Only the topic of more than 1,600 people still missing from the Kosovo War was mentioned by the parties. According to Kosovo's chief negotiator, Mr. Bislimi, both parties have expressed an interest in accessing each other's state archives. The parties also agreed that working committees on the matter should meet on a regular basis, and that the bodies that have been discovered so far should be returned to their families. Mr. Bislimi claimed that Veljko Odalovic was Slobodan Milosevic's top henchman during the Kosovo conflict, and Kosovo refuses to acknowledge him as the leader of the Serbian delegation on this issue.. All of these and many other challenges faced by Pristina-Belgrade dialogue have an impact on the sincere and humanitarian approach to the issue of missing persons. Consequently, the fate of missing persons continues to be hostage of the dialogue, and the agony of the families, as well as the human rights violations that surround the missing persons and their families, persists. As a result, a huge percentage of the population has doubts about the authorities. According to international and Kosovo legal frameworks, authorities are required to defend all citizens' rights; yet, if a significant portion of society (in particular families of the missing persons) does not feel protected, then their contribution to the democratic consolidation is questioned. The success of the Pristina-Belgrade dialogue still remains the final hope for discovering the whereabouts of the missing persons, to finally give the families some peace and allow them to focus on their lives and contribute to the society as a whole. While EU-led talks have succeeded in reaching an agreement on technical concerns, they have struggled to address basic political issues. The cost of Serbian recognition is likely to be a slew of international aid, increased autonomy for Kosovo Serbs, or a territorial swap — or even a mix of the latter two alternatives. And yet, the Serbian party does not welcome the help of the Serbian government in opening the Serbian archives when it comes to people who have gone missing. . The search for the victims continues to be a significant impediment to improving relations between Belgrade and Pristina.

The International Criminal Tribunal for the former Yugoslavia (ICTY) and a number of states acting on behalf of the ICTY's, as well as the Kosovo Force (KFOR), have focused their efforts on examining mass executions and mass graves. The ICTY and KFOR have compiled the most comprehensive listings of mass executions and mass burial sites.

The investigation of mass graves and the verification of death claims is a long-term, difficult, and time-consuming process. However, international agencies are likely to have recorded the great majority of death claims. The ICTY, KFOR, and other foreign agencies have identified over 500 mass graves and killing sites. Over 11,000 dead have been reported to the ICTY from over 500 gravesites. As of early November 1999, the ICTY has confirmed completion of field investigations at around 200 of the 500-plus locations. Investigators have confirmed the discovery of approximately 2,100 bodies in over 160 locations, averaging about 11 bodies per site. Insufficient identification of crimes and flaws in evidence collecting, according to Bekim Blakaj, Director of the Humanitarian Law Center in Kosovo, pose considerable challenges in resolving this complex and crucial case even 21 years after the end of the conflict. Due to the death of many witnesses and a lack of documentation, it is extremely difficult to locate primary sources after so many years. However, the cooperation of Kosovo's and Serbia's institutions, as well as the sources of the Hague Tribunal, which have recognized and built an archive for many crimes, can assist in this process.

The delegations of Kosovo and Serbia have yet to convene a tripartite meeting since the last time they met in Brussels in the framework of the dialogue mediated by the European Union.. This is due to the fact that Belgrade and Pristina have opposing views on the topics that can be discussed at the meeting. The two delegations held separate meetings with the EU Commissioner for the Dialogue Kosovo-Serbia, Miroslav Lajcak. Nonetheless, there seems to be a huge obstacle regarding the continuation of the dialogue that is prone to bring peace and reconciliation within the region. As long as Serbia refuses to unveil the locations of the remaining missing graves, Kosovo will not accept to continue the dialogue in any other area. For Kosovo Albanians, the fate of their people is far more important and contributes to civil peace within the territory of Kosovo, as well as provides its citizens with the right narrative.

Conclusion

22 years after the end of the armed conflict in Kosovo, despite the fact that a high number of missing persons' remains were found, there is still need for more effort. Families of the missing persons are still waiting for an answer, losing hope and trust in the authorities as the years pass.

Dealing with the past is an important process which includes challenging issues, and the issue of missing persons is one of the greatest challenges. However, it must be addressed until each of the missing persons' fates is known, in order to build trust in the local institutions, and have an effective rule of law and democracy. Because of the diverse ethnic groups that live in Kosovo, as mentioned at the beginning of this paper, a number of missing persons belong to other communities as well. As a result,

including all the affected groups in the process is very important. We deeply believe that cooperation between Kosovo and Serbian authorities to investigate missing person cases would be a good step towards finding the answers. This requires political will from both parties, which has been lacking in recent years.

Therefore, the Commission on Missing Persons has an important role in dealing with this issue, as it must continue cooperation with relevant institutions and international organisations. As can be seen above, the Commission, the ICRC and the EU Commission report all give different numbers; hence a unified list of missing persons should be provided.

Kosovo legal framework on missing persons is quite comprehensive and prescribes all the rights of families of the missing persons as well as the obligations of the state. It also includes other communities, which are very important in the process of accounting for missing persons. However, there is some dissatisfaction from the families of the missing persons about the difference between the financial support of the civilian missing persons and the combatant missing persons.

This article analyzed some of the challenges surrounding the relevance of disclosing the fate of the missing persons and their impact on Kosovo's democratic consolidation. Although many actors have been involved, including the UNMIK, EULEX, and lately the recently established Kosovo mechanism, the fate of the missing persons remains pending. International standards, and Kosovo legal framework provides for human rights standards to be respected in the cases of missing persons and their families, however their realization is pending on Serbia's cooperation. Everyone has the right to know what happened to their missing family member(s), including their locations or, if they died, the circumstances of their death and, if known, the location of their burial, as well as the right to reclaim their mortal remains. As such, there is a need for further enhancement of the matter of missing persons in the EU-mediated Pristina-Belgrade dialogue. Although some progress has been made, there is still a need for the international community to condition the EU integration efforts on the disclosure of the fate of missing persons. As such, the EU-mediated Pristina-Belgrade dialogue needs to be further utilized in order to solve the fate of the missing persons solely on human and humanitarian grounds.

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Ardita REPISHTI

Director of Scientific Support and Civic Education, Authority for Information on Former State Security Documents

Public communication and classified data on the disappeared under communism, in the context of collective memory and education for democracy

Collective memory is the presentation of attitudes, social approaches to the past, and plays an important role in preserving the identity of the group (Roediger & Abel, 2015; Wertsch & Roediger, 2008).

Collective memory can change over time, thus reflecting changing waves of sensitivity to certain issues in society. It is studied by various disciplines, such as history, anthropology, sociology, psychology, literature and philosophy (Hirst & Manier, 2008; Roediger & Abel, 2015).

The very nature of collective memory makes it difficult to integrate it into just one academic discipline, so researchers explore it from a sociological, historical, and philosophical perspective, because it is various social factors that mediate the creation of collective memories (Hirst & Manier, 2008; Zelig & Nachson, 2012).

In this confrontation with collective memory, history plays a key role. In contrast to collective memory, history is defined as the academic and objective representation of the past. Historians insist on building an impartial and objective narrative of the past.

However, if we take a look at the history studied in schooling curricula and textbooks, it resembles more to collective memory than to the definition above. Because often, written texts aim to tell the story from a perspective that emphasizes national identity or that of social groups (Roediger, Zaromb, & Butler, 2009). Thus, the unification of beliefs with those of the social group to which we belong has to do with the collective memory which, in itself, summarizes the approaches of many social groups towards the past.

Basically, almost everything today can be considered as a fusion of collective memory with history (Wertsch 2009).

On the other hand, *civic education for democracy* is one of the pillars on which the work of the Authority is grounded, including aspects ranging from knowledge of politics, social values, and individual and collective civic and social behaviours.

With the legal amendments of 2020, “for the purpose of civic education, in order to inform citizens about the documents and the activity of the former State Security in general, and focusing on the younger generations in particular, the Authority carries out activities that help shape civic awareness for the reinstatement of the narrative of the past communism, based on scientific research, within the scope of this law.”

From this perspective, the Authority has had a communication strategy aimed at various groups of society for years now, starting with interest groups, the politically persecuted and their families, relatives of the missing, young people, researchers, journalists, etc.

The Authority, in cooperation with partners, has used various instruments to outlast this communication and add value to it.

Beyond various activities carried out over the years, I want present to this conference, with a focus on the disappeared under communism, two exhibitions by the Authority on the Missing Persons under the dictatorship. The first exhibition, “The Imperfect Past,” was held in the framework of the International Human Rights Day, in December 2019, while the second, “Security Service in its own words,” was held on the International Day of the Disappeared, on 30 August, 2021.

The work for the two exhibitions, which in both cases served as instruments to turn the attention to the issue and influence of the public dialogue on the communist past, also reveals many issues related to the materials, data, or lack of evidence about people who disappeared under communism, unravelling at the same time the approach to collective memory and the role of public communication on dictatorship.

This work also demonstrates how the curve has changed regarding the issue of the disappeared, which has finally become the agenda of the relevant institutions, the government and the opposition in cooperation with international partners.

The first exhibition, “The Imperfect Past”

In terms of the data used, the Authority cooperated with the IIPP and ICMP to put on the exhibition. The Konrad Adenauer Foundation in Tirana supported the exhibition, and we are pleased to say that, over the years, KAS has been a constant partner of institutions regarding the issue of the disappeared during communism.

Before providing the detailed work for both exhibitions, I will give a brief overview of the background that preceded it.

The Authority was established in 2017 to provide information on the documents of the former State Security Service to citizens, researchers and media. Part of its job is also to clarify the fate of those who disappeared during the dictatorship.

In 2018, the Albanian government signed an agreement with the ICMP on disappeared under communism, which was ratified by the Albanian Parliament in November 2018. The Institute of Former Politically Persecuted, which still has a special section for the disappeared, was part of the agreement. .

Over the years, relatives of the disappeared have reported the data to the IIPP, which has organized them in a dedicated database with names, alleged locations, years, circumstances, contact numbers, etc., as indicated by family members..

Likewise, the ICMP has its own applications for reporting the disappeared persons (which, as of 2018 can also be found on the Authority's official website), where family members can report on their missing loved ones.

On the other hand, the AIDSSH initiated a database of individual requests as soon as it was established, including requests seeking information about the fate of those who disappeared.

So, even though almost 30 years have passed since the fall of communism and family members continue to search for their relatives, there were and still are several institutions and organizations that collect data on the disappearances of communism independently for an important, humane cause, on the periphery of social dialogue on the past.

This is the ground where the Authority's first exhibition, "The Imperfect Past", was born.

Clearly, *the purpose of the exhibition* was to bring to society's attention the case of the disappeared and related issues.

In this context, the exhibition attempted to address the profiles of the disappeared, that is, through *prominent figures of the missing*, to shed light on one of the darkest sides of the dictatorship, still undiscovered as of today.

In order to bring forth the prominent figures, we had to work hard in research and archives.

The first phase of the work concerned the collection of information on the disappeared, spread in several countries. Depending on the typology of each case, a selection was made to include names from all social strata and categories: foreigners, Albanians, men, women, and children from north to south, personalities, common people, family of celebrities, artists, intellectuals, generations of the persecuted...

- For each of the selected names, the relevant documentation made available by the Authority's archives and materials was requested and studied .

-In addition, photographs of people were chosen, both before and during their imprisonment (in case they were convicted), as well as manuscripts, books, publications, etc., with relevant data.

-It was planned to have quotations from the relevant files of acquaintances or cell inmates of those who are currently missing, i.e. rare and authentic evidence of those who saw them in difficult moments, often the last ones.

-Also, other evidence on the missing person, such as newspaper articles, family data, artefacts or photos.

Once the preparatory work was completed and all the materials had been sorted and gathered with the aim of drawing the attention to the cause, the second question arose: *what is the intended target of the exhibition?*

You cannot work with the materials until you know who the target social group/groups are that will follow, read, treat, and distribute them, who will be affected by them, and who can help advance the cause.

At this point, in addition to the stakeholders - who are essentially the most knowledgeable about the case, the difficulties and problems associated to it - it is very important to affect the public opinion that ignores the case, because they lack information, consider it outdated, and believe it is the work or object of other institutions' work.

At this point, it is important that the information provided is properly processed to reach and engage all of these groups: the uninformed, those who avoid the case, institutions, organizations, universities, and the young. Then it's time to move on to the next stage, which is organizing the collected material and determining the structure of the presentation.

The target objective is closely related to what the exhibition *will reveal and stimulate*.

Beyond the research work, the important data that are made public, the identification of facts, characters, circumstances, and *the way they are made known* to third parties is of great importance. At this point, the presentation to the public is as important as the material itself.

I can say at this point, that one of the elements of the Authority's success in its work is in communicating findings to the public, where text writing and design play an important role.

The merging of the two ensures that the data collected by the institution are conveyed in the right way, reaching widely to several social groups, through speech and image professionals, experienced in public communication.

By this I mean that, just as important as the very fact and its finding is the manner in which it becomes comprehensible and readable to third parties who will, in their own ways, advance the case.

These are the elements that require investment, attention, extra care, and cooperation with the appropriate people, because it is important that the cause is understood in its dimension, speaking to those social groups that until yesterday failed to consider this case as their own, as part of their life or work.

At this point, the Authority extended its cooperation with the journalist Fatmira Nikolli, well known for her quality writings and experience in the study of the communist past, as well as with Henrik Lezi, a professional designer, expert on works on the communist past.

After getting acquainted with the ideas, profiles and findings, and collecting data from family reports, the exhibition was conceived, consisting of 14 panels with the names of people who disappeared during communism, from north to south; from state-building personalities to foreigners whose lives ended in Albania; from children to the revolt of political prisoners in Spaç, from cases of decades of research to families searching for up to 7 people whose remains are still missing.

In this way, each panel was organized according to a similar structure, both original and depending on the topic addressed. A header, title, subtitle, introductory paragraph and dedicated expressions were all included in the narrative text (all elements of public communication and design, emphasizing key points, facts and details that need to come to the surface and engage the public).

With his knowledge of public communication, the designer visually translated the language of the text. Thus, the extended material was rearranged depending on the selected design. In many cases, this means significantly shortening the narrative text, as well as selecting photos and key documents for publication. It is basically an exhibition and should be presented as such: complete, deep, striking, straight.

But what remains in the text?

Straight and cautious language not a language of hatred or separation. The very fact that the exhibition addresses certain social categories, especially those who need to be familiar with the case and can support it, requires that the story be told beyond stereotypes, based on documented data and evidence, and be credible.

As for the documents exhibited next to the photos, they present the facts as such, with data that are no longer classified and reveal the truth that had been left in darkness and oblivion until yesterday.

At this point, we come to the important role of design, with the text writer for the public, and the Authority, which organizes the exhibition. Data grouped in narrative, table, documentary format, etc., should be worked on carefully, to achieve a fair proportion between reading, cognition and focus on photos, images and design.

The fact that other people who are aware of the cause are cooperating for the exhibition, affects the quality of the target product since they are not influenced by daily work and manage to present it in many plans. As noted earlier, texts need to be delivered in a fluent, divulged, non-bureaucratic language, that is devoid of emphasis but direct. Instead of using the term hate, why not use teasing, which encourages reflection. Not irritating, but revealing.

For this reason, the cooperation has been successful, as experts in the field, well-known journalists and experienced designers have approached, putting their knowledge and skills to service for a final product of the Authority that exceeds expectations.

Essentially, the final material differs greatly from its first draft, everyone added on from themselves and eliminated side or second-hand facts, due to the balance of information, the purpose of what is conveyed, and communication with the public.

Are 14 profiles of the disappeared during dictatorship enough?

The data presented are strong, based on documents and evidence, but this presentation does not include other important data from all three institutions, family reports over the years, cases pending for nearly 30 years and yet to be raised, or the institutions' lack of response to family members looking for their relatives...

How can you get the attention of society, without teasing it about the fact, without putting your finger on the wound and ultimately, not informing it about the people who disappeared under communism?

At this point, the designer-journalist-Authority cooperation came up with a finding that unifies all the identified elements:

The reported spots, i.e. all the findings of the three institutions working on the disappeared, were materialized in an installation-map, in which respective flags were raised on each reported burial site. .

The installation's concept included a coffin-map, lying in the centre of the room/hall, with profiles of the disappeared arranged around it, so it was surrounded by people, as the custom is. Portraits of the dead and accusatory portraits of those who have not yet been found and whose family members are unable to take flowers to their graves were placed around the coffin-map.

A book containing all family members' reports on the disappeared, collected by the IIPP, ICMP and the Authority was placed in one corner of the exhibition, thus incorporating all of the elements.

The installation of the map of Albania, with clearly evidenced reported burial sites, panels of distinguished personalities and common people still missing, with data on their lives and disappearances, evidence and photos; detailed information in the relevant book and information in the panels - where all the social categories of the disappeared were shown - tackled several issues at once, shaking the visitor, through the successful use of various means of communication: collaboration with reputable journalists, designers and public communicators; use of a straightforward language and avoidance of hatred; facts intertwined with metaphor and symbol; data from Security Service archives and files; personal information and rare photos.

The exhibition was inaugurated at the National Historical Museum, in the centre of Tirana, on International Human Rights Day, with the presence of representatives from many public institutions and international organizations, including the UN representative for the missing, Mr. Duhaime, the Parliament, persecuted people's associations, family members, young people, representatives of religious communities, partner organizations cooperating with the Authority, the media, etc., ,.

To internationalize the issue of the disappeared under communism, the exhibition was translated into English and was widely delivered in both languages. The Authority created a special edition in both languages with all of the necessary explanations.

The exhibition's longevity was secured by the fact that it disseminated material that is still being delivered today, including leaflets in Albanian and English.

At the same time, the exhibition was published online, on ISSUU and on the official website of the Authority, in Albanian and English, and is regularly distributed on social networks, according to the addressed commemorative dates or important events related to historical personalities.

This constant spiral communication with different social groups makes the exhibition vivid and keeps it always in motion, bringing back to attention people, stories and events.

Even the movement of the exhibition in various cities around the country, where local dialogues on the disappeared under communism were held, made it appear as if we were opening it for the first time in each city.

Although there are similar situations, it has a different impact in each city; therefore a different approach is required. So, the exhibition in Shkodra focused on different characters (convicts from Shkodra and its suburbs) than in Maliq, Tepelena or Saranda. The exhibition was reorganized in every city, although with the same panels, and communication about it was renewed, sowing in every area the seed of communication on the missing persons during the dictatorship.

In this way, the data remains new and interesting, rather than being consumed, thanks to the communication with the public across the country, each city having its own specifics as well as similar situations.

Second exhibition on the disappeared, “Security Service in its own words”

In contrast to the first exhibition, which focused on the cause of disappearances, bringing it to the attention of institutions and society, as well as international stakeholders, addressing data and documents, although it was held under circumstances where most of it had to be settled from zero, the second exhibition had a different objective and other expected results.

If it was hard to raise people’s attention to the issue of the disappeared under communism before yesterday, the way has now been paved.

The law of 2020 gave the Authority an additional role with regard to the disappeared under communism, and also clearly determined the definition of the disappeared, previously defined as missing in the Albanian legislation. The ICMP’s joint project with the Authority to raise awareness on the disappeared under communism, meetings held in several cities of Albania, work on the roadmap for the families of the disappeared, and the increased interest from persecuted associations in the cause, in addition to family members’ pressure to find their relatives, was a new ground of work.

But why was an exhibition needed in 2021 and what could it communicate?

As noted in the first presentation, the first exhibition on the disappeared would be an innovative tool for communicating findings, a way to make the case of the disappeared everyone’s case, to introduce people to it, to bring them closer, to make them aware...

In addition to few archival materials that were available, the exhibition focused mainly on the data and materials of family members, as well as evidence.

Why does the capital city and society need a second exhibition for the disappeared during the dictatorship in 2021, after the aimed awareness on the issue has been

achieved by means of work and contacts?

What was *the purpose of the second exhibition* and which were *the target groups*?

If the first exhibition contained information, confessions, as well as findings, the second exhibition came as an authentic feed of the Authority, with documents from the former State Security Service on the executions carried out, for which the Security takes over the authorship.

Over the years it has been noticed that there were a few materials on the disappeared and clarification of their fates in the files of the former State Security.

To help family members, the Authority addressed them to the archives of the Ministry of Interior, to prisons, etc. It has been very difficult, almost impossible to find clear data on places, time, and persons involved who could assist during the search or guide family members to find the remains of their relatives amid the Security documents. The regime's secret police had taken care to hide, destroy and make it difficult to find some of the data.

However, the Security documents must be read carefully because they contain necessary elements, such as the materials used for the exhibition in this case. There is considerable data on people executed by the Security Service during the dictatorship, which proudly claims the authorship for the murder, disappearance, and extinction of political opponents in their cells (they have taken care not to allow data appear in other documents, and although the violence exercised has been widely known, torture appears or is implied very little in the Security documents).

From 1972 to 1980, when the State Security was a consolidated structure under the Ministry of Interior, the opposite occurred with historical records and reporting materials of the secret police, operated by regional Security service branches. According to their historical records, branches of the Security Service have been established since the World War II and take the authorship of several important executions carried out by the communists during the war.

Seen in today's perspective, as written evidence of the Security Service's many years of activity, the recorded data are important to be addressed and accessed along other documents, family stories, files of convicted persons and their family members, to help present the whole story.

The great novelty brought by the second exhibition on the disappeared in communism was precisely this, the strength of the document, the fact given or implied, the different sides of the truth, the lack of credibility of the State Security documents, declassified, read carefully, and presented to all, the way they were written.

In this context, the exhibition reveals the language of the Security Service, the very fact of the Security, leaving room for verification, if not opposition, , making clear at first glance, the high number of executions of opponents that the Security service admits to have annihilated itself, , breaking down the relevant plans and strategies.

I'd like to present a typical case in which several Security documents, preserved by the

Authority, accept different truths about the disappeared Galip Hatibi. From the very first years of the installation of the regime, he was close to Koçi Xoxe, who later mistreated him, and his disappearance as head of the family led to the punishment of his wife and the surveillance of his son. Over the years, they had varying data about their family member's fate.

The kidnapping and murder of Galip Hatibi

Accused of "*accessing the service of espionage of the American imperialism*", the 26-year-old Galip Hatibi from Dibra, newly married, was arrested on 25 September, 1946 by the State Security forces. Evidence points to an arrest that took the form of a secret kidnapping in front of the University of Tirana. "*In 1946, by order of Nesti, I illegally arrested Galip Hatibi... as an agent of the Americans. He had been interrogated by Nesti and Thoma Karamello ... I know that often, Nesti and Thoma have badly beaten Galip and treated him very badly. He was killed illegally from Angji Faber and Skënder Kosova in July-August 1948, with a special trial organized by an order from Vaska*", affirmed Vango Mitrojorgji, a senior Security officer, in self-criticism.

Held in isolation for a long time at the State Security Section's basement (at Selvia), he was never interrogated until executed, according to some evidence, somewhere near the Kinostudio, after being reduced to skin and bones.

During his own trial, Koçi Xoxe, who had already been indicted, affirmed that, "*For Galip Hatibi, Vaska (Koleci) told me that he was in miserable conditions and so, with the decision of the Commander (Enver Hoxha), he was executed following an informal trial*". His subordinate, Vango Mitrojorgji, also affirmed that, "*in case of resistance, torture was used extensively, to the point where the detainee died or testified*." According to the indictment in the trial against Kadri Hazbiu and Feçor Shehu, "*Many cases of such murders committed without trial by order of traitors Mehmet Shehu, Kadri Hazbiu, Mihallaq Ziçishti and Llambi Peçini have been revealed, based on evidence and facts gathered by investigating bodies*". Here are mentioned: the murders without trial of Mihallaq Ziçishti and Galip Hatibi, who were arrested as American spies and then burned in an oven, as well as murders committed in Puka, Rrëshen, Kruja, Burrel, Berat, etc "

Testimonies from the responsible persons include the names of some of the culprits for his execution, who also violated the communist laws..His fate still remains unclear, and the location of his remains was never found.

After Galip's murder, his wife, Asamble Hatibi, recognized the ordeal of suffering with her child, Durim. In addition to her dissatisfaction with the regime that killed her husband, she was also accused of reinforcing the statements about Enver Hoxha's low morals. Asamble was arrested in October 1978 and released in November 1982.

Her son was also persecuted. Though a talented football player, he was assigned to work in a geological enterprise. "*He is very honest and very introvert, but a volcano is raging inside his chest. He was given some advice*", the Security writes about him.

So, it is clear what this exhibition reveals, but to *whom is it addressed*? What are the social groups involved in the presentation, in the centre of Tirana, close to the Prime Minister's Office, of documents that were previously secret, but are now freely readable and available to the public?

If the awareness to the disappeared has risen, what comes next? What is the next step?

Society asks: Who are they? Why did they disappear? How did they disappear? What happened to their family members?

Why are people who were convicted with or without a trial still kept hidden from their families today? Why aren't the families informed about the location of their remains? How can this issue be completely resolved?

What is the role of institutions, particularly the Authority, in revealing and highlighting the truth?

Of course, opening files, reading documents, and making them available to the public and society.

In the case of the second exhibition, 19 historical records of the Security Service district branches were read and published for all interested parties, presented in 19 relevant panels /structures with the typology of the place where they were written.

But do opened Security documents contain sensitive data? Do they contain personal data? What would happen if they were declassified and made available to society?

The opening of documents and historical records of Security branches leads to the fact that the State Security itself recognizes the execution of its opponents, with and without trials. In addition to missing people, the documents contain other data pertaining to the implementation of other laws of the Albanian state. To be in accordance with the amended Law 45/2015 on Information and Personal Data, which provides information, while also preserving personal data and respecting the dignity of the individual, this data becomes unreadable to third parties.

In the case of well-known persons with very significant complex histories, data on family members' testimonies are provided, in addition to information. So the exhibited panel is not only a revelation of the Security documents about the disappeared, but also indicates what happened to their families as well, connecting the past with the present.

In addition to detailed information on executions carried out by the former State Security Service, the documents include illustrative images. Should all of the photos, no matter how grave, be released to expose the atrocities of communism? For the images of executed people taken after the shooting, our choice was no.

The purpose was not to terrorize, but to convey a terrifying dimension. Photos can be provided to the researchers, the media, and the public, and those who are interested to know more about history and unravel it. For example, in the case of Shkodra Security historical records, the strongest story reported by the Security itself is that of the execution in a cave by anti-tank of its political opponents, a well-known General who, along with

his fleeing comrades, were torn apart by the anti-tank.

The title, "The deputy is killed with an anti-tank, the body is buried", gives its dimension. The photograph of Colonel Haxhi Hajdari presents his noble portrait, as the story unravels the horror of his execution.

Historical records have been studied in depth, and data on the missing have been evidenced on each page. The data were verified and cross-referenced with the files of the mentioned persons. Photos of persecuted persons were extracted from each file separately, if there was any. If there were no photos, they were looked for among family members or other sources. So, the exhibition has combined documentary data from Security historical records with data from the Security files and relevant photos. When there was information from the family it was added, and confronted with data from other historical sources. In any case, the Security information is cross-referenced with other data about the persons and their families.

19 lists of those killed reported by the State Security in each area were placed in 19 panels/structures, along with a note stating that all data should be further verified and enriched.

The lists of those killed are not final; these are the names of those evidenced in historical records. Aside from them, there is a list of thousands killed without trial.

Why should they be verified, if all the documents exhibited are state documents?

And here we come to a delicate moment that has to do with the information of the Security files. Security documents are authentic, but not reliable. There are reasons why data are presented in a certain way, and as such they need to be verified with other sources as well. You must be prepared to read and understand even between the lines of a Security document: executions, deaths with or without trial, in or out of the investigation premises, in horrific, inhumane, or organized ways according to action plans.

At this point, why did the Authority exposed the data as such?

To make it clear that State Security documents may misinform and this is clearly understandable. State Security documents refer to the following fact "State Security is the Party's weapon, used against the enemy of the class." Thus, the executions and actions that the Security explains as legitimate, relate to the distorted presentation of the case, interpreted as its given data.

But which cases were selected for this exhibition, based exclusively on documents, and were they addressed from a historical point of view?

The selection of figures for the exhibition - among the dozens that appear in each district's historical record - is based on typology. So the more figures are presented, the more are the typologies of opponents execution. If the death in cells of different personalities is mentioned in the historical records of Shkodra and Tepelena it is not the same in other exposed panels, although they all show the same ways of eliminating the opponents.

Thus, the exhibition “Security Service in its own words” includes murders during the war, linking the Security and the communists to the purges they have carried out since World War II, whereas in relevant historical records they themselves took the authorship of this (historical records have been completed in 1972-1980, at a time when Security was consolidated as a structure).

There are murders of prime ministers and personalities, signatories of Independence Act or their progenies, founders and contributors to the Albanian state. There are murders of clergy of all faiths, murders in cells, investigation rooms, sieges; murders at the cross-borders; murders of writers, intellectuals, etc.; murders within their own ranks, including communists who were later considered enemies.

The working group on the exhibition and historians who read the material and gave relevant suggestions identified thousands of murders in 19 historical records, from which some typologies of execution or disappearance were selected.

All of the executed had to be addressed with care and attention, and the data had to be cohesive in order to make the presented material as clear as possible, serious and understandable.

In this case, the explanatory text, which summarized the entire exhibition and was written after a detailed study of Security Service documents, took on first-hand importance, highlighting the big picture of the disappeared in Albania and totalitarianism in the country and abroad, a text aimed at presenting the essence, goals, and promoting the reflection of society.

A society that continues to face stereotypes, phenomena of division, disagreement, lack of apology and the gap that divides it, which is no longer filled with propaganda, short-term policies and words, but with touching problems, putting a finger on the wound and shedding light on cases that are still in the dark. Disappearances under communism are an open wound for our society, yesterday and today, as well as the responsibility to be addressed.

For reasons explained earlier, the Authority’s collaboration with well-known journalists and acclaimed designers was one of the elements of the presentation’s success even in the second exhibition. The previous collaboration was renewed, this time on other terms, with inherent materials to be exposed, each pushing the target a little further.

The date, location, design and development of the exhibition were all seemingly secondary details, but really important for a thorough and great presentation of the whole.

“Security Service in its own words” was inaugurated on 30 August, the International Day of the Disappeared, in the square in front of the Prime Minister’s Office, which bears the names of two people who went missing during the communist regime, drawing attention to truths that many do not know (it is a known fact that Vangjel Lezho and Fadil Kokomani are convicts of communism, but not that they are still missing).

But it is not just about the name of the place. The park’s location, in the centre of Tirana,

adjacent to the Prime Minister's Office, on a street where thousands of citizens pass by every day, brings the issue of the disappeared to our attention, making it visible and tangible.

Close to the Prime Minister's Office, the issue of the disappeared under the dictatorship is no longer peripheral; the state assumes its responsibilities that the history of the disappeared under communism is unknown and has not been addressed to its conclusion, so the Prime Minister's Office has a role to play, as well as citizens and society.

Likewise, the conception and design of the exhibition make it attractive and appropriate for both young and older people.

The installation of the exhibition "Security Service in its own words" lays on a lawn (in front of the Prime Minister's Office), consisting of 19 structures named "islands", which represent the 19 declassified Security historical records. The structures consist of superimposed cubes, with the stories of those who disappeared during the dictatorship written on their sides.

The cubes, which have some sides filled and some left blank, convey the idea of sections of history to be filled and completed by others, as an invitation to study, confront and reflect.

In addition to the 19 islands (historical records of Security districts), a central island is placed in the middle of the installation, unravelling the title and the purpose of the exhibition, as well as a much needed reflection about those who disappeared under communism.

As such, a visit to the "islands" only completes the puzzle of the disappeared, through all the typologies of executions which, passing from island to island, are added to the ways in which terror was faced by people in this country and visitors, researchers, and young people cannot remain indifferent to the fact.

Their rage towards injustice grows exponentially when they consider how the terror system put an end to individuals who thought differently, not only by condemning, executing, and neutralizing them as enemies, but also by making them disappear, so that families are still unable to lay flowers on their graves.

In this way, this massive exhibition - with serious and very strong data, with important files opened for the first time to the public, declassified and made available to those interested, organized with a simple and divulged language, with titles for each panel, with photos of authentic documents to which it referred, with photos and materials (manuscripts, diaries, etc.,) of deceased persons, conceived in an innovative way, appealing to young and old, invites you, and promises not to let you go, keeping you involved, - is important.

It unequivocally reveals the dark side of Security Service and invites everyone to recognize it, have the opportunity to even oppose or confront this approach, serving other perspectives, based on historical evidence and sources.

Conclusions

“How can you remain human in an inhuman world?” was one of the questions at this year’s ENRS annual meeting on memory and identity, linking the past with the future. Can we be united in diversity, staying true to the beliefs of the groups we belong to and being open to learning and knowing more?

The present has the power to “change” the past, so civic education for democracy is important, because the past and its traces in the present significantly affect our lives, as well as the perspective for the future.

The past is an integral part of the present, and as such, it can be used by politics, the interests of the day that connect the individual or grouping with the feelings of the past, with the collected memories, which are an essential part of it. So the past is powerful. This also makes the memory powerful.

Therefore, the role of the Authority is to bring the past to light, to remove the shadows, to clarify and to raise questions about issues that need to be resolved.

The truth is that we are still dealing with the trauma - individual, familial and collective, and in many cases, generational. The traumas of emigration, fleeing, transformation and loss of pride are among them. Dealing with trauma, that is, engaging with the issue helps the individual and consequently, society. This is a way to heal it, to go back to the past in order to understand the present.

This is also accomplished through activities that bring the horrible, dark facts of the Security to the society, so that it sees, recognizes, touches and analysis them, without avoiding them.

The data must be handled with care and attention, but the truth must be told plainly and clearly. Speeches against hate and design concepts are tools to achieve the goal of shaping educated individuals who understand the background where they grow and develop. They cannot be the fact in itself, which risks presenting Albania’s past communism as romantic.

Today, stereotypes keep the past alive; “traitor”, “kulak”, “saboteur”, “enemy” and those who inherited these epithets continue to be on the other side, divided by a gap from those who have been taught for generations to stay away from them. The polarization of memory today is in itself a polarization of politics and vice versa. They used feelings related to the past to make people follow them.

The rewritten narrative on the facts, as well as open stances towards the past, are what helps to have a less tense present, where trauma does not erupt unexpectedly, but is addressed with care and professionalism by institutions, experts, and historians.

Our collective memory and plurality of stances towards the past is being tested. Challenging it day by day, with professionalism and seriousness, we carry out our civic mission, for a better Albania tomorrow, for a society of democracy and human dignity.

Dr. Valbona EMINI PLLAHA

Specialist in studies and audiovisual projects for the Albanian Authority for Access to Information on Former Sigurimi Files- AIDSSH

HATE SPEECH, A MEANS OF VIOLENCE OF SOCIETIES UNDER REGIMES

LANGUAGE USED IN THE DOCUMENTS OF THE FORMER STATE SECURITY SERVICE 1945-1990

This paper focuses on transitional justice as one of the key tools for peacebuilding processes aimed at ensuring a sustainable democratic future.¹ When we say democratic future, we mean free societies that pay special attention to communication without barriers, as a form of freedom and an indicator of a less hierarchical and less repressive society. The study of communication and of various forms of expression, mainly with negative connotations used in society, in a certain period of time, aims to identify the type of communication that has created situations of persecution, discrimination, violation of rights, violence, and punishment as an attempt to understand the mistakes of the past in order to uncover the truth, and prevent and avoid the repetition of the same actions for us and future generations.

Even though the original concept of transitional justice refers to the prosecution of human rights violations committed by past dictatorial and oppressive² regimes, the meaning of the term has later expanded to include a variety of instruments, mechanisms and measures that go beyond the punitive aspect of coping with the past³. Thus, in this context, we approach transitional justice not through lawsuits but through social discourse driven by political influence in society, which are aimed at fundamental changes to the benefit of the country's development, but are deviated from the initial objectives by using the totalitarian doctrines.

This effort is one of the various instruments a society can use to face the past and show that it is not moving from a state of oppression to a state of silence, but calls for a transition to a stable and peaceful society, even more democratic society. This new society should not remain indifferent to insults, hatred, and violence that, although verbal, has had direct consequences on the targeted persons making them part of the punitive measures imposed with or without trial. Thus, knowing the past through

1 Clara Sandoval Villalba, *Transitional Justice: Key Concepts, Processes and Challenges*.

2 Sanya Romeike, *Transitional Justice in Germany after 1945 and after 1990*, pg. 10 [file:///C:/Users/user/Downloads/Drejtasia%20Tranzicionale%20One%20Gjermani%20pas%201945%20dhe%20pas%201990%20\(1\).pdf](file:///C:/Users/user/Downloads/Drejtasia%20Tranzicionale%20One%20Gjermani%20pas%201945%20dhe%20pas%201990%20(1).pdf)

3 Quotation from Fischer, Martina. 2011. "Transitional Justice and Reconciliation. Theory and Practice". In: Buckley-Zistel et al, (ed) *Transitional Justice Theories*. Abingdon: Routledge, page 1-3.

communication is a different approach that complements the mechanisms of transitional justice and helps us identify and address the mistakes of the past, in order to mitigate the grievances and hatreds that can often end up in violation of rights and become the cause of violent acts.

Since social and political discourse in developing societies happens to be associated with negative connotations that go as far as expressing hatred, we must first explain how the fundamental changes of these societies happen and in what context these political forms take place. The paper outlines concepts of transitional justice, based on the documented discourse in former state security service files, but does not pretend to analyze historical and political developments of that period.

The context of our country and the state organization established in 1945-1990 was similar to governments and political formations established in a geographical area, organized in a country with a regressive history of conservatorism, militarism with insurgency, occupation and rebellions. They also tended to adopt many aggressive methods of exercising power over the people, against political opponents and even against opponents within their ranks.

This way of exercising the authoritarianism of the government, combined with the above elements, as well as the ideology of the Marxist model brought about a power that used an inherent part of the violence instruments to oppress the people in order to maintain the power. Self-proclaimed democratic, this power initially relied (after the WWII) on measures that had strongly supported it, but later degraded to include their supporters among opponents considered enemies of the people, abusing their support in the worst form.

This paper sheds light on the many barriers created in a society that is going through or has gone through a period of abuse characterized by violence, discrimination and insecurity, where the risk of recurrence is present. To manage this risk, it is necessary to know how to re-establish an inclusive, non-coercive, democratic society and free society that respects the citizen, and sets up the foundations of peace and understanding.

This can be achieved through:

1. Undertaking truth-seeking initiatives;
2. Undertaking initiatives to create memory and transitional justice;
3. Identifying the various forms that became the cause of a conflict or infraction of human rights by first studying them in the context of the past and then comparing them with the present;
4. Show the consequences, the damage to the individual and to the society that these aggressive forms inflict;
5. Creating prevention and restriction forms on the use of violent acts, even verbal, through various normative acts.

These steps may serve as apt keys to prevent the recurrence of aggressive forms that

oppress the individual and the society, including verbal forms.

Why is it important to focus on hate speech, insults, discrimination, and violent language? Because we believe that we can not prevent violent acts if we do not know the causes that lead to them. We know that violent acts and cruel crimes are not spontaneous or isolated events; they are processes with history, precursors and motivating factors.

According to various definitions, the term "hate speech" is understood to cover all forms of expression that propagate, promote, or justify racial hatred, xenophobia, anti-semitism, or other forms of hatred based on intolerance, including intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities,⁴ including class conflict.

It is therefore important to take precautionary measures as soon as we identify cases of communication through hate speech, which are followed by violent actions, before they spread widely and become part of everyday life as something normal and right.

With this paper, we try to highlight ways of preventing violent acts by identifying risk factors. One of these risk factors is hate speech, known as a step towards the occurrence of violent acts that can escalate into mass atrocities.

We focus in our paper on the former State Security Service Documents 1944-1991, where we often encounter a serious form of hate speech that aims to incite intimidation, oppression, hostility, discrimination up to acts of violence against those who are its target. Labeling different forms of communication with a negative connotation summarized as "hate" does not seem to show the true dimension and different forms of this communication.

Hence, we have identified some forms of communications that are closely related to violent acts, whether limited to a close family or social circle or with having an impact on the whole society. We know that identifying cases even in limited groups is a necessary link toward preventing violent acts against the whole society. Seen from today's perspective, on the basis of the former state security service documents of the communist system that ruled in Albania during 1945-1990, we encounter several different forms of communication with negative connotation.⁵

If any of the "circles" as a form of communication that attempts or manages to produce violent acts against an individual, a certain group or a society, then it can no longer be identified as an offensive language, discriminatory language or hate speech but is included in the large circle, which is identified as violent speech. Thus, in such cases, we cannot use the term "hate speech", since we are not just dealing with an expression of hatred but with a language that produces violence.

4 Recommendation No. R (97) 20 of the Committee of Ministers to member states on "hate speech", Adopted by the CoE Committee of Ministers on 30 October 1997 at the 607th meeting of the Ministers' Deputies, p. 107

5 I am using the term negative connotation, given the violent communication, which I am not mentioning as such till I clarify the various forms of communication including insult, discrimination, oppression, punishment, hatred, and violence.

As we reflected above, the expressions of violent language are diverse, often even camouflaged and can also be made through words that in their first sense do not carry a negative connotation.

In the discourse used in the former State Security Service Documents, we often encounter: (it will be accompanied with other examples)

- **Insult** - Communication that insults the persons under surveillance: *N. P. editor of the newspaper "Free Albanian" and very mean in saying slander and lies against our country.*⁶
- **Disdain** - Communication that expresses disregard and underestimation, lacks appreciation and care; despises a group of people: *The old community consists of people without capacity and who were put in charge just for the sake of their name.*⁷
- **Discrimination** - Communication that distinguishes one group from others by not calling them equal and restricting or denying them their proper rights: *The purpose of the organization was to gather around it the remnants of the treacherous "National Front organization"*⁸.
- **Fear** - Communication that expresses a feeling of deep concern when we are in front of a danger that threatens us directly or in front of an upcoming danger: *If national front seizes me alive, they are more angry and hostile to me than to K.*⁹
- **Hate** - Communication that conveys hatred through words selected to label an individual or group of people: *"Polygon" had spoken with hatred about the agrarians, calling them thorns.*¹⁰
- **Repression** - Communication that aims to keep the people subjugated and exploited, repressive communication produced by an oppressive regime on the individuality and freedom of expression: *It is the party that controls the activity of the state security service and with its directives opens new horizons for them to wage the war, to discover and mercilessly strike the enemy of the class and its hostile activity, in order to consistently mitigate the class conflict.*¹¹
- **Punishment/accusation** - Communication that leads to the punishment of the persons addressed: *The defendant has done nothing but faithfully pursued the anti-popular policy of the Catholic clergy, a policy that has its arsenal in Vatican.*¹²
- **Violence** - Communication that proves the use of force and violence against the accused: *we laid hands on him even though he was severely compromised and made it difficult to the investigator to quickly unravel him...*¹³

6 Object file of the Committee Free Albania, pg. 4/12

7 Object file of the Committee Free Albania, f. 15

8 History of the State Security of the District of Kolonja for the period 1941-1975, pg. 60

9 Judicial investigation file S. T., pg. 92

10 Object file of the Committee Free Albania, pg. 82

11 History of the State Security of the District of Kolonja for the period 1941-1975, pg. 70

12 Judicial investigation file of At. Josif Papamihalit, pg. 5

13 History of the State Security of the District of Kolonja for the period 1941-1975, pg. 46

Violent language is not just a form of communication, but it is directly related to abusive, harassing, insulting, denigrating conducts towards a person or group of people. In different contexts, it can be difficult to immediately identify the effects that violent language can produce in a society. However, in this paper, through a detailed analysis of the language of violence (violent speech) examples found in AIDSSH's archive documents, we aim to reflect on the impact of this form of communication even when it is used as a weapon to identify, label and punish individuals, as well as to deliberately justify their persecution and punishment.

The words used in the former state security service documents are violent, vicious, and emotionally charged. The words used by the security service officials help us understand that the government of that time and its institutions (based on the doctrine of Marxism focused on class conflict) were waging war against citizens belonging to a particular class, or considered as enemies of the people. They were labelled as such simply because they thought otherwise, were opponents to the system, demanded more rights, expressed dissatisfaction, or because their families had defected and left the country or were convicted of breaking the law.

For example, a document entitled "History of the State Security Service Authority", documented by the regional directorate, states:

1. *It is the government that controls the activity of the state security service organs and with its directives opened new horizons to wage war, **to discover and mercilessly strike the enemy of the class and its hostile activity**, to consequently mitigate **the class war**¹⁴.*
2. *The aim was for the security service personnel to have ideological and political clarity, to evaluate **the hostile work of the class enemy, to raise revolutionary vigilance, hatred toward the enemy...***

We must keep in mind that political leaders, as well as other public figures, are able to influence the public at large to the extent that the language they use, often accompanied by actions, tends to be reproduced even by ordinary people, who follow blindly the ideology of the leader.

3. *In this operation, the connection of the security service organs with the people has been strongly evidenced, as the party ordered, **the hatred of the people towards the enemy of the class...***¹⁵

This paragraph clearly shows the impact and the dimension of this type of communication when accompanied by relevant actions.

Based on various documents such as: *judicial investigation files, history of districts, testimonies, former state security service reports, and platforms*, we understand how this type of communication is done. I initially top-bottom (from the leader to the people) and then bottom-up (from the people to the leader) and was used as a tool to determine the

14 History of the State Security of the District of Kolonja for the period 1941-1975, p. 70

15 History of the State Security of the District of Kolonja for the period 1941-1975, p. 73

fate of the surveilled persons.

The words chosen by *informants, collaborators, investigators, judges, directors* to identify or label the persons who were against the power and ideology of the time, incited hatred even among the people, who distanced themselves from these persons declared as enemies. But, they also incited fear and put under this pressure the people engaged in cooperation with the regime to denounce persons labeled as enemies.

Based on the same ideological and political line, the language used in the reports made by the people against the ones surveilled by the party was similar to the language the party used or instructed to use. Every so often, it become more aggressive rendering the punishment of the persons reported inevitable.

In the following example, we see how reporting was sometimes based on the opinion of the people themselves.

4. *During the Assembly [proceedings], he appeared very reserved. He didn't come up with obvious objections, but, kept on the pretext that he was not clear on this point and thus raised points of discussion for others as well. This is a frightening element and is quite reserved but does not agree with the People's Power*¹⁶.

- He appeared very reserved - There is no culprit.
- He did not come up with obvious objections - There is no culprit.
- Kept on the pretext that he was not clear on this point and thus raised points of discussion for others -Unclear reports, dubious, not factual.

So, if the reporting had ended here, the eavesdrop process and, consequently, the trial would probably not have continued, but even if the trial had continued, the sentence would have been lower.

Often, when reporters, technician/ operatives were not clear about the guilt they attributed to a person, they used similar phrasing to this model: **"he is a very reserved and frightening element."** A model that does not relate the eavesdropped or accused person to a specific fault through eavesdropping or accusation. Thus, by using the particle **"but"**, which here has a negation function (to give the idea that he is not so reserved) in order to reject the previous claims and reinforce the reporting, **but does not agree with the people's power.** The term **"people", "popular"** is used to make reporting even *more credible and comprehensive.*

5. *This is a frightening element and is quite reserved but does not agree with the People's Power.*

The use of the word **"people", "popular"** apparently is an ideological (Marxist) influence derived from the often -sed top-down communication, as in the following example:

- On behalf of the people (decisions)

16 Formular file no. 11-A, S. Toto., p. 59

- The state security service organs are organs of our people's state, they are an integral part of our people's power.

To better understand the power of language and the role it played in determining the punishment of persons classified as enemies, below is an example where the security operative - through the words chosen in the report - saves the person under surveillance from persecution and punishment.

1. *As a too aged element and that has no sympathy for the enemy element, as an element that hates power, but that his activity is only in irrelevant opposing comments and slogans and for several years has served on superposition. According to agency data, the council does not carry out any significant activity, only in rare cases that manifests hatred towards the government. For all these reasons and since he no longer poses any social risk, I propose to lower it from category II-a to II-b.*¹⁷

In this example, even if some words convey hatred or negative connotations, the way the sentence is constructed is intended to excuse the person.

How should we understand this?

In the above-mentioned paragraph, we distinguish some moderating words like:

- too aged;
- his activity consists only in making comments;
- does not perform any significant activity;
- no longer poses any social risk.

Reportings required in this way would save the person from punishments of various forms, or get a lesser punishment. This type of communication can be designated as **facilitating language**.

An opposite example is given in the following passage of the report, against a person under surveillance:

2. *He tried to minimize his activity by justifying it with the religious background, etc.*¹⁸

In this sentence, we distinguish some words that are not intended to alleviate the accused, but to direct him towards punishment by not accepting his statement as true.

- Tried to minimize its activity...
- Justified it with the religious background...

Likewise, in the following example there is a tendency to bring the person under investigation toward punishment, specifically:

17 Formular file 908, Baba H. Abazi, p. 14

18 Judicial incestigation file no. 4802, J. Papamihali, (p. 5)

*He is indifferent to the government, not speaking out against it, but his father is a fugitive and he keeps in touch with him, so I propose to open a file against him.*¹⁹

If the reporting had closed to the part: *He is indifferent to the government, not speaking out against it*, perhaps the fate of the accused would have been different. But, the fact that the following words are added to the report: *but his father is a fugitive and he keeps in touch with him, so I propose to open a file against him*, makes accused subject to investigation and sentenced by the court on this file opened to him. (Apparently, this was an often-used tactic in that period, as the accused himself in a handwritten note placed in the middle of a book had foreseen his fate when he wrote: *What are you blaming us for, the mistakes of our ancestors?*)

Often the use of violent, negative language is noticed in various nicknames given to collaborators, such as:

- *black hand;*
- *blind;*
- *skinny;*
- *chatty;*
- *dwarf;*
- *red skin;*
- *bald headed;*
- *owl;*
- *neckbeard;*
- *rryp/idiot;*

Groups seen as opponents of the system were often stigmatized using terms that conveyed hatred such as:

- *kulak,*
- *trockist/trotskyist*
- *persecuted,*
- *trash of "national front",*
- *peoples' enemies,*
- *traitors of the state,*
- *people of bad biographies...*

19 Formular file no. 240, category 2 A, Genc Leka

These labeled nicknames, in addition to being derogatory and disrespectful terms that aim to harm the integrity, character and reputation of one or more persons in relation to their membership in a particular group, are discriminatory terms. They classify them as different on the basis of belief, or of the ideas or groups they belonged to, which do not always have an objective and reasonable justification. In general, all of these terms have a stigmatizing purpose, as they aim to negatively label a group of people.²⁰

This type of communication is a form of pressure and instils fear and insecurity in society. The pressure is most evident when, in addition to offensive and violent words, it is accompanied by reinforcing words that worsen the discourse and give it negative nuances.

Flagrant - flagrant violation²¹

Evident - of evident Trotskyist spirit

Minimization - minimization of the role of the party

Root - should make the root turn

In the documents of the former State Security Service, we encounter a mixed style and not a pure administrative-legal style, as it should be. In this case, we must emphasize that the discourse of meaning nuances is not a characteristic of the administrative-legal style proper to written or even judicial writing. Therefore, the forms of expression carrying emotions are atypical for this type of discourse and should be taken into consideration in official letter's writing today, We may not undo the past, but we can learn from it and reflect so as not to repeat the same mistakes.

Through the examples in this paper, we point out the mistakes, admitted even by the state security service employees in documents mainly of the typology of a platform²² in which it is written that:

State Security Service mistakes are related to:

- Committing illegal acts in flagrant violation of the laws of the People's Republic;
- Misuse of the people by the security service leading to the enmity of the working masses with the Party and the State.
- Inappropriate organizational forms and of a Trotskyist spirit...
- Working methods according to the example of the Trotskyist working method...

All these forms not only create tension, oppression, and fear, but also restrict freedom of expression in society. This is clear from the example given below, which shows how citizens are afraid to express themselves freely because they fear interpretations that

20 Ecri General Policy Recommendation No. 15 On Combating Hate Speech – European Commission Against Racism and Intolerance, Strasbourg, 21 March 2016

21 File no. 29, Political and organizational platform of state security pg. 23

22 Political and organizational platform of state security; Mistakes of state security before the plenum XI, pg. 23

could lead to their sentencing.

*· I say something to you, but it is our responsibility not to leak it, because I am afraid of the rumors as people interpret them differently.*²³

In the context of a society under dictatorship, these expressions clearly indicate the restriction of freedom, and communication. It contradicts with what we now know and often refer to, the European Convention on Human Rights, Article 10, on the freedom of expression. This right includes freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.²⁴

It is therefore important to study these various forms of restraint often made by the individual himself for fear that the person with whom he is communicating may make interpretations, which may distort the message and may be used to accuse or punish him. **The fear of different interpretations** shows that this destroys communication, as illustrated in this simple scheme:

The provider who is afraid to express himself

Skeptical recipient

Context that distorts messages

The consequences faced after interpretations and distortions

So by studying and analyzing this type of communication, we can clearly understand the different forms of restraint, therefore, by identifying them we may start drafting out different ways of preventing and creating a freer communication, less punitive, insulting, contemptuous, a clear and fair communication, worthy of a free and democratic society.

Recommendations:

Considering communication as a key factor in the democratization of society, it is important for the society to treat it as a value and as an indisputable reality in human and social relations. This is achieved when a society is flexible and open to change, separates religion from politics and the military, recognizes the uniqueness and equality of citizens, the right to expression, freedom of thought and, finally, political pluralism.²⁵

This paper not only aims identification and prevention but also seeks to serve education in order to eradicate prejudices and misinformation on which hate speech is based, It also points to the need that this education be addressed especially to young people.²⁶

23 Formular file 261, V. S. Blloshmi

24 https://www.echr.coe.int/documents/convention_eng.pdf

25 Rescue the communication, Dominique Wolton

26 <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech-alba/16809eb58e>

We have an obligation not only to study but also to engage in avoiding factors that may favor the appearance of violent communication in all forms. We also need to understand the disadvantages and the harm that these types of manifestations have for the individual in particular and the society in general, in order to prevent verbal violence and remedy the harm caused.

Preventing the use of various forms of violent communication is an important step and a cornerstone of democratic societies toward respect fundamental human rights. Communication is inseparable from the dual aspirations that characterize our societies: freedom and equality.²⁷

Measures that need to be taken in the present, reflecting on the past, should be in accordance with the following:

- historical context,
- political circumstances,
- the role of accusing or accused persons in society,
- the level of education of the surveilled persons and persons enforcing the law,
- banned art works and those that indoctrinated the society,
- methods used to educate society.

Given that the previous conflicts created by violent communication are different, various ways of preventing and resolving conflicts should be considered.

Which might be some of the different forms of prevention?

1. Prevention on a personal level is closely related to individual efforts, that is:
 - the individual and his effort to become a better and more useful person in society;
 - the individual who is educated, who appreciates the other;
 - the individual who respects a different opinion;
 - the individual who reacts if he sees injustice;
 - the individual who does not try to get something he does not deserve;
 - the individual who does not tread on the others to advance in his career, does not misuse power and cannot be alienated;
 - the individual who stands by the objectives and ideals on which a free and democratic society stands.

27 Rescue the communication, Dominique Wolton

Prevention in social, political and cultural framework:

1. Prohibit this type of communication in press, tv, social media;
2. Prohibit this type of communication with a political context, in public (meetings, parliament, forums, etc.);
3. Respect a purely administrative-legal style in written official documents, completely avoiding words carrying emotions;
4. Prohibit the use of offensive, discriminatory words in public institutions, educational institutions, etc.;
5. Prohibit the words with negative connotations in advertisements displayed in public places;
6. Orientation towards the well-education of citizens;
7. Engagement of civil society in awareness campaigns: rallies, TV programs, exhibitions, film or documentaries;
8. Include the school curricula, discussion classes on this issue, widely addressed on various topics that mention problems related not only to bullying but also to the aforementioned forms.
9. Monitor media and imposing fines if they display various forms of violent communication;
10. Take concrete legal measures to limit the use of words of negative connotations.

Through various forms (discussions in schooling institutions but not only, through public lectures, screening of films showing the consequences of violent communication, social documentaries focusing on the individual and his role in society, as well as on the masses and their impact on the individual, the realization of public exhibitions focusing on peace building through a more loving, more social, more democratic and less discriminatory society but more cautious in setting up relations with the other, appreciating and accepting it as equal.

Their successful realization necessarily requires the cooperation of civil society, media, government, universities, organizations or diplomatic missions to bring forth different experiences. However, even in the absence of such cooperation, individual initiatives play a key role in building a less conflicting society, a democratic and peaceful society.

We cannot institute justice only through engagement with the past. While this paper is focusing on communication, speech and its significance, we can also say that we may influence the present and understand how we should approach and address the other.

Also, revealing pieces of communications - which express various forms of hatred, violence, contempt - put an end to denial or attempts to minimize the truth. By treating them critically, we show how stigmatized persons were treated during the regime, based

on ideological indoctrination, abuse of duty, wish for an undeserved achievement (career) or even lack of education. It can be analyzed as part of the same mechanism that opened incurable wounds in society. So, we approach transitional justice and place a stone in one of its pillars "truth", through which: **we face - we prevent - we reflect.**

This study aims to be further elaborated as it is very important to take into account the voices of individuals, who were stigmatized and condemned. Today, their testimonies become important bridges connecting the past and the present and in many cases reflect the opinion of the entire society. About 50 verbal testimonies received by the Authority for Information on former State Security Documents are the true voices of the past trembling from its guilts. They help us learn about numerous violent words full of anger and hatred, which the witnesses had to face.

From the communication seen by us, numerous words with different contents have been filed according to the divisions mentioned above and will be further addressed by making a comparison with the language used in written documents. The study will also focus on today's context in order to confront the past and the present. Have we learned from the past, have we reflected and have the various forms of violent communication been prevented or limited in a society in transition that aspires to be defined as democratic?

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D. Anjeza XHAFERAJ

Lecturer at the European University of Tirana.

Msc. Alban RELI

Lecturer at the University of Tirana.

A DISCOURSE ANALYSIS OF STRATEGIES PURSUED BY THE PLA TO NORMALIZE PEOPLE'S DISAPPEARANCES IN ALBANIA DURING COMMUNISM

The aim of the paper is to explore the discourse strategies of the Party of Labor of Albania when addressing the problem of the missing persons. The contention is that the PLA and its leaders made possible the disappearance of thousands of people by normalizing the process. The missing persons were declared enemies of the people, and as such, they had to disappear in some way or another, so that the integrity of the body politics could be preserved. The class enemy was considered a parasite that should be eliminated in the name of social prophylaxis. By using discourse analyses, the paper will investigate the discursive strategies followed by the Communist Party and its leader when addressing the class enemy. Speeches by Enver Hoxha in Party Congresses, Plenums, and gatherings with people will be analyzed. Only by normalizing the process of elimination of everyone who was depicted as an enemy did the Communist Party make possible the elimination of thousands of people. With normalization it is understood the standardization of the procedure so that everyone knew in advance what would happen if someone had to be declared an enemy of the people. The paper will analyze the vocabulary used to portray the class enemy and his/her destiny in specific cases. The study has analyzed the speeches given to justify the elimination of - now missing persons - Father Anton Harapi, Lef Nosi, Maliq Bey Bushati, Dom Lazër Shantoja, Dom Ndre Zadeja and the sabotage group of the Maliqi swamp. The analysis will cover the period immediately after the end of the IIWW, which was followed by the communists coming to power.

I. Introduction

The number of missing persons during the communism is estimated to be around 6,000 (ICPM, 2021, pp.4), even though different documents indicate that the number might go as high as 8,000¹. The Albanian Rehabilitation Centre for Trauma and Torture claims that 4,000 people are still not identified. The missing people are believed to be political

1 Commissioner for Human Rights (2016) *Missing persons and victims of enforced disappearance in Europe*. Council of Europe. Pp. 19.

prisoners who were executed or died because of the harsh conditions in labor camps and torture as well. Little efforts have been made by the government to identify the missing persons. It is believed that mass graves were more likely to be located near the work camps and prisons, where political prisoners were held.

Attempts to find the missing persons and provide compensation for the victims of the communist regime and their families have started since 1991. During the period July 1991 to November 1997, the government of Albania has adopted the Law on Compensation of the Formerly Politically Persecuted Persons (15 July 1991, amended on 12 December 2007), the Law on Innocence, Amnesty and Rehabilitation of Former Politically Persecuted Persons (30 September 1991), the Law on the Status of Formerly Sentenced and Prosecuted by the Communist Regime (July 1993, amended in December 1993), provisions of the Criminal Code of the Republic of Albania in 1995 (amended in 2015), and the Resolution on Condemning the Crimes of Communism in Albania (2006). The year 2010 marks the first efforts to do this, when a task force was established. However, little was done until the International Commission on Missing Persons started its work in Albania in 2018. The first efforts were put into identifying the remains of the mass graves in Dajti Mountain (on the outskirts of the capital, Tirana) and Ballsh (southern Albania).

So far the ICMP has worked with the government, the civil society, and international organizations to address the problem of missing persons during the communism in Albania. The Council of Ministers of the Republic of Albania and the ICMP have signed a Cooperation Agreement to join efforts and push forward the process of finding the missing persons during communism, from 29 November 1944 to 2 July 1991.

The physical elimination of the people started from the very beginning of the communist regime. The communists were brutally harsh on everyone they thought of as a potential enemy and sought to eliminate them. In a totalitarian regime, this is the logic of paving the path to power.

With the collapse of the communist regime and after the first pluralist elections in March 1991, the People's Assembly of Albania pardoned and freed all political prisoners. It also pardoned all those who were imprisoned for political accusations and those who had trespassed across the border to live abroad. The law provided for compensations which were to be distributed in line with the typology of the punishment.

One of the tasks of the law was to enable the mechanisms for finding the missing persons. It is estimated that around 100 bodies of missing people have been found over the years. In 1993, near Tirana, the bodies of 22 people were found. These people were shot on 26 February 1951, somewhere on Erzeni riverbank, after being accused of trying to bomb the Soviet Embassy (Institute for the Studies of the Communist Crimes and Consequences)². According to the Institute, the victims were intellectuals, including Sabiha Kasimati, the first female Albanian scientist. Their families were sent to internment

2 ISKK. *Bomba në Ambasadën Sovjetike (Bombing the Soviet Embassy)*. Available at: <https://www.iskk.gov.al/en/bomba-ne-ambasaden-sovjetike/>

and concentration camps in Tepelena and Vlora. Another mass grave was discovered near Dajti Mountain in 2010. The Albanian Institute of Forensic Medicine found 13 bodies³, but was unable to identify them due to a lack of expertise and equipment.

These events made known to the public opinion the “story” of the missing people, or better say, of the missing bodies killed during communism and buried in massive and unknown graves.

This paper will analyze the communist regime in its very first years and look at the strategies used to eliminate its enemies. The article analyses speeches held by the leader of the Communist Party, Enver Hoxha, against Father Anton Harapi, Lef Nosi, Maliq Bey Bushati, Dom Lazër Shantoja, Dom Ndre Zadeja, Sami Qeribashi, Qenan Dibra and the so called “sabotage group of Maliqi swamp”

II. Methodology

A Critical Discourse Analysis (CDA) was conducted to analyse the speeches of Enver Hoxha when referring to the enemies of the people – now missing people.

Discourse analysis is an important method for understanding what happened during massive purges and physical elimination of people. It helps to understand the strategies used by the communists in power to eliminate those they considered enemies and threats to their power. Discourse, written or spoken, is not innocent; it is not a non-problematic reflection of an existing reality. On the contrary, it produces a social reality, in which actions take place.⁴ Discourse is a social activity that constructs meaning through language used in specific situations and contexts.⁵ There is a strong relationship between those who produce discourse and their intentions.

CDA investigates how power is abused and, as result, domination and inequality are produced and reproduced⁶. According to Fairclough, discourse is a result as well as produces power relations: those who possess discourse construct the reality and have the control and contribution of the subordinates⁷. Scholars of discourse analysis contend that CDA addresses social problems, power relations are discursive, and discourse produces ideology.⁸ When conducting CDA, scholars investigate the discursive content, the social relations of the people involved in this discourse, and the positions and role that the people involved in the discourse have and play⁹.

3 Hosken, Andrew & Albana Kasapi (01 November 2017) *Albania: The country searching for hundreds of mass graves*. BBC News comments that there were 14 bodies. Available at: <https://www.bbc.com/news/world-europe-41818359>

4 Gee, James Paul (2008) *Social Linguistics and Literacies. Ideology in discourses*. London and New York. Routledge. pp. 9

5 Lemke, Jay.L (2005) *Textual Politics. Discourse and Social Dynamics*. Taylor and Francis. Pp. 5

6 Van Dijk, Teun (2008), *Discourse and Power*. MacMillan. (pp. 352).

7 Fairclough, Norman (1989) *Language and Power*. New York: Longman. Pp. 46.

8 Fairclough, N., & Wodak, R. (1997). *Critical Discourse Analysis*. In T. van Dijk (Ed.), *Discourse Studies: A Multidisciplinary Introduction* (Vol. 2, pp. 258-284). London: Sage.) pp. 271-280.

9 Fairclough, Norman (1989) *Language and Power*. Pp. 49.

Fairclough contends that in order to be ideal, discourse should be mutual; it should be a two-way communication. However, it is important to emphasize that in discourses held by Hoxha in the first days of his being in power¹⁰, the actors involved participate in a passive way. They are not allowed to speak, or at least their words do not reach the audience. The communication is one-way: from Hoxha to the people, thus allowing him to position the subjects of his narratives (written or spoken) whenever he wanted and depict them in such a way that he could obtain the maximum benefit.

In order to understand the role that Hoxha's discourse played in the elimination of his enemies, clearing the path for the consolidation of his power, we will investigate the speeches he held with regard to their punishment and elimination. We will analyze the speeches held with regard to Father Anton Harapi, Lef Nosi, Maliq Bey Bushati, Dom Lazër Shantoja, Dom Ndre Zadeja, and the sabotage group of Maliqi swamp. Based on the criteria established by Teun Van Dijk¹¹ we will see the lexical choices made: what words were used to describe them, the frequency of their use, and what adjectives, adverbs, and allusions were used when describing them. In addition, we will analyze the actors involved in the "story" and how they relate to each other.

Before proceeding with Hoxha's speech discourse analysis, we will summarize the features of discourse during communism. One of the features is the production, creation, or invention of the enemies, who were necessary to frighten the people. The enemies were the culprits for hindering the development of the country and the wellbeing of the people. The enemies envisaged to be discovered and eliminated were the kulaks,¹² the clergy, the bourgeoisie, the imperialist world, the landlords, and everyone else whom the policy of the government decided to be. Strategies used to portray the enemy were based on:

- abuse of emotions (the enemy is negatively portrayed in a story, with the narrator and the audience being one group where the enemy does not belong to);
- construction of a future that is hypothetically threatened by the enemy;
- logic – the decision to discover and eliminate the enemy is made after a long process of consultations and evaluations with experts;
- "voices of expertise", and
- "altruism" – everything that is said and done is in the public interest.

While analyzing the texts produced by Hoxha (written and spoken), we will investigate the strategies used to attack the enemies of the regime.

10 That would continue throughout his life, however in this study we will focus only in his first years.

11 Van Dijk, Teun (2008) *Discourse*.

12 Kulak – a peasant who owns a larger plot of land than poor peasants – almost wealthy peasants. Kulaks were considered enemies of the communist regime.

III. Patterns in Discourse Analysis when attacking the “enemies”

The PLA has been consistent when attacking the enemy of the class. The strategies were similar whenever there was a necessity to eliminate threatening figures from the opposition, who were not in line with the ideology of the party and did not support Enver Hoxha. The official line of the party is to be found in the speeches of the First Secretary, who never wasted the opportunity to discredit his opponents in meetings with people all over the country, in newspapers articles, in plenums, and at party congresses. Even though the events analysed in this paper are different, one can easily observe the same patterns.

III.1 Portraying the enemy as a traitor to the country

When referring to Father Anton Harapi, Lef Nosi and Maliq Bey Bushati, who were executed in 1946, they were depicted as traitors to the country. In an article published in the newspaper “Bashkimi” (Unity), on 3 January 1946, Enver Hoxha commented: “Very soon, three of the dirtiest faces, who have committed treason against the Albanian people, one of the greatest in Albanian history...will be condemned in court”¹³. The three of them are depicted as “first grade criminals” collaborators till the last minute with the Italian Fascists and German Nazis, bloodthirsty who have lied to the Albanian people. Furthermore, they were accused of being successors of those institutions that had acted against the national interests. The article is vague regarding the identity of these institutions. The most important thing is that they were abroad, and underneath the “friendly mask” they wore, evil intentions resided: they were working against the interests of the country and attempting to put it “under slavery”. Even though the foreign institutions are not mentioned, a series of articles, speeches, protest letters to the UN, and open letters addressed to western countries indicate that the three of them were collaborators with the USA and the UK, against the USSR.

In addition to the treason with foreign enemy countries, the three of them were also accused of disruption, division, and conflicts among the people themselves. Words such as “responsible for the destruction of the country,” “collaborators of the German Nazis”, and “suffering of the people” are repeated continuously, sometimes even within the same sentence, as a strategy to link these figures permanently with these deteriorating concepts.

With regard to Father Anton Harapi, Hoxha adds:

Father Anton Harapi, eminent representative of the traitor’s part of the catholic clergy; he is not responsible only as a person for betraying the country, but at the same time he is responsible as a member of that part of catholic clergy which has betrayed the country. Behind the mask of his religion, he has deceived the people, he has lied to the devoted members of the church and has pushed people against each other, in a war against the holy cause of the people, which at the same time was the cause of those faithful, deceived people of the Catholic

13 Hoxha, E. (1969) *Vepra (Collection)*, vol.3, pp. 225-228.

Church of Albania, victims of Father Anton Harapi and his collaborators who belonged to the same profession.¹⁴

In the same article, words such as “ugly”, “anti-national”, “against the people”, “against the country” are used with reference to Father Harapi, adding that he and everyone else like him will be “punished without hesitation” and that “in the new Albania are allowed to live only those who love the people and the country and who work and are ready to die for them”.¹⁵ When referring to the enemies of the people, the wording is the same. Repetition is the strategy: repetition within the article and in succeeding articles, so that no one has any doubt about the identity of the enemy: “Agents of OVRA¹⁶ and Gestapo, Father Anton Harapi, Dom Lazër Shantoja, Dom Ndre Zadeja and others like them are typical clergymen who have sold the country.”¹⁷

In a “Bashkimi” article, words like “cruel regency government”, “dirty decisions against the Albanian people”, and “high profile member of the National Front” are used to describe Lef Nosi, while words like “quisling”¹⁸, “responsible for numerous crimes”, and “enemy of the people whom he has despised and wounded”, are used to describe Maliq Bey Bushati. Again, at the end of the paragraph, Hoxha does not forget to repeat without hesitation: “the day has come for them to pay for what they have done to the people”.

The repetition of the fate of the condemned is a permanent feature: the article finishes with the words:

In our country, the criminals of the war will pay for what they have done to the people. They will not stay in luxury hotels. For Father Anton Harapi and Maliq Bushati, the day has come to pay the price for what they have done. With regard to Lef Nosi... he cannot escape the justice of the people, but he will pay for his innumerable crimes, committed consciously.

The same is observed when referring to Sulçe Beg Bushati, Dom Lazër Shantoja, Prenk Cali and Dom Ndre Zadeja. They are accused as traitors; they have received their well-deserved punishment by the people, and everyone who follows in their footsteps will have the same fate¹⁹.

14 Hoxha, E. (3 January 1946) “Regjentët në Gjyq (Regents on Trial)”. *Gazeta Bashkimi (Unity Newspaper)*. In: *Vepra (Collection)*, vol. 3. pp. 225-228. Tirana: Publishing House “8 Nëntori”.

15 Ibid.

16 Organizzazione per la Vigilanza e la Repressione dell’Antifascismo (Organization for Vigilance and Repression of Anti-Fascism) the Secret Police of Mussolini.

17 Hoxha, E. (26 January 1946) Mbeturinat e reaksionit mbanin shpresat në ndërhyrjen e armiqve të jashtëm - Intervistë dhënë korrespondentëve të kryeqytetit (The waste of the reaction held out hope for the intervention of foreign enemies— Interview given to the capital’s journalists). In “*Gjithmonë Vigjilencë I (Always Vigilant)*”. Tirana: Publishing House “8 Nëntori”, pp. 179.

18 The Quisling were those who cooperated with the Nazis. Widely used in post-war Europe, especially in the Communist Bloc. Named after Vidkun Quisling who was a Norwegian military officer, politician and Nazi collaborator, who nominally headed the government of Norway during the country’s occupation by Nazi Germany during World War II.

19 Hoxha, E. (16 April 1945) Fjala e mbajtur në Kongresin e II-të të Rinisë - “Drejtësia e popullit është e pamëshirshme ndaj kriminelëve të luftës dhe tradhëtarëve të atdheut” (Speech held at the 2nd Congress

III. 2 Discrediting the Enemy by Appealing to the Sufferings of the People

Another strategy adopted by the communist regime, as manifested in speeches held by Enver Hoxha, was to attach the leader (*himself*) to the poor and suffering people, and accuse the opponents of the regime as being agents of their sufferings. Thus, when referring to Father Anton Harapi, Lef Nosi and Maliq Bey Bushati, insinuations of them being successors of the feudal lords were made. According to Hoxha, they considered the people to be destined for poverty and sufferings, and they were the true culprits for such sufferings.

The “criminals” of the country were condemned not only because their condemnation was considered just and right, but also because their condemnation was linked to the prosperity of the country and the wealthy future of the new generations. Promising a joyful future was then added to contrast with the dark past and the suffering people had experienced.²⁰

Frightening the people about the potential loss of the people’s government was in line with the communists’ strategy to appeal to their sufferings: “The purpose of these elements was to overthrow the power of the people and to bring to power the old oppressive and anti-people regimes”²¹ or “the interests of these elements and of the strata they represent have always been and are against the interests of the people”.²²

Frightening people went hand in hand with “pampering” their egos. Thus, Hoxha would add, “These people consider, and they are right, that when the people are in power, this is like death to them...[and that they] accustomed to live at the expense of the poor people, abusing the efforts and sweat of the hard working people, could not agree with this [communist] regime that brought the people into power, and gave them the levers of leadership, making them patrons of their wealth and work”²³. When referring to the condemnation of the enemies of the people like Father Anton Harapi, Dom Lazër Shantoja and Dom Ndre Zadeja, Hoxha appeals to the virtues of the Albanian people, such as: a fighting people who fought for many years against the biggest army, a vigilant people, and a people who love their government, because with this government they are finally in power after so many centuries of slavery and serfdom, and after immense sufferings and sacrifices.²⁴

The same pattern is observed when speaking about the group of “traitors” and “saboteurs” of Maliqi swamp in 1947. In his speech held in front of the workers and

of Youth - The justice of the people against the war criminals and the traitors of the country is pitiless). pp. 147-150.” *Gjithmonë Vigjilencë I*” (*Always Vigilant I*). Tirana: Publishing House “8 Nëntori”.

20 Ibid., pp.149

21 Hoxha, E. (26 January 1946) Mbeturinat e reaksionit mbanin shpresat në ndërhyrjen e armive të jashtëm. -Intervistë dhënë korrespondentëve të kryeqytetit (The waste of the reaction held out hope for the intervention of foreign enemies – Interview given to the capital’s journalists). In *“Gjithmonë Vigjilencë I”* (*Always Vigilant*). Tirana: Publishing House “8 Nëntori”, pp. 177.

22 Ibid, pp.179.

23 Ibid, pp.179.

24 Ibid, pp.180.

peasants of Maliq, on 12 October 1947, Hoxha said:

“Today we are celebrating the finalization of the first part of work in Maliq, one of the greatest enterprises of our government. All the Albanian people praise this enterprise as one of the greatest victories of our work to construct a new life, a better and joyous life for the working masses. But we built it, because our government is the government of the people, and it wants our people to have more food. We did it because [we] have a ... willing and self-sacrificing people.”²⁵

The speech is filled with words such as “ours is a government of the people”, “willing of the people”, “beautiful life for the people”, “democratic society for the people”, “new society”, “people’s power”, “heroic people”, “war against the fascist invaders and traitors of the country”, “improvement of people’s lives”, “exploitation of the people by the capitalist class”, “nationalization of factories and mines”, and the like. Contrasting the new, bright present of the people, with the miserable past, is a persistent line of thought throughout the speech. However, all this is the prelude to the main point: the execution of the group of engineers who were assigned the task of swamp drying:

“...in this important enterprise for the recovery of the economy, we have faced challenges; acts of sabotage committed by technicians, enemies of the people, sold to foreigners for a fistful of dollars and sterling, who ...have attempted to hinder our efforts to construct the country, aiming to destroy our efforts so that we could not strengthen our economy but remain economically dependent and beg Anglo-American imperialists, losing in this way our economic and political independence, thus creating a free space for their predatory purposes. They have tried to sabotage our work, aiming to discredit the government of the people.”²⁶

Moving from glorification of the people to their enemies’ condemnation and then back to praises of the people is a repetitive strategy. Glorification goes hand in hand with reminders of how poor the people had been and how wonderful their lives would be in the new system. Shifting from one discursive repertoire to the other, Hoxha keeps reinforcing that the party and the people are one and that the enemies are not part of the people.

25 Hoxha, E. (12 October 1947) Te gjithë sabotatorët i pret i njëjti fund: gjyqi i popullit- Nga fjala para punëtorëve dhe fshatarëve të Maliqit (All saboteurs will have the same end: the People’s trial). In *“Gjithmonë Vëgjilencë I” (Always Vigilant I)*. fq. 245-249. Publishing House “8 Nëntori”, pp. 246.

26 Ibid., pp. 246-247.

III.3 Speaking in the Name of the People

The third pattern pursued by Hoxha was to speak in the name of the people. Thus, when referring to the punishments against Harapi, Nosi, and Bushati, Hoxha comments:

“People’s power has strong roots because it was established by the people themselves while they were fighting against the Italian Fascists and German Nazis, and against all those people, circles, and institutions who became tools of treason, and whom the people will unmask to reveal their true nature. The dynamism that pushes our people to move forward toward the construction of a happy life will expose all those, who with or without masks, are trying to hamper the efforts of the Albanian people to construct a new life. Our people will show their place to the pro-fascist sludge which poses a risk to our nation.”²⁷

The same pattern is observed even when referring to Sulçe Beg Bushati, Dom Lazër Shantoja, Prenk Cali and Dom Ndre Zadeja. Hoxha speaks in the name of the people: “The justice of the people has triumphed in every corner of Albania. It is in power, it is just, human, and pitiless against the war criminals and traitors of the country.”²⁸

When referring to the Special Court against the Criminals of the War and Enemies of the People, established on 15 December 1944, which between 1 March 1945 - 13 April 1945 condemned 60 people, Hoxha considers it “The Great Special Court” and “an embodiment of the highest justice”. Here, again, he speaks in the name of the people:

“The people saw there, for a month and a half, the maneuvers played behind their backs, on their shoulders full of wounds; they saw their tragedy, they saw how the traitors of this country had organized terror, stealing, and infamous acts; they saw how the treason was organized and how many times they had sold Albania.”²⁹

The alleged criminals were accused of wanting to destroy the wellbeing of the poor and suffering people; they were accused of wanting to organize armed criminal bands that would destroy the roads and cut the electricity in order to inspire discontent among the people, which would result in an uprising of the population.

Speaking in the name of the people would be a permanent pattern of Hoxha’s speeches, when and wherever he had the occasion to speak, as well as in the articles he would publish in the daily newspapers. He positioned himself within the party and above

27 Hoxha, E. (3 January 1946) “Regjentët në Gjyq (Regents on Trial)”. *Gazeta “Bashkimi”* (Unity Newspaper). In: *Vepra (Collection)*, vol. 3. pp. 225-228. Tirana: Publishing House “8 Nëntori”.

28 Hoxha, E. (16 April 1945) *Fjala e mbajtur në Kongresin e II-të të Rinisë “Drejhtësia e Popullit është e pamëshirshme ndaj kriminelëve të luftës dhe tradhëtarëve të atdheut”* (Speech held at the 2nd Congress of Youth -The justice of the people against the war criminals and the traitors of the country is pitiless). pp. 147-150. “*Gjithmonë Vigjilencë I*” (*Always Vigilant I*). Tirana: Publishing House “8 Nëntori”. pp. 148.

29 *Ibid.* pp.149.

it, within the people and sometimes outside of them, like a spectator who carefully watches a spectacle and then reports on it. “The people’s courts have judged the people’s enemy”³⁰. Hoxha took the liberty of defining and redefining the people every time he could, and it suited him. He was able to define who the categories to be left outside were by defining the people without forgetting to put the label “criminals” first: the landlords, the bayraktars, the clergyman, the rich merchants, the adventurous and sold intellectuals with 100 flags, the officers of the Zog³¹ Army, all the dirt and waste of fascism and internal reaction. They hated all the government’s actions done in the name of the people, such as the agrarian reform that gave the agricultural land to the poor peasants and the payment of taxes; they hated the public sector and the improvement of the people’s lives; they hated the integration of the youth in the new political system and the integration of women as well; they hated the organization of the working class in trade unions and syndicates and the big leap in education and culture.³² This discourse attributed to the new government successes that were impossible to obtain in such a short time, and put all the blame on those whom Hoxha system had decided to eliminate.

III.4 Permanent Revolution – No execution should be the last – it only serves to pave the way for more purges in the country

The condemnation of Father Anton Harapi, Lef Nosi, and Maliq Bey Bushati is certain: in the article, Hoxha clearly claims that they will pay for what they have done to the country. The First Secretary of the Party is above the court. While sending a clear warning of what was expected to happen – which indeed happened – and assuring them of their fate, Hoxha also sent the clear message that they would not be the last³³.

“The huge process of treason cannot be finished in one day because the traitors of the people, supported by the internal and foreign reaction, have worked a lot, and the traces they have left are still visible. Their remains (waists) are trying to profit from the generosity of the people and the people’s government in order to get stronger, to win back the lost positions, and to re-establish the anti-people regimes. In other times and places, this might have happened, but not in the new democratic Albania, because now these reactionary cliques are destined to be crushed without mercy and eradicated for the good of the people and democracy.”

30 Hoxha, E. (7 October 1946) Reaksioni i brendshëm mbështetet kurdoherë te paraja dhe bajoneta e imperialistëve – Nga raporti për aktivitetin dhe detyrat e reja të Frontit. Në Gjithmonë Vigjilencë I. (The internal reaction is always based on the money and the bayonet of the imperialists. From the report on the activity and new tasks of the Front. In Always Vigilant I, Tirana: Publishing House “8 Nëntori”. Pp.203.

31 King of Albania from 1928 - 7 April 1939. King Zog left the country a few days before the invasion of Albania by the Italian Fascists.

32 Ibid, p. 203.

33 Hoxha, E. (3 January 1946) “Regjentët në Gjqy (Regents on Trial)”. *Gazeta “Bashkimi” (Unity Newspaper)*.

The message had a twofold purpose: on the one hand, it made clear that the party was above the court, that it was the only body to have the legitimacy of decision-making, and on the other hand, it served to frighten the people, in case they had any doubt about creating alliances outside the communist regime.

The permanent revolution requires vigilance to crush any attempt to attack and/or overthrow the regime. Thus, Hoxha comments:

“For a long time, the defence bodies have been vigilant in monitoring the fascist and pro-fascist activities of some institutions and individuals who, connected with each other, have attempted to organize subversive acts against ...the government of the people and its leaders. These fascist wastes, supported by foreign organizations, by the enemies of the people and of the parliamentary democracy of our country, thought that this would fulfil their treason plans and they would escape the vigilant observation of the people’s justice. However, their activities were always under the vigilant monitoring and control of the government. The perpetrators of these activities are known, and the leaders of these traitor organizations and terrorist acts are in the hands of the Justice.”³⁴

The permanent revolution is often a prophylaxis. It is done in the name of the people, and likewise, in the health sector, in order to keep the body healthy, “taking care” efforts should be permanent. When referring to Sami Qeribashi and Qenan Dibra, Hoxha uses the words “waste of Reaction”³⁵, and as such, as part of the prophylaxis, they had to be eliminated so that the health of the political body would remain untouched.

III.5 Discrediting the “enemies” by associating them with foreign forces outside the country

Foreign countries, particularly those in Europe, were frequently portrayed as enemies of the country. All the fatalities in the country had originated abroad. This is a narrative that is widely used during communism, and as the archives show, it has been present in the communist discourse since the first days of its establishment. By associating Father Harapi, Nosi and Bushati with foreign reactionary actors outside the country, the communist regime represented by Hoxha attempted to discredit them, so that no support from the people could be obtained:

“There are some people and reactionary circles abroad who try to justify these fascist wastes; there are people and newspapers abroad that, under the mask of democracy require mercy for these tools of Mussolini and Hitler. These are

34 Hoxha, E. (26 January 1946) Mbeturinat e reaksionit mbanin shpresat në ndërhyrjen e armive të jashtëm. -Intervistë dhënë korrespondentëve të kryeqytetit (The waste of the reaction held out hope for the intervention of foreign enemies – Interview given to the capital’s journalists) pp. 176-180. In “Gjithmonë Vigjilencë I” (*Always Vigilant*), Pp. 176-180. Tirana: Publishing House “8 Nëntori”, pp. 176-177.

35 Ibid.

the same circles and people who support Albanian criminals and give them complete freedom to write articles in Italian fascist newspapers against Albania, against the democratic power, and against the eligible revindication of the Albanian people against Italy."³⁶

Foreigners are often associated with the word "reactionary", so it is clear to the people and everybody else that they rather stay away from the "outsiders", as they are always reactionary and thus would incriminate themselves.

The UK and the USA, always referred to as Anglo – American forces, are especially attacked in Hoxha's discourses. Discrediting Anglo-American forces was imperative in a time when both the USA and the UK had not recognized Hoxha's government as legitimate. By doing so, Hoxha and his entourage aimed at sabotaging the support that their opponents had among the people. Thus, when referring to the revolt of Koplik, in January 1945, Hoxha comments that the domestic reaction, especially the Catholic clergy, in cooperation with Vatican and the Anglo-American forces, had attempted to overthrow the democratic government of Albania and organize the invasion of Albania by the Anglo-American forces. By doing so, Hoxha sought to be always on the "right side", on the side of the people, while those who cooperated with foreigners were those who would harm the country and its people. The same rhetoric was used for the uprising of Postriba in 1946. Hoxha links the Catholic clergy to the foreign agencies that were trying to overthrow the people's power. The clergy are accused of abusing religion and making use of the seminars to create a fascist organization, which was organizing activities against the people's power. Further, Hoxha adds that these people had never fought against the Fascists and Nazis and that their past was dark.

What can easily catch the reader's eye is that the documents to prove treason are into the hands of Hoxha's party, not into the hands of courts. From the very beginning of the establishment of the communist dictatorship, Hoxha made it known that all the state organs were under the control of the party.³⁷

Conclusions

In this paper, we employed critical discourse analysis to examine the strategies used by the communist leader Enver Hoxha to justify the elimination of the "enemies" during the early years of his power consolidation. Hoxha's speeches in party's plenums in front of the people, as well as interviews with journalists, have been the topics of analysis as were also materials that clearly indicated the names of the "enemies" who were declared missing after the collapse of the communist system.

36 Ibid, pp. 174

37 Hoxha frequently used the phrase, "the facts that we have in our hands," thus creating confusion about who the organs that possessed the facts were.

Even though scholars distinguish five linguistic strategies to eliminate the enemy, in the analyzed texts we identified the first two: the portrayal of the enemy in a negative way in stories where the narrator and the group (people) are one and undivided, and the construction of a future that is hypothetically threatened by the enemy. We could not locate any examples of “logic” when the enemy was discovered and condemned after a careful examination, nor voices of expertise, nor even sacrificing of the people for the greater good. In the first years following the establishment of communism in Albania, there was no place for “careful” examination and “voices of expertise,” because the communist system was in a rush and the experts were targets of elimination. Very often, Hoxha referred to facts already known, which became crystal clear in the *ad hoc* courts built with the aim of eliminating the enemies of the communist regime.

The following are the patterns observed for the elimination of people: portraying the enemy as a traitor to the country; discrediting the enemy by appealing to the sufferings of the people; speaking in the name of the people; asserting permanent revolution; discrediting the “enemies” by associating them with foreign forces outside the country.

Even though the mechanisms of totalitarianism are widely under investigation in Albania, there is still a lot of room for research and investigation. The construction of a theoretical model and the analysis of empirical evidence will help to shed light on a past that is still unknown to many.

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Dr. Suela JANINA

Member of the United Nations Committee on Enforced Disappearances

THE TRUTH, JUSTICE, REPARATION AND MEMORY AS VICTIM'S RIGHTS AND STATE'S OBLIGATIONS

"Time cannot heal the wounds of enforced disappearance, the truth, justice and reparations can."

I. The international context of enforced disappearance, its nature, definition and contemporary forms.

Everyone who knows what enforced disappearance refers to explains it as one of the cruelest and most inhuman crimes the history of humanity has ever experienced. Enforced disappearance has been and continues to be a source of unimaginable pain for many families who often live their lives without knowing what has happened to their loved ones. Enforced disappearance is an offence to human dignity and a violation of multiple human rights, including the right to personal liberty and security, the right to recognition as a person before the law, the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, the right to a fair trial, and the right to life. Enforced disappearance also violates the economic, social and cultural rights of the disappeared persons and their families.

Disappearing a person, putting him/her outside of the protection of the law, and concealing his/her fate has a devastating effect not only on the individual who is subjected to this crime, on his family and relatives but also on society as a whole. Disappearing persons, mainly as a form of political repression and as an instrument of terror against people is not new. This practice of terror was even legally codified in Hitler's Night and Fog Decree. During the 70' and 80' the phenomenon was spread through terrible practices in Latin America, where it was used in several of the countries in that region as an organized method in order to exterminate political opponents. The tragic history of enforced disappearance and its legacy in the region has created two wrong patterns that continue to influence the discussion to present days: first, by connecting it with a regional dimension and second, by considering it as belonging to the past and isolated in the last century. Unfortunately, these patterns do not match with the sad reality that we experience at the UN organs dealing with enforced

disappearances, counting the growing numbers of requests coming from families of disappeared persons across the globe. The root causes of the phenomenon have not completely changed, but other situations have developed: enforced disappearances continue to occur throughout the globe and continue to take new forms. Nowadays, some disappearances are perpetrated in the name of the fight against terrorism or “national security”. Others occur in the context of migration and / or human trafficking. In some countries, enforced disappearances are mainly carried out by non-state actors with the connivance or tolerance of the state.

There have been inspiring movements against enforced disappearance, with remarkable results, which succeeded in showing the evidence of the cruelty of this crime and bringing it to international attention. Owing to the long struggle of relatives of disappeared persons, family associations, and human rights activists around the world, we have an international instrument which states that enforced disappearance is an international crime. The International Convention for the Protection of All Persons from Enforced Disappearances, which entered into force in December 2010, constitutes a large step forward in a long historical process. It followed the blueprint of the Declaration on the Protection of all Persons from Enforced Disappearance, adopted by the General Assembly on 1992 and the work done by the Working Group on Enforced and Involuntary Disappearances (WGEID), the pioneer and great contributor in the frontline of the fight against enforced disappearance. The Convention represents a significant progress in international law by defining the non-derogable right not to be subject to an enforced disappearance. The Convention presents a solid definition of the crime of enforced disappearance in Article 2 as “the arrest, detention, abduction or any other form of deprivation of liberty by agents of the state or by 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 places such a person outside the protection of the law.” This definition encompasses three cumulative elements: the deprivation of liberty against the will of the person concerned; the involvement of state officials or indirectly by acquiescence; and the refusal to disclose the fate and whereabouts of the person concerned.

The Convention also acknowledges that any individual who has suffered harm as the direct result of an enforced disappearance is a “victim” of such an act. The Convention sets out a range of steps that states should take to prevent and eradicate enforced disappearances, as well as address the terrible impact of these crimes on individuals. This recognition brings out its value within the implementation of a solid legal framework, binding for every state party in the areas of prevention, punishment, reparation, justice for the victims’ families and non-repetition of enforced disappearances, as well as a tool to protect missing persons and their families, establishing monitoring mechanisms. These features include: the prohibition of secret detention; non-refoulement; disappearances perpetrated by non-state actors; extraterritorial jurisdiction; and the right to the truth. They also include the duty to fully investigate all reported cases of disappearance, and to

prosecute alleged perpetrators of acts of disappearance in ordinary, non-military courts. Victims and their families should also be able to obtain redress and compensation.

Also, the Convention provides law enforcement personnel and public officials with a clear picture of their obligations as well as guidance on how to discharge their duties in compliance with international law and standards. Its work has a significant preventive effect and has allowed relatives of disappeared persons to seek justice and redress.

The Convention provided for the creation of the Committee on Enforced Disappearances, a body of independent experts that monitors its implementation by the state parties. Through its comprehensive framework and its various mandated activities, the Committee assists state parties in a constructive spirit of cooperation to ensure that their legal framework (criminal, civil and administrative) and practice align with the human rights standards stemming from the Convention, allowing victims and their relatives to access their rights under the Convention.

The Convention allows bringing cases to the international level through the mechanism of urgent actions. The urgent action procedure is unique in the entire human rights system, based on its preventive nature, by which families and relatives can address the Committee to request urgent measures to be taken in order to locate their beloved ones who have disappeared. Since 2012, CED has registered around 1500 urgent action requests.

The crime of enforced disappearance for individual acts is serious, but in cases of widespread or systematic practice, it constitutes a crime against humanity. The prohibition of enforced disappearance is absolute. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability, or any other public emergency, may be invoked as a justification for enforced disappearance. Today, it is clear that no reason or circumstance can be invoked or justifies enforced disappearance, which is unacceptable today as it was decades ago when it first came to the attention of international community.

II. Dealing with past disappearances: the right to the truth, justice and reparation

The right to the truth has gained the status of an autonomous, inalienable, and independent right in international law. The right to the truth implies knowing the full and complete truth as to the events that transpired, their specific circumstances, and who participated in them, including knowing the circumstances in which the violations took place, as well as the reasons for them. In cases of enforced disappearance, missing persons, children abducted or born during the captivity of a mother subjected to enforced disappearance, secret executions, and secret burial places, the right to the truth has also a special dimension: to know the fate and whereabouts of the victim.

The right to the truth is both a collective and an individual right. Each victim has the right to know the truth about violations that affected him or her, but the truth also has to

be told at the level of society as a “vital safeguard against the recurrence of violations.”

At the international level, the right to the truth relating to enforced disappearances or missing persons is recognized in a number of instruments. The existence of the right to the truth as an autonomous right was acknowledged by the Working Group on Enforced or Involuntary Disappearances (WGEID) in its very first report.

The Updated Set of Principles for the Protection and Promotion of Human Rights through the Fight against Impunity recognizes the right to the truth both in its collective and individual dimensions. Principle 2 states that “[...] each people has the inalienable right to know the truth about the events that occurred in the past in relation to the perpetration of aberrant crimes and the circumstances and motives that led, through massive or systematic violations, to the perpetration of these crimes [...]”. Further on, it refers to the imprescriptible right of the victims and their families “[...] to know the truth about the circumstances in which the violations were committed and, in the event of death or disappearance, about the fate of the victim” (principle 4). This right implies the adoption of measures that ensure judicial and non-judicial procedures through which the truth of what happened can be established, the evidence preserved and a historical record maintained (principle 5).

Article 24 of the Convention establishes the right of each victim to know the truth regarding: i) the circumstances of the enforced disappearance, ii) the progress and results of the investigation, and iii) the fate of the disappeared person. Although at the time of the *travaux préparatoires* of the Convention, the right to the truth was already recognized in international humanitarian law as well as in international judicial practice related to human rights, the inclusion of this right in an international human rights treaty is highly innovative and represents one of the main features of the Convention. During its first ten years of work, the Committee has regularly recommended that state parties incorporate the right to the truth into their legal systems by including an “explicit provision for the right of victims to know the truth regarding the circumstances of an enforced disappearance and the fate of the disappeared person.” The Committee has also recommended that states include in their legal systems a definition of “victim of enforced disappearance”, in line with Article 24 (2) of the Convention, so as to ensure that all persons who have suffered harm as a direct result of an enforced disappearance can fully and effectively exercise the right to the truth, among other rights enshrined in the Convention. States Parties, therefore, should ensure that all victims of enforced disappearance are able to enjoy this right fully and effectively, without the need to be represented by a lawyer and without time limits related to when the enforced disappearance was committed. To guarantee the right to the truth, among other rights, the Committee has recommended such measures as: ensuring prompt, thorough, and impartial investigations; making certain that law enforcement or security forces, whether civilian or military, whose members are suspected of having committed an enforced disappearance do not take part in investigations and are not in a position to influence their progress; developing strategies for the full investigation of cases of disappearance in order to avoid the fragmentation of investigations; and ascertaining that the context is

analyzed, patterns are identified, and all possible hypotheses and lines of investigation are generated and followed, including the possible involvement of state agents; and investigating possible chains of command, indirect perpetrators, and other forms of perpetration and participation. In certain cases, the Committee has recommended setting up commissions of independent experts charged with establishing the truth about past human rights violations, in particular regarding enforced disappearances; ensuring that truth commissions have sufficient personnel as well as financial and technical resources to carry out their work promptly and effectively; and taking the necessary measures to guarantee that all public entities cooperate with these organs and provide them with all the assistance within their power.

The right to justice

Impunity arises from a failure by states to meet their obligations to investigate violations, to take appropriate measures in respect of the perpetrators, particularly in the area of justice, by ensuring that those suspected of criminal responsibility are prosecuted, tried, and duly punished; to provide victims with effective remedies and to ensure that they receive reparation for the injuries suffered; to ensure the inalienable right to know the truth about violations; and to take other necessary steps to prevent a recurrence of violations.

The Convention places on the state party the obligation to undertake effective investigations. Where there are reasonable grounds for believing that a person has been subjected to enforced disappearance, the authorities should undertake an investigation, even if there has been no formal complaint about the case. A state party should adopt the necessary measures to ensure that persons suspected of having committed an offence of enforced disappearance are not in a position, directly or indirectly, by themselves or through others, to influence the progress of investigations.

Under arts. 11 and 12 of the ICPPED, all cases of enforced disappearance must be properly investigated. Under art. 24, para. 6, of the ICPPED, state parties are obliged to continue the investigation at least until the fate of the disappeared person is clarified. While commenting on the state parties' understanding of their obligations under the ICPPED in its annual reports, the CED has pointed out that state parties must be careful not to confuse efforts to determine the fate and whereabouts of the victims with the investigation into the crime. It also stressed that despite the fact that these are two distinct obligations, the investigation of enforced disappearances may lead to information that is necessary in searching for and locating the victims.

The state parties are under the obligation to investigate enforced disappearances even in the absence of a formal complaint. Besides, the CED has expressed its concern when the investigative actions by the authorities are not carried out *ex officio*, but only when relatives, close contacts, or representatives of the disappeared persons take the initiative.

The CED has insisted on the importance of providing the authorities in charge of investigating enforced disappearances with adequate technical, financial, and human resources so that they are able to discharge their duties promptly and effectively. It has also expressed concerns where, in the legislation and practice of the state party concerned, it found other obstacles (e.g., the discretion of the relevant police officer, restrictions on accessing the relevant documentation and places of detention or other places where there are grounds to believe that a disappeared person may be present) that could hinder the prompt, effective, and impartial investigation of alleged cases of enforced disappearance.

The right to reparation

The right to reparations is a well-established and basic human right, which is enshrined in universal and regional human rights treaties. The victims of enforced disappearance have the right to reparation, which corresponds to the obligation of the state party to make reparation.

Under the Convention, each state party should guarantee in its legal system that victims of enforced disappearance have the right to obtain reparation and be compensated quickly, fairly and adequately. This right covers material and moral damage as well as, where appropriate, other forms of reparation such as restitution, rehabilitation, and satisfaction, "including the restoration of dignity and reputation", and finally, guarantees of non-repetition. WGEID has stated that reparation must not be contingent on the determination of responsibility and criminal conviction of the perpetrators and other participants in the case of enforced disappearance. CED has urged states to guarantee the right to compensation for the relatives regardless of whether the crime of enforced disappearance is criminally prosecuted.

III. The Albanian context of past disappearances

The phenomenon of disappearances in Albania during the communist regime has not yet been given the relevant importance at the national level. At the international level, it has been the subject of reviews by the relevant bodies, whose observations and recommendations should guide the efforts to address this issue in the right way. The holistic approach should be based on a strong political will to deal with the past; the most successful model is prepared to fail if not supported by awareness at political and societal levels. According to the WGEID, there is a noticeable lack of public discourse and little political consideration of enforced disappearances. In this discouraging environment, investigative and prosecutorial authorities take little interest in the phenomenon of enforced disappearances and there is no sense of urgency; the

authorities lack professional knowledge in this area and are, consequently, reluctant to initiate investigations.

According to the Working Group on Enforced or Involuntary Disappearances which conducted an official visit to Albania in December 2016, the official data on missing persons and those who were judicially or extrajudicially imprisoned or executed under the dictatorship are reportedly incomplete, with different non-governmental organizations offering different figures. It is estimated, however, that more than 6,000 persons went missing, yet with no specific information on how many of them were forcibly disappeared. According to information provided by the Institute for the Studies of Communist Crimes and Consequences, victims can be classified into the following categories: people who were executed by the regime, with or without a trial; people who were imprisoned; and people who were internally displaced to concentration or labour camps. The remains of those who were executed by the regime were mostly buried in mass unmarked graves located near detention centers, prisons, and concentration or labour camps throughout the country. The number of burial sites also remains inaccurate and is estimated by some sources to be between 22 and 29, including mass graves. The Working Group has noted with regret that no ex officio investigations have been conducted to date into enforced disappearances committed during the dictatorship.

Albania has presented its report on the implementation of the Convention for the Protection of All Persons from Enforced Disappearance in November 2015, and held a constructive dialogue with the Committee on Enforced Disappearances in May 2018. In its concluding observations, the Committee addressed, among other issues, the enforced disappearances during the communist regime. The Committee has welcomed the various initiatives taken by the state party to address human rights violations, in particular the enforced disappearances that occurred during the communist period from 1944 to 1991. The Committee observed that the state party has taken measures to compensate victims and their families, and has set up specific institutions to study and identify political persecution by the communist regime, and to raise public awareness in that regard. The Committee notes that the state party has created a Disappeared Persons Section within the Institute for Integration of the Former Politically Persecuted, which is mainly tasked with finding persons subjected to enforced disappearances during the communist regime, in particular by collecting evidence and information on the victims and exhuming human remains. However, it regrets that the state party has not yet carried out investigations with a view to identifying and prosecuting those responsible and providing all forms of reparation to victims and their families, in accordance with article 24 of the Convention. In its conclusions, **the Committee has encouraged Albania to redouble its efforts to effectively shed light on enforced disappearances that took place during the communist regime, in particular regarding the fate and whereabouts of the disappeared persons, and to consider investigating such crimes, prosecuting those responsible, and providing all forms of reparation to the victims and their families, in accordance with article 24 of the Convention.**

Recommendations:

I. The Albanian legal framework is generally in line with international standards for the prevention and punishment of enforced disappearances. (Art. 109. c CC). It may need some amendments to specific elements of the right to truth and the notion of the victim, in order to correctly address the cases of past disappearances. The technical legislative to fill the lacunas should be discussed among law professionals and representatives of the victims, to decide between partial amendments in the existing legislation, or an all-inclusive legislation, both choices should have as objective to approve legislation securing the rights of both society and families of forcibly disappeared persons to know the truth about what happened; the right of families to have the remains of their loved ones found, identified and returned to them; their right to reparation, including compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition; and the right to memory, as well as the right to access to justice.

- A specific element to be included in the legislation is the introduction of a certificate of absence due to enforced disappearance, and as it has been accepted in a number of states, it should be considered as a solution to define the legal status of forcibly disappeared persons and to guarantee pertinent rights to their family members.

II. In relation to state policies, as recommended, a comprehensive policy should be put in place to search, locate, and identify the remains of persons who disappeared during the dictatorship.

- An accurate official register should be created with the exact number of disappeared person, and disaggregated data on age, gender, geographic location, etc.
- Launching the creation of a national DNA bank to which families can contribute samples and raising awareness among families about its use and purpose;
- Identifying potential burial sites and establishing centralized mapping for all these locations;
- Establishing and enforcing standard operating procedures for the proper preservation of currently identified burial sites and any samples recovered from them;
- Opening investigations at the identified burial sites;
- Ensuring annual budgetary allocations for the above-mentioned endeavours. It is estimated that the budget required to thoroughly search for missing remains in the burial sites identified in Albania is between 15 and 20 million Euros. The state should take the necessary steps to use forensic expertise and scientific methods of identification to the maximum of its available resources, including through international assistance and cooperation.

- These policies should include a strategy for memory that takes into account the importance of officially preserving former detention facilities and labour camps as memorial sites and creating memorials for the recognition and rehabilitation of victims. This strategy should also aim to create awareness among new generations and work towards reconciliation within Albanian society, taking into consideration its repressive past. To that end, families of victims and associations active in this field must be an integral part of all initiatives aimed at designing, implementing and celebrating memory.
- An important element in addressing the disappearances is training for law enforcement officials, judges, and lawyers representing victims relating to applicable international standards, specific characteristics of crimes of enforced disappearance, and corresponding investigative and judicial practices, including the need for heightened sensitivity in dealing with the victims.

Panel II:

Domestic and International Obligations to Investigate Cases of Enforced Disappearance

Mirela BOGDANI

Associate Professor of Law at the Faculty of Law of the University of Tirana

MISSING PEOPLE DURING THE COMMUNIST REGIME IN ALBANIA INTERNATIONAL STANDARDS AND NATIONAL CONTEXT

I. International Standards on “missing people” and “victims of enforced disappearance”

a. The international concept of a “missing person” and a “victim of enforced disappearance”

i. The general concept

The concept of a missing person is broad and is seen from different perspectives. First, the definition of a missing person is not always the same in different countries and legislations. However, according to the International Commission of Missing Person’s definition, subjectively, a missing person is anyone whose whereabouts are not known and who is being sought by another person or other persons. The term “missing person” acquires an objective meaning when a person is formally reported as missing, or when an unidentified body is discovered.¹

Seen from a legal perspective, several national legislations establish a number of conditions to be met for a person to be considered “missing”. For example, the UK Guardianship (Missing Persons) Act² lays down three important conditions to be met: (a) the person is absent from his or her usual place of residence, (b) the person is absent from his or her usual day-to-day activities, and (c) the first or second condition is met. The first condition is met if the person’s whereabouts are not known at all, or are not known with sufficient precision to enable the person to be contacted for the purposes of decisions relating to his or her property and financial affairs. The second condition is met if the person is unable to make decisions relating to his or her property and financial affairs or to communicate such decisions with a view to their implementation (or both), and the reason for that is something beyond the person’s control, other than illness, injury or lack of capacity in relation to a matter (within the meaning of the [UK] Mental Capacity Act 2005).³

1 For more information visit ICMP’s website: <https://www.icmp.int/the-missing/who-are-the-missing/>

2 United Kingdom Guardianship (Missing Persons) Act, passed on 27 April 2017: <https://www.legislation.gov.uk/ukpga/2017/27/enacted>

3 Article 1(1), (2) and (3) of the Guardianship (Missing Persons) Act of 2017.

Abbreviations

ECHR-	European Convention on Human Rights
UDHR-	Universal Declaration of Human Rights
UN-	United Nations
CED-	The Committee on Enforced Disappearances
CoE-	Council of Europe
ICMP-	International Council on Missing Persons
ICC-	International Criminal Court
ICRC-	International Committee of the Red Cross
ICPPED-	The International Convention for the Protection of All Persons from Enforced Disappearance
WGEID-	The Working Group on Enforced or Involuntary Disappearance
AIDSSH-	The Authority for Information on Former State Security Files
IML-	The Institute of Forensic Medicine
KRSH-	The Constitution of the Republic of Albania
KP-	The Criminal Code of the Republic of Albania
KPrP-	The Code of Criminal Procedure of the Republic of Albania
IIP-	The Institute for Integration of Formerly Persecuted

Differently, the international humanitarian law, identifies “missing persons” or “persons unaccounted for” from a different (humanitarian) point of view. In this context, missing persons are regarded as those whose families are without news of them or who are reported missing, on the basis of reliable information, owing to an international or non-international armed conflict, a situation of internal violence, disturbances, natural calamities or catastrophes.⁴

As defined above, the concept of “missing people” is broad and encompasses a large number of situations in which a person can be considered missing. This paper will focus on one group in particular among the missing persons in Albania: the *victims of enforced disappearance* during the Communist regime in Albania. The latter is a smaller and specific group of missing persons, among other missing persons’ groups. “Disappearance” is defined as any situation where persons are arrested, detained, or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of the government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law.⁵

Authoritarian regimes, like the Communist regime that ruled Albania for about 45 years, used the practice of “enforced disappearance” as an instrument of social and political control. Since illegal arrest and detention were devoid of due process, families of those who were “disappeared” by the state had no means of requesting information about their missing relatives. Only after the fall of the Communist regime in Albania, efforts have been made to shed light on what happened and where the remains of these missing persons are.⁶

ii. The special case of Albania

From November 1944 until 1991,⁷ Albania was ruled by a totalitarian communist dictatorship that is remembered as one of the harshest and bloodiest in Eastern Europe. On the grounds of “the war of classes”, a large number of people who were accused of not (properly) supporting communism or even individual communist leaders, were deported, imprisoned, and some of the latter even killed, away from their other relatives, friends, and acquaintances. According to the Institute for the Study of the Crimes and

4 International Committee of the Red Cross (ICRC), *Guiding principles. Model law on the missing*, 2009, Article 2.1.

5 United Nations Declaration on the Protection of All Persons from Enforced Disappearances, 18 December, 1992.

6 This topic will be further elaborated upon throughout this study.

7 This period is considered a totalitarian regime, as defined by Law No. 10242 on the Institute of Studies of the Communist Crimes, and Law 45/2015 on the Authority of Former State Security Files.

Consequences of Communism (ISKK) in Albania, 5,577 men and 450 women were sentenced to death and killed. There are also numerous reports that political prisoners died in prisons or labor camps as a result of torture or other causes, such as suicide. Even in these cases, the bodies were not returned to the families, because in the Communist regime, the body of the convict remained at the disposal of the state throughout the duration of the sentence, even if he/she died.⁸

After the fall of the communist regime in Albania, the exact number of persons who went missing between 1945 and 1991 remains unclear, though the figure is believed to be in the region of 6,000.⁹ The Albanian authorities have adopted several legislative acts since 1991 addressing the issue of victims of the former regime, but uncertainty remains about the fate of missing persons and the location of gravesites, and little has been done to give concrete assistance to the families of the missing.¹⁰

Since the transition to democracy in 1991, the Albanian authorities have taken measures to ensure that the rights of the families of the missing from the Communist era are fulfilled. In 2018, the Council of Ministers of the Republic of Albania and ICMP signed the Cooperation Agreement between the Council of Ministers of the Republic of Albania and the International

Commission on Missing Persons, in order to advance efforts to locate persons who went missing during the Communist period in Albania, between 29 November 1944 and 2 July 1991, as well as in other circumstances for which the Council of Ministers may seek the assistance of the ICMP. The Cooperation Agreement is predicated on the desire of the Council of Ministers of the Republic of Albania to protect the rights of family members of persons who went missing, in particular by ensuring that the whereabouts of the missing and the circumstances of their disappearance are investigated effectively.¹¹

b. Relevant international bodies dealing with enforced disappearance

i. The International Commission on Missing Persons (ICMP)

The ICMP is a treaty-based international organization with headquarters in The Hague, the Netherlands. Its mandate is to secure the cooperation of governments and others in locating missing persons from conflict, human rights abuses, disasters, organized crime, irregular migration, and other causes and to assist them in doing so. It is the only international organization tasked exclusively with working on the issue of missing

8 Guide to the rights of the families of the missing persons during the Communist period, the Authority for Information on Former State Security Files, page. 5

9 For more information visit the ICMP's website: <https://www.icmp.int/where-we-work/europe/albania/>

10 *Ibid.*

11 ICMP Report: Albania, missing persons from the communist era: a needs assessment, Sarajevo, 2 March 2021 ICMP.GR.WB.152.6.W.doc, page 5.

persons. It was created in 1996 at the G-7 Summit in Lyon, France, and is engaged in developing institutions and civil society capacity, promoting legislation, fostering social and political advocacy, and developing and providing technical expertise to locate and identify the missing.¹² On 15 December 2014, the Foreign Ministers of the Netherlands, the United Kingdom, Sweden, Belgium, and Luxembourg signed the Agreement on the Status and Functions of the International Commission on Missing Persons (also known as the ICMP Treaty), granting ICMP full international legal personality. The ICMP Treaty provided for a new organizational structure, including a Board of Commissioners, a Conference of State Parties, and an executive to be headed by a Director General.

The ICMP operates in diverse societal, political and cultural environments, engaging in all aspects of locating and identifying missing persons, from fostering the involvement of civil society, to providing technical assistance and building institutional capacity. The ICMP has been active in some 40 countries that have faced large numbers of missing persons as a result of natural and man-made disasters, wars, widespread human rights abuses, organized crime, and other causes.

Some of the major objectives of the ICMP are:

- Working with governments to develop their institutional capacity to address the issue of missing persons efficiently and impartially.
- Helping governments to develop legislation to safeguard the rights of families of the missing, and working with civil society organizations to empower them to advocate for their rights.
- Assisting the process of justice by ensuring that governments adhere to a rule-of-law-based approach to investigating disappearances and providing evidence in criminal trials.
- Assisting governments with fieldwork, as the ICMP has been involved in the excavation of more than 3,000 mass and clandestine gravesites and has spearheaded the application of advanced forensic techniques to locate and recover missing persons.
- Managing all data pertaining to its missing persons process by maintaining a unique, specialized Online Inquiry Center (OIC) and Identification Data Management System (IDMS).
- Operating the world's leading high-throughput DNA human identification facility. To date, more than 20,000 missing persons from around the world have been identified using DNA with ICMP's assistance.

12 For more information, visit the ICMP's website: <https://www.icmp.int/about-us/>

- Providing training and education programs to a wide range of individuals, including government authorities, prosecutors and judges, NGOs, families of the missing, and forensic practitioners.

ii. The Committee on Enforced Disappearances

The Committee on Enforced Disappearances (CED)¹³ was created by the Convention for the Protection of All Persons against Enforced Disappearance (ICPPED) (see below) in its Second Part. It is a body of independent experts that monitors how the ICPPED is implemented by the state parties. The Committee and its Secretariat work daily to support victims, civil society organizations, national human rights institutions and states in their search for and location of disappeared persons, to eradicate, punish, and prevent this crime, and to repair the damage suffered by the victims.¹⁴ It has competence solely in respect of enforced disappearances that commenced after the entry into force of the ICPPED.¹⁵

The Committee consists of ten experts of high moral character and recognized competence in the field of human rights who serve in their personal capacity and are independent and impartial. The members of the Committee have a term of 4 years. They are elected by the States Parties according to equitable geographical distribution. Due account is taken of the usefulness of the participation in the work of the Committee of persons having relevant legal experience and of balanced gender representation.¹⁶ Each State Party submits to the Committee, through the Secretary-General of the United Nations, a report on the measures taken to give effect to its obligations under this Convention, within two years after the entry into force of the ICPPED for the State Party concerned.¹⁷ If the Committee receives reliable information indicating that a State Party is seriously violating the provisions of this Convention, it may, after consultation with the State Party concerned, request one or more of its members to undertake a visit and report back to it without delay. Following its visit, the Committee shall communicate to the State Party concerned its observations and recommendations.¹⁸ On the other hand, if the Committee receives information that appears to contain well-founded indications that enforced disappearance is being practised on a widespread or systematic basis in the territory under the jurisdiction of a State Party, it may urgently bring the matter to the attention of the General Assembly of the United Nations.¹⁹

13 For more information, please visit: <https://www.ohchr.org/en/hrbodies/ced/pages/cedindex.aspx>

14 Ibid.

15 ICPPED, Article 35.

16 ICPPED, Article 26.

17 ICPPED, Article 29.

18 ICPPED, Article 33.

19 ICPPED, Article 34.

iii. The Working Group on Enforced or Involuntary Disappearance

The Working Group on Enforced or Involuntary Disappearance (WGEID)²⁰ is one of the thematic special procedures overseen by the United Nations Human Rights Council. By Resolution 20 (XXXVI) of 29 February 1980, the Commission on Human Rights decided to establish a working group of five independent experts to examine questions relevant to enforced or involuntary disappearances of persons. Since then, the mandate of the Working Group has been regularly renewed.²¹

The purpose of the WGEID is to help the relatives of disappeared persons ascertain the whereabouts of their disappeared family members. The Working Group communicates with governments regarding individual cases and requests that the state investigate and inform the Working Group of the results. By acting as a channel of communication between families of disappeared persons and governments, the Working Group has been able to develop dialogues with many governments, regardless of whether they have ratified any legal instruments providing for an individual human rights complaints procedure.²²

The WGEID activities include duties like:

- assisting relatives to ascertain the fate and whereabouts of their disappeared family members;
- transmitting enforced disappearance cases to the competent governments;
- conducting country visits and reporting on the findings of these visits;
- receiving claims for acts of enforced disappearance that may amount to crimes against humanity;
- monitoring the states' progress in implementing the UN Declaration on the Protection of All Persons from Enforced Disappearance (see below);
- issuing general comments on the states' progress in implementing the UN Declaration on the Protection of All Persons from Enforced Disappearance;
- protecting relatives of disappeared persons, their legal counsel, witnesses to disappearances or their family, members of organizations of relatives and other nongovernmental organizations, human rights defenders or individuals concerned with disappearances;
- reporting annually to the Human Rights Council on its activities; etc.

20 For more information visit: <https://ijrcenter.org/un-special-procedures/working-group-on-enforced-or-involuntary-disappearances/>

21 Enforced or Involuntary Disappearances, Fact Sheet No. 6/Rev. 3, Office of the United Nations, High Commissioner for Human Rights, page 11.

22 *Ibid.*

iv. The International Committee of the Red Cross

The International Committee of the Red Cross (ICRC)²³ is an independent, neutral organization ensuring humanitarian protection and assistance for victims of armed conflict and other situations of violence. It takes action in response to emergencies and at the same time promotes respect for international humanitarian law and its implementation in national law. The work of the ICRC is based on the Geneva Conventions of 1949, their Additional Protocols, its Statutes, and those of the International Red Cross and Red Crescent Movement, and the resolutions of the International Conferences of the Red Cross and Red Crescent.²⁴

The ICRC works to locate persons reported missing and put them back into contact with their relatives. This includes looking for family members, restoring contact, reuniting families, and seeking to clarify the fate of those who remain missing. In situations of conflict, the ICRC promotes the filling of tracing requests by relatives of missing persons and submits these forms to authorities that may be able to provide information on the persons sought.²⁵ In this respect, the ICRC organized an international conference in 2003 to tackle the problem of missing people and seek ways to help the families and communities affected, which was widely attended by human rights organizations, governments, experts, and missing family associations. It reaffirmed the right to know the fate of missing people, already enshrined in international humanitarian and human rights law, by identifying concrete measures that parties to a conflict should take to prevent disappearances, such as respecting and protecting civilians and managing information on people properly. Additionally, the conference identified the crucial role of forensics and the proper handling of human remains. Moreover, it recognized the vital role of networks that restore family links in which the ICRC, the Red Cross, and the Red Crescent, and many family associations are involved.²⁶

The ICRC has launched an online tracing service when large-scale emergencies occur. Relatives can look for information on their loved ones through this service, which is currently available for persons, reported missing in connection with, among others, the conflicts in Bosnia and Herzegovina, Croatia and Kosovo^{27, 28}.

23 For more information, please visit: <https://www.icrc.org/en/mandate-and-mission>

24 <https://www.icrc.org/en/what-we-do/restoring-family-links>

25 Missing persons and victims of enforced disappearance in Europe, Council of Europe Commissioner for Human Rights, March 2016.

26 For more information, please visit: <https://www.icrc.org/en/document/protected-persons/missing-persons>

27 All references to Kosovo, whether to the territory, institutions or population, should be understood in full compliance with United Nations Security Council Resolution 1244

28 For more information, see: Missing persons and victims of enforced disappearance in Europe, Council of Europe Commissioner for Human Rights, March 2016, page 31.

c. Missing (disappeared) people under communist regimes

Societies emerging from authoritarian regimes like the communist one have to deal with a legacy of human rights violations, including enforced disappearances. It is argued that dealing with a past which is marked by massive violence should be a “necessary precondition for the establishment of the rule of law and the pursuit of reconciliation”.²⁹ The search for missing persons is often an important first step in such a process and the immediate priority for relatives and victims.

The need for international condemnation of the crimes of totalitarian communist regimes is proclaimed in the Council of Europe Parliamentary Assembly’s Resolution 1481 (2006).³⁰ As seen from the perspective of the rights against enforced disappearance, the above Resolution establishes that:

- The totalitarian communist regimes which ruled in Central and Eastern Europe in the last century, and which are still in power in several countries in the world, have been, without exception, characterised by massive violations of human rights. The violations have differed depending on the culture, country, and the historical period and have included individual and collective assassinations and executions, death in concentration camps, starvation, deportations, torture, slave labour and other forms of mass physical terror, persecution on ethnic or religious grounds, violation of freedom of conscience, thought, and expression, freedom of the press, and also lack of political pluralism;
- The crimes were justified in the name of the class struggle theory and the principle of dictatorship of the proletariat. The interpretation of both principles legitimised the “elimination” of people who were considered harmful to the construction of a new society and, as such, enemies of the totalitarian communist regimes. A vast number of victims in every country concerned were their own nationals;
- The fall of totalitarian communist regimes in Central and Eastern Europe has not been followed in all cases by an international investigation of the crimes committed by them. Moreover, the authors of these crimes have not been brought to trial by the international community;
- Awareness of history is one of the preconditions for avoiding similar crimes in the future. Furthermore, moral assessment and condemnation of crimes committed play an important role in the education of younger generations. The clear position of the international community on the past may be a reference for their future actions;

29 J. Sisson, Anne-Marie La Rosa and Monique Crettol, “The Missing and Transitional Justice: The Right to Know and the Fight against Impunity”, *International Review of the Red Cross*, Vol. 88, No. 862, 2006, available at: www.icrc.org/en/international-review/article/missing-and-transitional-justice-right-know-and-fight-against-impunity

30 The Council of Europe Parliamentary Assembly’s Resolution 1481 (2006) <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17403>

- The victims of crimes committed by totalitarian communist regimes who are still alive or their families deserve sympathy, understanding, and recognition for their sufferings; etc.

An important legal instrument condemning the crimes committed in the name of communism is Prague's Declaration on European Conscience and Communism.³¹ The latter was initiated by the Czech government and signed on 3 June 2008 by European politicians, former political prisoners and historians. This Declaration is not binding on the states; however it has been granted a lot of support by prominent politicians. The main aim of the Prague Declaration is the criminalization of communism. As regards enforced disappearance, this Declaration calls for:

- Reaching an all-European understanding that both the Nazi and Communist totalitarian regimes should be judged by their own terrible merits to be destructive in their policies of systematically applying extreme forms of terror, suppressing all civic and human liberties, starting aggressive wars and, as an inseparable part of their ideologies, exterminating and deporting whole nations and groups of population; and that as such they should be considered to be the main disasters, which blighted the 20th century recognition that many crimes committed in the name of Communism should be assessed as crimes against humanity, serving as a warning for future generations, in the same way Nazi crimes were assessed by the Nuremberg Tribunal;
- Introduction of legislation that would enable courts of law to judge and sentence perpetrators of Communist crimes and to compensate victims of Communism;
- European and international pressure for an effective condemnation of the past Communist crimes and an efficient fight against ongoing Communist crimes, etc.

d. Major International Instruments on Enforced Disappearance

i. The Universal Declaration of Human Rights: Related violations concerning enforced disappearance

The Universal Declaration on Human Rights (UDHR)³² is one of the most important legal instruments concerning international human rights. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, it was proclaimed by the United Nations General Assembly in Paris, on 10 December 1948, as a common standard of achievements for all peoples and all nations. It sets out, for the first time, the

31 See the full text of the Prague's Declaration at: <https://www.legal-tools.org/doc/e123be/pdf/>

32 For more information on the Declaration's full text, please visit: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

fundamental human rights to be universally protected.

The UDHR sets out a number of international human rights, which can be categorized into at least two major groups: first, *civil and political* rights, and second, *economic, cultural, and social* rights. Enforced disappearance of persons is considered to breach the fundamental human rights belonging to both of the above groups. According to the United Nation's (UN) High Commissioner for Human Rights' Fact Sheet on Enforced or Involuntary Disappearances,³³ the following *civil or political* rights may be infringed upon in the course of a disappearance:

- The right to recognition as a person before the law;
- The right to liberty and security of the person;
- The right not to be subjected to torture and other cruel, inhuman, or degrading treatment or punishment;
- The right to life, when the disappeared person is killed;
- The right to an identity;
- The right to a fair trial and to judicial guarantees;
- The right to an effective remedy, including reparation and compensation;
- The right to know the truth regarding the circumstances of a disappearance.³⁴

On the other hand, the same Report stresses out that enforced disappearance is connected to violations of additional economic, social, and cultural rights, not only as regards the disappearance victims themselves, but also as regards their family members. Such violations encompass breaches of:

- The right to protection and assistance to the family;
- The right to an adequate standard of living;
- The right to health;
- The right to education.³⁵

Disappearances can also involve serious breaches of international instruments that are *not conventions*, such as: the *Standard Minimum Rules for the Treatment of Prisoners*, approved by the United Nations Economic and Social Council in 1957, the *Code of Conduct for Law Enforcement Officials* and the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, adopted by the General Assembly in 1979 and 1988, respectively.³⁶

33 United Nation's (UN) High Commissioner for Human Rights' Fact Sheet No. 6, rev. 3, Enforced or Involuntary Disappearances, July 2009.

34 *Ibid.* page 8.

35 *Ibid.* page 9.

36 See also: United Nation's (UN) High Commissioner for Human Rights' Fact Sheet No. 6, rev 3, Enforced or Involuntary Disappearances, July 2009.

ii. The European Convention on Human Rights: Related articles concerning enforced disappearance and the European Court on Human Rights' approach

The European Convention on Human Rights (ECHR)³⁷ is a major legal instrument protecting human rights and liberties in the Member States of the Council of Europe and it has been signed by all 47 Members.³⁸ This makes the ECHR part of the national legal systems of the signing members. The Convention guarantees specific rights and freedoms, and prohibits unfair and harmful practices whereas the European Court of Human Rights applies and protects the rights and guarantees set out in the ECHR.

The ECHR does not address the enforced disappearance of persons in one single dedicated article. However, this does not imply that the issue of enforced disappearance is not covered by this convention. In fact, the enforced disappearance tackles a number of rights established in the ECHR articles.

First, the European Court on Human Rights (the Court) analyses the cases of enforced disappearance in connection with **Article 2 of ECHR** (The right to life). The latter establishes that:

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

(a) in defense of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

The Court applies a presumption of violation of the substantive limb of Article 2 of the ECHR when the victim has last been seen alive in life-threatening circumstances and the respondent state fails to provide convincing explanations as to his or her fate and whereabouts.³⁹ When disappearances occur in these circumstances, the state's obligation to conduct an effective investigation and to identify and prosecute perpetrators does

37 For more information on the Convention's full text, please visit: https://www.echr.coe.int/documents/convention_eng.pdf

38 For more information on the list of the Council of Europe's Member States, please visit: <https://www.coe.int/en/web/portal/47-members-states>

39 The European Court of Human Rights, *Cyprus v. Turkey*, judgment of 10 May 2001.

not come to an end upon discovery of the body or presumption of death. In certain cases, the Court has examined whether the respondent state took effective operative measures to protect the right to life of the disappeared person, as required by the positive obligations stemming from Article 2 of the ECHR.⁴⁰

It is important to emphasize that the respondent state may be held accountable by the Court only in cases where there is a genuine temporal link between such violations and the entry into force of the ECHR in that specific state. For instance, Albania has ratified the ECHR in 1996. Therefore, the Court would be lacking in competence to deal with applications concerning the violations of Article 2 in Albania caused by enforced disappearances that happened before 1996. However, the Court has also affirmed that the *procedural* obligation arising from Article 2 of the ECHR is separate and autonomous from the substantive limb and can be regarded as “detachable”, thus binding states also when the disappearance or death of the victim took place before the entry into force of the ECHR for the state concerned. The procedural obligation continues *as long as measures to clarify the circumstances* of the violation and establish responsibility can reasonably be expected.⁴¹

Second, the enforced disappearance cases are linked to violations of **Article 3** of the ECHR (Prohibition of torture). This Article stipulates that:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

This Article can be applied as regards the victim(s) of enforced disappearance themselves, but also concerning their family members. As regards *the direct victims*, the Court does not revert the burden of proof with regard to an alleged violation of the substantive limb of Article 3 of the ECHR in respect of a disappeared person, nor does it apply any presumption, instead requesting applicants to prove beyond reasonable doubt that their relative has in fact been tortured.⁴² The Court has often asked respondent states to provide copies of the criminal investigation files, but co-operation on the part of the authorities has been unsatisfactory. In these cases the Court has found breaches of the states’ duty to provide all necessary facilities for the examination of applications, in violation of Article 38 of the ECHR.⁴³

On the other hand, Article 3 of the ECHR can be applied to protect the enforced disappearance victims’ family members or relatives as well. To assess the occurrence of such violation, the Court considers:

40 Missing persons and victims of enforced disappearances in Europe, Council of Europe Commissioner for Human Rights, March 2016, page 37.

41 European Court of Human Rights, *Šilih v. Slovenia*, judgment of 9 April 2009, par. 157-160.

42 European Court of Human Rights, *Zaurbekova and Zaurbekova v. Russia*, judgment of 22 January 2009, par. 91 and 92.

43 Missing persons and victims of enforced disappearance in Europe, Council of Europe Commissioner for Human Rights, March 2016, page 40.

- The *proximity* of the family tie;
- The *circumstances* of the relationship;
- The extent to which the relative *witnessed the events* in question;
- The *involvement* of the family member in attempts to obtain information on the disappearance;
- The fact that they need to be born *before the time* the enforced disappearance took place.⁴⁴

Third, enforced disappearance is related to violations of **Article 5** of the ECHR (Right to liberty and security). which provides that:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for noncompliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within

⁴⁴ European Court of Human Rights, *Janowiec and Others v. Russia*, judgment of 16 April 2012, par. 151 to 154.

a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

This article directly addresses the human rights’ violations that occur in all cases of enforced disappearance. Despite some scarce efforts, the Court usually has not treated the right to liberty separately from the right to security.⁴⁵

Similarly to Articles 2 and 3 of the ECHR, the Court emphasizes the distinction between the substantive and procedural limbs of Article 5 of the ECHR. The substantive limb of Article 5 imposes on the Member States the obligation to respect people’s right to liberty and security. The Court has established that “Having assumed control over the individual, it is incumbent on the authorities to account for his or her whereabouts”. For this reason, Article 5 must be seen as requiring the authorities to take effective measures to safeguard against the risk of disappearance and to conduct a prompt effective investigation into an arguable claim that a person has been taken into custody and has not been seen since.⁴⁶ On the other hand, the procedural limb of Article 5 obliges the member states to conduct an effective investigation into the disappearance of a person who has been shown to be under their control.

Last, enforced disappearance triggers the right of the damaged parties to claim reparations in accordance with **Article 13** of the ECHR (Right to an effective remedy), which provides that:

“Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

The goal of remedy and reparation is to achieve *restitutio in integrum* and, where that is not possible, compensation and other adequate and appropriate forms of reparation.⁴⁷ As part of the right to remedy and reparation, victims, in the majority of cases, the immediate family members, have a right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person. The Court has emphasized that where relatives have an arguable claim that a member of their family has disappeared at the hand of the authorities, or where a right with as fundamental an importance as the right to life is at

45 See also: Kyriakou, Nikolas, An affront to the conscience of humanity: Enforced disappearance in international human rights law, European University Institute, Florence, June 2012.

46 European Court of Human Rights, *Kurt v. Turkey*, judgment of 1998.

47 *Mujkanovic and others v Bosnia and Herzegovina*, Application No. 47063/08.

stake, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation, capable of leading to the identification and punishment of those responsible and including effective access for the relatives to the investigatory procedure.⁴⁸ This is also known as “the right to the truth”. The above remedy, required by Article 13 of the ECHR, must be “effective” in practice, as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or the omissions of the authorities of the respondent state.⁴⁹

However, the ECHR has come under severe criticism for its restrained approach due to low amounts of damages awarded to the relatives of the victims of enforced disappearance.

iii. The UN Declaration on the Protection of All Persons from Enforced Disappearance

The UN Declaration on the Protection of All Persons from Enforced Disappearance (hereinafter the UN Declaration) was adopted by the General Assembly of the United Nations through the Resolution 47/133 of 18 December 1992 and concluded in 2006⁵⁰. It is proclaimed as a *body of principles* for all States. It is not a legally binding document; however it has had an important impact in raising awareness as regards the rights of the victims of enforced disappearance and their family members and also in drafting the International Convention for the Protection of All Persons from Enforced Disappearance (see below).

In its Recitals, the Declaration lays down a *definition* of enforced disappearance, describing it in the meaning that “*persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law*”.⁵¹

In addition, this UN Declaration provides a list of other international legal instruments which provisions would be breached by the acts of enforced disappearance, including: the Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 1977; the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (especially as regards the right to life, the right to liberty and security

48 Tanis and others v. Turkey, Application No. 65899/01, para. 235.

49 Ipek v. Turkey, Application No. 25760/94, para. 197.

50 For more information on the full text of the Declaration, please visit: <https://www.ohchr.org/en/professionalinterest/pages/enforceddisappearance.aspx>

51 Paragraph 3 of the Recitals

of the person, the right not to be subjected to torture and the right to recognition as a person before the law); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Code of Conduct for Law Enforcement Officials; the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and the Standard Minimum Rules for the Treatment of Prisoners, etc.

The Declaration on the Protection of All Persons from Enforced Disappearance considers any act of enforced disappearance as an offence to human dignity, violating, *inter alia*, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, and constitutes a grave threat to the right to life.⁵² In this respect, the states do not only have the obligation under this Declaration *not to practice, permit or tolerate* enforced disappearances, but also *to contribute by all means* to the prevention and eradication of enforced disappearance. In addition, they have the obligation to take *effective* legislative, administrative, judicial, or other measures to prevent and terminate acts of enforced disappearance in any territory under their jurisdiction.⁵³ Moreover, the Declaration introduces a three-fold responsibility for the states involved in enforced disappearance. It emphasizes that the state or state authorities that organize, acquiesce in, or tolerate such disappearances will be liable under *criminal law* and *civil law*, without prejudice to the *international responsibility* of the state concerned in accordance with the principles of international law.⁵⁴

As regards the persons participating in acts of enforced disappearance, the Declaration stipulates that they shall be brought before the competent civil authorities of that state for the purpose of *prosecution* and trial unless he has been extradited to another state wishing to exercise jurisdiction in accordance with the relevant international agreements in force. All states should take any lawful and appropriate action available to them to bring to justice all persons presumed responsible for an act of enforced disappearance and who are found to be within their jurisdiction or under their control.⁵⁵ In addition, persons alleged to have committed these acts should be suspended from any official duties during the investigation; tried only by the competent ordinary courts in each state; not be granted privileges, immunities or special exemptions; not benefit from any special amnesty law or similar measures that might have the effect of exempting them from any criminal proceedings or sanction etc. However, they should be subject to fair treatment in accordance with the relevant provisions of the Universal Declaration of Human Rights and other relevant international agreements.⁵⁶

Further, the Declaration focuses on the rights of the victims of enforced disappearance and their family members. It establishes the right to a *prompt and effective judicial*

52 The UN Declaration on the Protection of All Persons from Enforced Disappearance, Article 1

53 The UN Declaration on the Protection of All Persons from Enforced Disappearance, Article 3.

54 The UN Declaration on the Protection of All Persons from Enforced Disappearance, Article 4 and 5.

55 The UN Declaration on the Protection of All Persons from Enforced Disappearance, Article 14.

56 *Ibid.*, Article 16.

remedy as a means of determining the whereabouts or state of health of persons deprived of their liberty and/or identifying the authority ordering or carrying out the deprivation of liberty⁵⁷; the right of any person deprived of liberty to be held in an *officially recognized place of detention* and, in conformity with national law, be brought before a *judicial authority promptly after detention*⁵⁸; the right to *accurate information for the family members or counsels* on the detention of such persons and their place or places of detention, including transfers⁵⁹; the right to complain to a competent and independent state authority and to have that complaint promptly, thoroughly and impartially investigated by that authority⁶⁰.

iv. The International Convention for the Protection of All Persons from Enforced Disappearance

The International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED)⁶¹ was adopted by General Assembly resolution A/RES/61/177 in December 2006 and came into force on 23 December 2010. Over 70 states, as well as numerous NGOs, associations of families of the disappeared and experts participated in the three-year negotiation process.⁶² Countries that ratify the Convention agree to be legally bound by it and are called state parties. It is the first universally legally binding human rights instrument concerning enforced disappearance. It was preceded by the Declaration on the Protection of All Persons from Enforced Disappearance (see above), which remains an important reference as a body of principles for all states. However, the ICPPED introduces new standards and strengthens the ones established by the UN Declaration.

In its Preamble, the ICPPED lays down a list of other international instruments with which it is interconnected, like: the Universal Declaration of Human Rights (especially the related articles discussed above); the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; etc. It provides a definition of enforced disappearance, stating 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 by 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

57 *Ibid.*, Article 9.

58 *Ibid.*, Article 10 (1).

59 *Ibid.*, Article 10 (2).

60 The UN Declaration on the Protection of All Persons from Enforced Disappearance, Article 13 (1).

61 For more information on the full text of the Convention, please visit: <https://www.ohchr.org/en/hrbodies/ced/pages/conventionced.aspx>

62 Enforced or Involuntary Disappearances, Fact Sheet No. 6/Rev. 3, Office of the United Nations, High Commissioner for Human Rights, page 12.

such a person outside the protection of the law.⁶³ The above definition is very similar to the definition provided by the UN Declaration on the Protection of All Persons from Enforced Disappearance, which is a sign of the important impact that the Declaration has had on the drafting of the ICPPED. However, unlike the UN Declaration, that mentions this definition in its Preamble, the ICPPED has dedicated an individual Article to its establishment. Moreover, this convention reaffirms the UN Declaration's standing that the widespread or systematic practice of enforced disappearance constitutes a **crime against humanity**.

The ICPPED establishes the *absolute* nature of the prohibition of enforced disappearance. In its first article, it provides that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability, or any other public emergency, may be invoked as a justification for enforced disappearance.⁶⁴

- *Signing States responsibilities under the ICPPED*

As regards the *Signing States' responsibilities*, the ICPPED emphasizes that they must take measures to avoid any kind of enforced disappearance. First, the Signing States should guarantee to any person with a legitimate interest, such as relatives of the person deprived of liberty, their representatives or their counsel, **access to information** regarding a person's deprivation of liberty.

A Signing State which applies a **statute of limitations** in respect of enforced disappearance shall take the necessary measures to ensure that the term of limitation for criminal proceedings is of long duration and is proportionate to the extreme seriousness of this offence and commences from the moment when the offence of enforced disappearance ceases, taking into account its continuous nature.⁶⁵ In addition, the same article emphasizes that it is the states' responsibility to guarantee the right of the victims of enforced disappearance to an **effective remedy** during the term of limitation.

Moreover, each Signing State shall ensure that any individual who alleges that a person has been subjected to enforced disappearance has **the right to report the facts to the competent authorities**, which shall examine the allegation promptly and impartially and, where necessary, undertake without delay a **thorough and impartial investigation**.⁶⁶ The contracting states are bound by an obligation of close cooperation with each other. They have to afford one another the greatest measure of mutual assistance with a view to assisting victims of enforced disappearance, and in searching for, locating and releasing disappeared persons and, in the event of death, in exhuming and identifying them and returning their remains.⁶⁷

63 ICPPED, Article 2.

64 ICPPED, Article 1(2).

65 ICPPED, Article 8.

66 ICPPED, Article 12.

67 ICPPED, Article 15.

- *Persons involved in committing enforced disappearance acts*

In addition, the ICPPED gives an important emphasis to the measures to be taken against the *persons participating in acts of enforced disappearance*. It provides that each signing state shall take the necessary measures to hold criminally responsible at least any person who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to or participates in an enforced disappearance and also their superiors who knew that their subordinates were committing acts of enforced disappearance.⁶⁸

- *Victims of enforced disappearance*

Importantly, concerning the *victims of enforced disappearance*, the ICPPED provides a definition of “victims of enforced disappearance”, stipulating that it refers to the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance.⁶⁹ The approach of considering victims of enforced disappearance even the family members of the disappeared persons constitutes a novelty among international instruments. The latter have the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person and to obtain reparation and prompt, fair and adequate compensation.⁷⁰ In this respect, it is important to underline that the victim’s right to compensation is interpreted broadly by the ICPPED, stating that the right to obtain reparation covers *material and moral damages* and, where appropriate, *other forms of reparation*, such as: restitution; rehabilitation; satisfaction, including restoration of dignity and reputation; guarantees of non-repetition.⁷¹

- *The Committee on Enforced Disappearances*

In its second part, the ICPPED establishes *The Committee on Enforced Disappearances* (see above for a more detailed review) to carry out the functions provided for under this Convention. This fact makes an important difference between the Declaration on the Protection of All Persons from Enforced Disappearance and the above convention, as the former does not provide a monitoring body for its application. For a more detailed review of the functions and membership of the Committee, see Section I(b)(ii) of this study.

68 ICPPED, Article 6.
69 ICPPED, Article 24.
70 *Ibid.*
71 *Ibid.*

II. National Context on “missing people” and “victims of enforced disappearance”

e. Provisions of the Constitution of the Republic of Albania on missing persons and enforced disappearance

The Constitution of the Republic of Albania (CRoA)⁷² is the highest fundamental law in the hierarchy of norms in the Republic of Albania. In the context of this study, it is important to note that the Constitution was drafted, adopted and came into effect after the fall of the Communist regime in Albania. The Constitution does not explicitly provide for the terms “enforced disappearance” or “missing person”. In fact, the only Albanian law that provides for a definition of the term “missing person” is Law no. 45, dated 30.04.2015, “On the right to information on the former State Security documents of the People’s Socialist Republic of Albania”⁷³, which stipulates that “A *missing person*, according to the scope of this law, is a person who is arrested, detained, abducted or deprived of liberty in any other form by agents of the state or other persons or group of persons acting upon the state authorization, support and approval followed by the non-acceptance of the deprivation of liberty or by concealment of the fate or whereabouts of the missing person, by denying to this person protection in compliance with the law.”⁷⁴

However, given the **principles** put forth in the Constitution, it is evident that enforced disappearance is unacceptable and intolerable in Albania at the level of constitutional principles. From the very Preamble, the Constitution states on “*the guarantee of fundamental human rights and freedoms, with a spirit of religious tolerance and coexistence, with a pledge to protect human dignity and personhood, as well as for the prosperity of the whole nation, for peace, well-being, culture, and social solidarity ... with a deep conviction that justice, peace, harmony and co-operation between nations are among the highest values of humanity.*”

In reference to this view, the Constitution provides in **Part One (Fundamental Principles)** that: “the ..., *dignity of the individual, human rights and freedoms, social justice, ... are the basis of this state, which has the duty of respecting and protecting them.*”⁷⁵ This article establishes the **positive obligation** of the state to protect the individual’s dignity and human rights. An action (such as enforced disappearance) that violates the right to life, the prohibition of torture, the right to liberty and security, the right to fair trial, etc., is automatically considered unconstitutional in reference mainly to its Article 3.

Part two of the Constitution is fully dedicated to the respect of fundamental human rights

72 Law No. 8417, dated 22.11.1998, “Constitution of the Republic of Albania”.

73 This law is further analysed in detail below.

74 Article 1(8) of Law “On the right to information on the documents of former State Security of the People’s Socialist Republic of Albania”.

75 Article 3 of the Constitution of the Republic of Albania.

and freedoms. Again, this part sanctions not only the negative obligation of respecting human rights and freedoms but also the positive obligation of protecting them in case of any violation. Article 15(2) of the Constitution stipulates that the bodies of public power, in fulfilment of their duties, shall **respect** the fundamental human rights and freedoms, as well as to **contribute to their realization**. The Constitution dedicates a special article to the protection of the right to life. Article 21 stipulates that:

“The life of a person is protected by law.”

In addition, the Constitution sanctions in Article 25 the right on prohibition of torture:

“No one may be subjected to torture, cruel, inhuman or degrading punishment or treatment.”

The Constitution pays special attention to the right to liberty and security. Article 27 stipulates that:

1. *No one may be deprived of liberty, except in the cases and according to the procedures provided for by law.*
2. *Freedom of person may not be limited, except in the following cases:*
 - a) *when punished with imprisonment by a competent court;*
 - b) *for failure to comply with the lawful orders of the court or with an obligation set by law;*
 - c) *when there is reasonable doubt that he/she has committed a criminal offense or to prevent the commission by him/her of a criminal offense or his/her escape following its commission;*
 - ç) *for the supervision of a minor for purposes of education or for escorting him to a competent organ;*
 - d) *when the person is the carrier of a contagious disease, mentally incompetent or dangerous to society;*
 - dh) *for illegal entry at state borders or in cases of deportation or extradition.*
3. *No one may be deprived of liberty just because of not being able to fulfil a contractual obligation*

The Constitution and the ECHR seem to follow the same line on the guarantees that should be provided for the protection of the right to liberty and security.⁷⁶ This is a comprehensive article that addresses different situations in protecting human rights, but it is particularly important as it supports the victims of enforced disappearance and prevents the recurrence of such violations in the future.

f. Albania’s ratified international agreements on missing persons

⁷⁶ See subchapter 1(d) (ii) herein for more information on the ECHR provisions on the right to liberty and security.

and enforced disappearance.

International agreements ratified by the Republic of Albania play a crucial role in the Albanian legal framework as the CRoA, Article 116, ranks them right below the Constitution and above any law or bylaw. Similarly, the Constitution itself guarantees that the Republic of Albania applies international law that is binding upon it.⁷⁷ Concerning the enforced disappearance of persons during the Communist era, Albania still needs new laws and bylaws to fully address the issues caused by almost 50 years of violations. For this reason, especially at this moment, it is essential that the victims of enforced disappearance during the Communist era (or their descendants) have the possibility to rely upon related international agreements signed by Albania.

The obligations arising from international agreements with Albania as a signatory have a major impact on addressing issues related to the enforced disappearance of persons. Albania has signed and ratified several important international agreements in the framework of addressing enforced disappearance of persons-related issues, such as the Universal Declaration of Human Rights, the European Convention on Human Rights, the Cooperation Agreement between the Council of Ministers of the Republic of Albania and the International Commission of Missing Persons, the International Convention for the Protection of All Persons from Enforced Disappearance of the United Nations, etc.

i. The role of the ECHR in the Albanian domestic law on enforced disappearance

Among the international agreements ratified by the Republic of Albania, it is important to distinguish the European Convention of Human Rights (ECHR), to which the Constitution of the Republic of Albania, in its Article 17, attributes a special and superior status in comparison to other international agreements. Paragraph 2 of this Article provides that the limitations of the constitutional rights and freedoms may not infringe the essence of the rights and freedoms and, in no case, may exceed the limitations provided for in the European Convention on Human Rights. Thus, in reference to the **limitations of the constitutional rights, the ECHR stands on top of the hierarchy of sources of law, along with the Constitution.**

As previously stated, the ECHR does not address enforced disappearance of persons in one single dedicated article. However, the ECtHR interpretations on the ECHR articles violated by the enforced disappearance of persons are significantly important as they may be directly applied by the victims of enforced disappearance in Albania (or their descendants). Hence, in compliance with the ECHR provisions and the ECtHR interpretations, enforced disappearance of persons may violate such rights as the right

77 Article 5 of the Constitution of the Republic of Albania.

to life, the right on the prohibition of torture or inhuman or degrading treatment, the right to liberty, the right to an effective remedy, etc.⁷⁸

ii. The role of the International Convention for the Protection of All Persons from Enforced Disappearance in the Albanian domestic law

The study analyses the International Convention for the Protection of All Persons from Enforced Disappearance in the frame of the international standards related to the phenomenon of enforced disappearance. However, it is also necessary to address an analysis of the impact that this Convention has on the Albanian domestic law. Such a need arises especially in the circumstances when, due to the lack of exhaustive bylaws to address in practice issues of enforced disappearance from the Communist period in Albania, the victims or their family members may also directly refer to ratified international agreements in adherence to Article 116 of the Constitution.⁷⁹

Albania signed the International Convention for the Protection of All Persons from Enforced Disappearance on 6 February 2007 and ratified it on 8 November 2007.⁸⁰ In accordance with the provisions of this convention, Albania bears many obligations (summarized in paragraph I(d)(iii) of this study), among which, it is important to note Article 12. The latter sets down a series of guarantees which, in addition to serving the victims of enforced disappearance or their families to report directly to the Albanian authorities, do also constitute legal obligations for the competent authorities, such as the prosecution offices of the courts, to conduct the investigation of such an offence.

First, these institutions must examine the allegations of any individual who alleges that a person has been subjected to enforced disappearance. Investigations must be undertaken promptly and impartially. In addition, according to this convention, the competent institution, i.e., the prosecution office in this case, must take the appropriate steps, where necessary, to ensure that the complainant, witnesses, relatives of the disappeared person and their defence counsel, as well as persons participating in the investigation, are protected against all ill-treatment or intimidation as a consequence of the complaint or any evidence given.⁸¹ It is important to note that even if there has been no formal complaint lodged by the complainants, the competent authorities (i.e., the prosecution office in the case of Albania) shall undertake an investigation where

78 See chapter 1(d) (iii) herein for further information on the ECHR interpretations on the enforced disappearance of persons.

79 Article 116 of the Constitution of the Republic of Albania sets forth the ratified international agreements as part of the normative acts regulating the whole territory of the Republic of Albania, and the second ones in the hierarchy, following the Constitution.

80 Prior to the Convention's entry into force.

81 Article 12(1) of the Convention.

there are reasonable grounds for believing that a person may have been subjected to enforced disappearance. Such a position is significant enough to be considered by the prosecution office, which in this case must initiate an *ex officio* investigation. It also complies with the provisions of the Criminal Procedure Code (to be further analysed below), which provides that the Prosecutor, *inter alia*, “conducts himself every investigatory action he evaluates as necessary”.⁸²

On the other hand, in the framework of the investigative work progress, Albania, as a signatory of this convention, shall bear the obligation to ensure that the prosecution office has the necessary powers and resources to conduct investigations effectively in this area, including access to the location where enforced disappearance is believed to have happened.⁸³

iii. Co-operation agreement between the Council of Ministers of the Republic of Albania and the International Commission on Missing Persons

The law on the ratification of the agreement between the Council of Ministers of the Republic of Albania and the International Commission on Missing Persons (ICMP)⁸⁴ has already made this important agreement part of the Albanian domestic law. The agreement defines the co-operation between the Republic of Albania and ICMP to locate persons who went missing during the 1944-1991 period as well as in other circumstances for which the Council of Ministers may seek ICMP’s assistance. It also defines ICMP’s legal status and functions in Albania in accordance with the Vienna Convention.⁸⁵

First, the agreement pays special attention to the mutual desire for co-operation. It underlines the **desire to protect the rights of family members of missing persons**, in particular by ensuring that the whereabouts of the missing persons and the circumstances of their disappearance are investigated effectively; **reference to the human rights treaties** to which Albania is a party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms and the International Convention for the Protection of All Persons from Enforced Disappearance; **advancing of efforts** to locate persons who went missing during the communist period in Albania between 29 November 1944 and 2 July 1991, as well as in other circumstances for which the Council of Ministers may seek the assistance of the ICMP.

The agreement also concentrates on defining in detail the **responsibilities and competencies of the ICMP office in Albania**. It is worth noting the duties of ICMP:⁸⁶

82 Article 24(1) of the Criminal Procedure Code.

83 Article 12(3) of the Convention.

84 Law No. 83/2018, “On the ratification of the Co-operation Agreement between the Council of Ministers of the Republic of Albania and the International Commission on Missing Persons (ICMP)”.

85 For more information, please visit the ICMP official website at: <https://www.icmp.int/press-releases/icmp-and-government-of-albania-sign-cooperation-agreement/>.

86 Summary of Article 2 of the Agreement.

- Undertake efforts **to assist the Albanian authorities in drafting the list of missing persons and their families** by using the ICPM Online Inquiry Centre (OIC) and the Identification Data Management System (IDMS);
- Provide **technical assistance** regarding forensic archaeology and anthropology;
- Assure that the **families of the missing persons are informed regularly** on the progress made with locating and identifying the missing persons;
- **Provide access to the public on the information** related to the process of locating, recovering and identifying missing persons, in consultation with the Albanian authorities;
- **Collect ante-mortem (before death) data** on missing persons and reference genetic samples from their family members in line with the ICPM policies on data protection;
- **Conduct DNA tests of the post-mortem (after death) samples** submitted by the Albanian competent institution and compare matching with the DNA profiles obtained through the family reference samples in adherence to its Standard Operating Procedures.
- Communicate promptly the **results of findings** to the Ministry of Interior as the Albanian competent institution; etc.

The Agreement dedicates special importance to the responsibilities of the Albanian authorities, party to this Agreement, namely: ⁸⁷

- **Provide any machineries, tools and man-power** needed to excavate the gravesites and to conduct examinations;
- Facilitate **safety in the gravesites** prior to and post excavations;
- Adopt measures to ensure that the **recovered remains shall be stored appropriately**;
- Take **post-mortem (after death) samples** in adherence to the ICPM's Standard Operating Procedures and submit them to the ICMP laboratories;
- **Observe the Albanian legislation** in the investigation of missing persons, including the excavation of human remains and the identification of located persons;
- Conduct **final identifications** by using the ICMP DNA reports and issue **death certificates**;
- **Inform the families** of the missing persons on the identifications;
- Take measures to record the relevant data in the **appropriate registers**; etc.

87 Summary of Article 3 of the Agreement.

In addition, the agreement states the ICMP's status, privileges and immunity in Albania. Chapter 3 of the Agreement lays out the data on the ICMP office in Albania, legal status, funds, managers, staff, experts, immunities and privileges, etc.

In the context of this special role in Albania, in line with the above principles, ICMP published in March 2021 a report on "Albania, missing persons from the communist era – a needs assessment".⁸⁸ In addition to the descriptive part of the legislation and the relevant executive bodies, the ICMP has also brought out the issues encountered. As a result, it has reported that *"There is no evidence that the Task Force⁸⁹ has ever requested a coordinated investigation with District Prosecution Offices, which are the solely competent ones to conduct an investigation and order the exhumation of gravesites. The competencies of the Task Force were transferred to the Institute for the Integration of the Formerly Politically Persecuted in 2014, and the Task Force ceased its operations"*⁹⁰ Despite the existence of basic legislation, the increasing level of co-operation between public institutions or other organizations is essential in the improvement of results. The same conclusion was further reached in the report, which states that *"The ISCC does not keep separate data on missing persons and has no official cooperation on the issue of missing persons with the IIPPP, which is located within the same premises."*⁹¹

Similarly, the report also focuses on the limited financial sources of several competent authorities for the information and rehabilitation of the families of enforced disappearance victims. The report states that, at the Institute for the Integration and Rehabilitation of Formerly Politically Persecuted, *"the Section for Finding the Missing Persons from Communist Crimes lacks sufficient financial means to fulfil its original mandate to recover and identify human remains."*⁹²

Another issue reported is the lack of modernization of archived information. According to the report, all data is kept in hard copy, and equipment in the possession of the ISCC is out of date. The ISCC requested assistance in data digitization so that data can be made available to the public.⁹³

1. Criminal Code of the Republic of Albania on enforced disappearance

The Criminal Code of the Republic of Albania⁹⁴ addresses issues related to the enforced

88 For more information, please visit: <https://www.icmp.int/wp-content/uploads/2021/03/icmp-gr-eb-152-6-alb-W-doc-albania-missing-persons-from-the-communist-era-a-needs-assesment.pdf>.

89 This is the Task Force for the Recovery and Identification of Human Remains of the Communist Victims, established in 2010 by the Albanian authorities.

90 ICMP Report, "Albania, missing persons from the communist era – A needs assessment", 02.03.2021, page 7.

91 Ibid, page 9.

92 ICMP Report, "Albania, missing persons from the communist era – A needs assessment", 02.03.2021, page 9.

93 Ibid, page 9.

94 Law no. 7895, dated 27.01.1995, "Criminal Code of the Republic of Albania" (as amended).

disappearance, both directly and indirectly. First, in the framework of the general principles set out in the first part of this code, it is worth emphasizing, in view of this study, that this criminal legislation is in charge of protecting the individual's dignity, human rights and freedoms.⁹⁵ The code also highlights that one of the principles it is based on is that of humanism.⁹⁶

Further on, the Criminal Code addresses more specifically (inter alia) the crimes related to enforced disappearance. It classifies the latter as "Crimes against Humanity". Such a stance adheres to the provisions of the Statute of International Criminal Court (which was signed by Republic of Albania on 18.07.1998⁹⁷ and provides for the enforced disappearance as a crime against humanity by sanctioning the obligation of States to conduct effective investigations on disappeared persons) and Article 5 of the International Convention for the Protection of All Persons from Enforced Disappearance.⁹⁸

Based on the above, the Criminal Code of the Republic of Albania addresses enforced disappearance under the section of crimes against humanity and provides that:

*"Murder, enforced disappearance, extermination, enslaving, internment and expulsion and any other kind of human torture or violence committed according to a concrete premeditated plan or systematically, against a group of the civil population for political, ideological, racial, ethnical and religious motives, shall be punishable to not less than fifteen years of or life imprisonment."*⁹⁹

It also tackles exactly the criminal offense of **enforced disappearance** in a solely dedicated article which provides that:

*"Enforced disappearance through arrest, detention, abduction or any other form of deprivation of liberty of the person by public officials or persons acting upon their authorisation, support or approval, followed by the non-acceptance of the deprivation of liberty or by concealment of the fate or whereabouts of the person, by denying the assistance and necessary protection in compliance with the law, shall constitute criminal offence and it shall be punishable by imprisonment from seven to fifteen years."*¹⁰⁰

One of the most critical issues that remains under the focus of discussions related to the enforced disappearance provisions of the existing Criminal Code of the Republic of Albania, is the **timely effect** of this Code pertaining to disappearances during the Communist era. The Code became effective upon its adoption by the Assembly of the

95 Article 1/b of the Criminal Code.

96 Article 1/c of the Criminal Code.

97 For more information, please see the Statute of the International Criminal Court at: <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>

98 As discussed earlier in this study.

99 Article 74 of the Criminal Code.

100 Article 109/c, paragraph 1 of the Criminal Code.

Republic of Albania on 27.01.1995, i.e., many years after the fall of the communist system in Albania. The Code itself provides that no one shall be sentenced for an offence, which, according to the law at the time it was committed, did not constitute a criminal offence and may not be convicted of an offence which, under the law of the time it was committed, did not constitute a criminal offence.¹⁰¹ For this reason, to understand whether its provisions may apply even in the case of disappearances that occurred during the Communist era, it is essential to determine the extension in time of this criminal offence.

Referring to the United Nations Declaration for the Protection of All Persons from Enforced Disappearance, its Article 17(1) provides that acts constituting enforced disappearance shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared, and these facts remain unclarified. Subsequently, enforced disappearance is addressed as a **continuing** criminal offence which does not end with the loss of the victim's contacts with family members, but extends in time until the facts of the disappearance are clarified. Even when it may be concluded that the disappeared person was in fact subjected to an arbitrary execution, for example by locating human remains and identifying personal belongings, as long as the whereabouts of that person are not located, or the remains have not been found and identified, the situation is that of an enforced disappearance.¹⁰²

In addition, albeit criminal offences are subject to the statute of limitation after some period from the commission of the criminal offence,¹⁰³ the Criminal Code dedicates an article to the fact that **crimes against humanity cannot be subject to the statute of limitations**. As mentioned at the onset of this subchapter, enforced disappearance is a crime that falls under the category of crimes against humanity. Therefore, Article 66 of the Criminal Code concerning the statute of limitations for this criminal offence does not apply in this case.

2. Criminal Procedure Code of the Republic of Albania concerning enforced disappearance

The Criminal Procedure Code of the Republic of Albania¹⁰⁴ does not dedicate special procedures to the criminal offence of enforced disappearance, but lays down the main principles and rules that must guide (inter alia) the investigations into this criminal offence. Hence, in the context of the general provisions, this Code underlines the fact that the criminal procedure law must ensure a fair, equal and due legal process, **protect the individual rights and freedoms and legitimate interests of citizens,**

101 Article 3(1) of the Criminal Code.

102 Guide on the rights of family members of the persons disappeared during the communist period, Authority for Information on Former State Security Files, page 15.

103 See Article 66 of the Criminal Code for more information on the statute of limitations depending on the social risk posed by the criminal offence.

104 Article no. 7905, dated 21.3.1995, "Criminal Procedure Code of the Republic of Albania", as amended.

and contribute to strengthening the legal order and implementing the Constitution and the laws of the state.¹⁰⁵ In the same section, the Criminal Procedure Code tackles the treatment of victims of a criminal offence, underlining that the public bodies must guarantee the human dignity of the victims of criminal offences and protect them against revictimization in the exercise of their rights provided for by this Code.¹⁰⁶

Analysis of this Code is particularly important in the context of procedures followed by the competent bodies indicated in this Code for the investigations into the cases of enforced disappearance during the communist era. First, this Code attributes a significant role to the **prosecutor in initiating investigations**. The prosecutor conducts criminal prosecution and brings charges in court on behalf of the state, runs and checks the preliminary investigations and the judicial police activity, carries out any investigation step he/she deems necessary, takes measures for the execution of criminal decisions and oversees their execution, and performs the functions of judicial cooperation with foreign authorities according to the rules prescribed in the Criminal Procedure Code.¹⁰⁷ Besides, **judicial police** plays an important role in this context, because it must even ex officio obtain information on criminal offences, prevent the criminal offence from triggering further implications, conduct investigations and collect all that serves the compliance with the criminal law. Similarly, the **courts** have a crucial role to play in rendering justice to the victims of enforced disappearance and/or their relatives. The court decides whether a defendant is guilty of the criminal offence of enforced disappearance based on the evidence and information presented to it by the prosecution office.

3. Law “On compensation of the former Politically Convicted by the Communist Regime”

The law “On compensation of the former Politically Convicted by the Communist Regime”¹⁰⁸ focuses on the rehabilitation of victims (and their family members) of unfair political convictions rendered during Communism in Albania. This law stands in line with the ECHR approach, particularly the provisions of Article 13 of the Convention on the right to effective remedy. This law seeks to ensure that the Albanian state gives **financial compensation** to the still-living former politically convicted by the Communist regime, to the family members of executed victims and persons interned or deported to camps, as a commitment of the democratic state to punish the crimes of the totalitarian Communist regime and guarantee a better life for them.¹⁰⁹ In the case of reparation

105 Article 1 of the Criminal Procedure Code.

106 Article 9(1) of the Criminal Procedure Code.

107 Article 24(1) of the Criminal Procedure Code.

108 Law no. 9831, dated 12.11.2007, as amended.

109 Article 2 of the Law “On compensation of the former politically convicted by the communist regime”.

for the family members of victims, the compensation is considered a non-pecuniary personal right.¹¹⁰

Eligibility requirements for the compensation are listed in Article 4 of this law. It provides that the convicted person (or his/her family members) must meet the following requirements in order to be eligible for compensation:

- be convicted to death sentence, deprivation of liberty, internment or deportation or be isolated in the investigative office or a psychiatric medical institution, because of a final court decision, administrative act or order of the investigative office, rendered during the period from 30.11.1944 to 1.10.1991;
- deprivation of liberty, isolation in the investigative office or a psychiatric medical institution must be because of a final court decision or order of the investigative office, as laid down in Article 5 of this law;
- served the unfair criminal sentence fully or partially;
- gained innocence under Law no. 7514, dated 30.9.1991, "On innocence, amnesty and rehabilitation of the former politically convicted and persecuted", as amended;
- according to the final court decision, he/she must not have committed any acts that are harmful or life-threatening to other citizens during the period from 30.11.1944 until 01.10.1991.

In light of the above, this law is applicable not only to victims of enforced disappearance during Communism, but to **all the politically convicted**. In most cases, the victims of enforced disappearance are part of a larger group of the politically convicted. They were usually persons convicted to imprisonment, internment or deportation for political reasons. On the other hand, families of victims of enforced disappearance - against whom there is no decision for death sentence, deprivation of liberty, internment, etc., - have to cope with additional difficulties in proving the disappearance based on documentation, leading to impediments in the exercise of their right to compensation or, in the worst case, they remain out of the remit of this law. This problem has been recognised and reported even by national and international bodies. According to the "Guide on the rights of family members of the persons disappeared during the communist period", it is reported that compensation is limited only to persons who possess documents proving their status (or their family members) as politically persecuted persons. This leaves many families of victims of enforced disappearance outside the scope of the law.¹¹¹

110 Articles 6 and 7 of the Law "On compensation of the former politically convicted by the communist regime".

111 Guide on the rights of family members of the persons disappeared during the Communist period, Authority for Information on Former State Security Files, page 18.

An important provision of this law is the definition of the “family circle” legitimated to demand compensation. Article 8 sanctions as follows:

*“For the purpose of this law, family members shall mean – regardless of other legal regulations – **ascendants, descendants, spouse, siblings of the former politically convicted person**, as well as **child/children of the siblings**. First-grade family members under the Civil Code exclude the other family members”.*

According to this law, financial compensation **does not preclude any other simultaneous or subsequent legal or administrative measures** in favour of the politically convicted and persecuted, which seek to reinstate justice and social dignity of this category or favourable conditions for their reintegration into society.¹¹² This stands in line with the provisions of Article 13 (ECHR) for an effective remedy and with the ECtHR interpretation of this Article in the context of enforced disappearance. In its judgements, the ECtHR has been clear in mentioning that, in addition to the payment of compensation, where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible, and including effective access for the relatives to the investigatory procedure, must be guaranteed.

4. Law “On the right to information on documents of the former State Security of the People’s Socialist Republic of Albania”

The law “On the right to information on documents of the former State Security of the People’s Socialist Republic of Albania”¹¹³ defines the rules and procedures to enable any interested person/entity to exercise their right to information on the **documents of the former State Security**. These documents belong to the period from 29 November 1994 until 2 July 1991, when the National Intelligence Service was established, and are available in the archive network of the Republic of Albania, and involve political criminal offences¹¹⁴ regardless of whether the competent Communist authorities have rendered or not a conviction sentence.¹¹⁵ This law addresses a wide scope of issues not limited only to the enforced disappearance of persons during that period. It is important for this study, because for the first time it provided the definition of “missing person” in the Albanian legislation:

112 Article 2 of the Law “On compensation of the former politically convicted by the communist regime”.

113 Law no. 45, dated 30.4.2015, “On the right to information on documents of the former State Security of the People’s Socialist Republic of Albania”, see link. <https://qbz.gov.al/share/hOmphM9RTvidcsl3OuCluw>

114 Referring to the definition in the Law no. 7514, dated 30.9.1991, “On innocence, amnesty and rehabilitation of the former politically convicted and persecuted”, as amended.

115 Article 2 of the Law “On the right to information on documents of former State Security of the People’s Socialist Republic of Albania”.

“A missing person is a person arrested, imprisoned, abducted or deprived of his/her liberty in any other form by State agents or by other persons or groups of persons, who have acted with the authorization, support or approval of the State, followed by denial of acceptance of deprivation of liberty or concealment of the fate of the missing person or the place where he/she is located, detaching him/her from the protection of the law.”¹¹⁶

Additionally, this law guarantees the right to information, transparency, and access to documents to discover the fate of missing persons during the Communist era in Albania.

Rules and procedures defined in this law provide for: the collection, administration, processing and use of documents of former State Security at the Ministry of Internal Affairs of the People’s Socialist Republic of Albania; the organization and functioning of the Authority for Information on Former State Security Files (AIDSSH); provision of information requested by state institutions and non-state entities for the purpose of this law; and obligations of public authorities and archives to provide access to documents in their possession.¹¹⁷ The Law pays particular importance to regulating the organization and functioning of the AIDSSH, but this will be elaborated in a dedicated section of this study.

According to this law, **any person** has the right to request and obtain information from AIDSSH on documents that contain information about him/her. The Authority responds within a reasonable deadline, depending on the complexity and the difficulty of providing the information in each case.¹¹⁸ The detailed rules on these deadlines are set out in the regulation on the organization and functioning of the Authority. So, the complete procedure for the examination and the Authority’s decision on a request presented by constitutional bodies and public authorities lasts 30 (thirty) days. For the examination of individual requests, the complete procedure, including the decision, lasts up to 6 (six) months. Requests from researchers/media must be processed and decided upon within a deadline of 6 (six) months.¹¹⁹

Guaranteeing the right to information is one of the basic principles in the implementation of this law and is prescribed in Article 20. It relates to the applicant’s right to have access to documents provided that he/she is in the capacity of an affected person, third party, collaborator or favoured person of the former State Security, or a representative by power-of-attorney thereto. This right includes the access and observation of original documents or copies of them. However, the Authority may fully or partially

116 Article 3(8) of the Law “On the right to information on documents of former State Security of the People’s Socialist Republic of Albania”.

117 Article 1 of the Law “On the right to information on documents of former State Security of the People’s Socialist Republic of Albania”.

118 Article 5 of the Law “On the right to information on documents of former State Security of the People’s Socialist Republic of Albania”.

119 Article 38 of the Regulation on the organization and functioning of AIDSSH.

limit the right to information where the information poses a real threat to national security. In case the documents or their copies contain personal information on other persons affected – besides the applicant – or third parties, these original documents may be accessed only with the consent of these affected persons or third parties; it is impossible to share information on the affected or third parties, or it is possible only by unjustified attempts and there is no reason to assume that the other affected persons or third parties have a legitimate interest in retaining this secret information.

The Law addresses **specifically the right to information for the family members of the dead or missing persons**, in Articles 22 and 22/1. The right to information on the existence of the former State Security documents on the dead persons or those reported missing, and the access to documents is recognized also to their relatives by this priority order:

- a. Spouses;
- b. Children;
- c. Nephews/nieces, when the persons mentioned in letters 'a' and 'b' have passed away or are reported missing.
- ç. Parents, when persons mentioned in letters 'a', 'b' and 'c' have passed away or are reported missing;
- d. Siblings, when persons mentioned in letters 'a', 'b', 'c' and 'ç' have passed away or are reported missing;
- dh. Children of siblings, when persons of the upper line have passed away or are reported missing.

Family relatives are provided information upon request and after proving their kinship. The aim is to preserve the rights and personality of the dead and missing persons, particularly by shedding light on the allegations of collaboration with the former State Security and on the fate of dead and missing persons.¹²⁰

The law pays importance also to the **cooperation among state institutions to recover the remains of the missing or executed persons** and take **measures to preserve the gravesites**. The Authority cooperates with central and local state institutions in the process of identification and recovery of persons disappeared or executed during communism, and in taking measures to adequately protect and preserve the current or potential location of gravesites.¹²¹

120 Article 22 of the Law "On the right to information on documents of former State Security of the People's Socialist Republic of Albania".

121 Article 22(1) of the Law "On the right to information on documents of former State Security of the People's Socialist Republic of Albania".

1. Albanian institutions that play a role in addressing enforced disappearance during the Communist era in Albania

a. Institutions with general powers

Forced disappearance is a criminal offence considered to be in continuous commission until the missing person is fully accounted for. Consequently, all public authorities that address criminal offences in general play a crucial role in resolving issues of enforced disappearance. The Law no. 83/2018, "On the ratification of the Cooperation Agreement between the Council of Ministers of the Republic of Albania and the International Commission on Missing Persons (ICMP)"¹²² provides that 'other institutions' for the purpose of implementation of the Agreement shall mean:

- **National, central, local** and other authorities under the relevant applicable legislation in the Republic of Albania;
- General Directorate of Archives;
- General Prosecution Office;
- Institute of Legal Medicine;
- Ministry of Health and Social Protection;
- Ministry of Justice, etc.¹²³

i. Prosecution Offices

In light of the above, a particular role is played by the **prosecution offices**, which, in line with the Criminal Procedure Code of the Republic of Albania, conduct criminal prosecution and bring charges in court on behalf of the state, run and check the preliminary investigations and the judicial police activity, carry out themselves any investigation step deemed necessary by them, etc. Besides courts, even the prosecution offices may order exhumation, in which case they notify one family member of the deceased to participate in the process, unless such participation may harm the purpose of the examination.¹²⁴ A prosecutor may request expert reports from the Institute of Legal Medicine.¹²⁵ Also, upon the consent of the defendant or other persons, the prosecutor may request obtainment of biological samples to determine the DNA profile; the same

122 For more information on the Agreement between the Council of Ministers of the Republic of Albania and the International Commission on Missing Persons (ICMP), please read the chapter with the same title in this study.

123 Article 2 of the Law no. 83/2018, "On the ratification of the Cooperation Agreement between the Council of Ministers and the International Commission on Missing Persons (ICMP)".

124 Article 200 of the Criminal Procedure Code.

125 Article 1(9) of the Decision No. 680, dated 02.09.2020, "On the organization and functioning of the Forensic Institute".

provision applies also to medical procedures.¹²⁶

However, it is worth noting that the engagement of the prosecution office in finding the remains of victims of enforced disappearance has not always enjoyed special attention. The 2021 ICMP Report draws attention on the fact that *“to date only one excavation has been ordered by the responsible prosecutor’s office. The Saranda District Prosecutor ordered an exhumation based on information provided by a family member related to the former prison camp in the village of Borsh in the District of Saranda. The human remains of one individual, believed to be one of the missing from the communist era, were exhumed in October 2019”*.¹²⁷ According to the same report, the lack of affirmative actions on the part of prosecution offices in this matter relates to reasons such as: reduced number of prosecutors due to dismissals from the vetting process, lack of financial resources to cover costs arising from engaging technical experts from the Institute of Legal Medicine,¹²⁸ etc.

ii. Courts

Courts are particularly important bodies in this regard as they play a key role in ruling about the guilt or not of the suspects of these criminal offences;¹²⁹ in ordering the exhumation of the human remains;¹³⁰ in requesting expert reports from the Institute of Legal Medicine;¹³¹ etc. Even the non-criminal courts are involved in the process of ensuring the rights of victims of enforced disappearance and their family members. The special legislation on the right to access the documents of the former State Security provides in several articles the possibility of challenging the Authority's decisions with the administrative court.¹³²

iii. The Institute of Legal Medicine

The Institute of Legal Medicine (ILM) is a body of particular interest in this study. The Decision no. 680, dated 02.09.2020, *“On the organization and functioning of the Institute of Legal Medicine”* defines its powers. It is this public institution that carries out the expert reports requested by the courts and prosecution office. The ILM has an important role in the identification of the remains of missing persons, because it is entitled to take

126 Article 200/a of the Criminal Procedure Code.

127 ICMP report, *“Albania, missing persons from the communist area: A Needs Assessment”*, 02.03.2021, page 12.

128 For more information, see ICMP report, *“Albania, missing persons from the communist area: A Needs Assessment”*, 02.03.2021, page 12.

129 Guide on the rights of family members of the persons disappeared during the communist period, Authority for Information on Former State Security Files, page 7.

130 Article 200 of the Criminal Procedure Code.

131 Article 1(9) of the Decision no. 680, dated 02.09.2020, *“On the organization and functioning of the Institute of Legal Medicine”*.

132 For example, Articles 5, 40 and 41 of the Law *“On the right to information on documents of former State Security of the People’s Socialist Republic of Albania”*.

samples and conduct forensics in order to draw an accurate conclusion of the time, circumstances of the murder of the victim, and other information, such as age, gender, body size and the identity of the victim in the event of a DNA analysis.¹³³ However, the above decision points to the principles and does not give details on technical issues as to how the ILM must implement its duties. Regulation on the organization and functioning of the Institute of Legal Medicine¹³⁴ details a bit more the technical specifications of the ILM work related to the exhumation procedure, by defining a 3-week deadline for the completion of the forensic examination of the exhumed corpses or bone remains.¹³⁵ However, even this Regulation does not provide specific details on how to handle cases where human remains thought to belong to victims of forced disappearance are found. According to the ICMP 2021 report, the ILM does not employ forensic archaeologists that are required for the excavation and recovery of human remains from mass graves,¹³⁶ and this might potentially harm the data and information that could be obtained *in situ* by these experts. The same report underlines in its conclusions that the ILM lacks sufficient facilities for the storage and examination of human remains recovered through investigations into missing persons cases.¹³⁷

b. Institutions with special powers

i. The Authority for Information on Former State Security Files

The Authority for Information on Former State Security Files (AIDSSH) is an independent public legal body responsible for the implementation of the Law no. 45, dated 30.4.2015, “On the right to information on documents of former State Security of the People’s Socialist Republic of Albania”. AIDSSH is a collegial body consisting of five members elected by the Parliament. Its duties include collection, administration, processing and using documents of the former State Security and giving information related to them. The AIDSSH has its seat in Tirana and is financed by the state budget and other lawful sources. It is fully independent in decision-making and in rolling out its functions.¹³⁸ By the recent amendments to the organic law “On the right to information on documents

133 Guide on the rights of family members of the persons disappeared during the communist period, Authority for Information on Former State Security Files, page 8.

134 Approved by Order no. 6745, dated 04.11.2003, of the Minister of Justice; amendments approved by Order no. 7194/1, dated 24.01.2006, of the Minister of Justice.

135 Article 59 of the Regulation on the organization and functioning of the Institute of Legal Medicine.
136 ICMP report, “Albania, missing persons from the communist area: A Needs Assessment”, 02.03.2021, page 11.

137 *Ibis*, page 15.

138 Summarized from Articles 1 and 2 of the Law no. 45, dated 30.4.2015, “On the right to information on documents of former State Security of the People’s Socialist Republic of Albania”.

of the former State Security in the PSRA”, the AIDSSH upgraded its role to that of coordinating all other state institutions for the location, identification and recovery of the remains of missing persons from the Communist era.¹³⁹

This Authority has **important responsibilities** closely related to ensuring the right to information and collection of evidence for the family members of victims of enforced disappearance. These responsibilities include: collecting documents from the former State Security for the purpose of and according to procedures laid down in the law; evaluating, listing, identifying, preserving and administering the documents in line with the rules and principles of the applicable legislation on archives; co-operating and coordinating efforts with the public authorities and archive bodies for the purpose of the implementation of the law; **giving information and sending notices** on the documents and ensuring their examination and hand-over to applicants; supporting scientific research during the history revision of the activity of the former State Security by **guaranteeing the examination of documents** and handing over copies of documents; **informing individuals**, constitutional institutions, public authorities and other interested stakeholders, in compliance with the law.¹⁴⁰

The law pays particular importance to the definition of rules governing the collection, return, archiving, etc. of documents of the former State Security. However, for the purposes of this study, the role of this Authority will be analysed under the lens of the **right of entities to information and access to documents**. To this matter is dedicated a particular and detailed chapter in the law. The Authority guarantees the right to information for the interested stakeholders. The applicant is granted the right to access documents when having any of the following qualities:

- affected person;
- third person;
- collaborator or favoured person by the former State Security or a representative by power-of-attorney thereof.¹⁴¹

In order to exert this right, the interested persons submit a **written request and ID** to the Authority to have information on the documents of the former State Security. Where the applicant believes that the application must be handled with priority, he must justify this need and urgency in the application. The Authority recognises urgency where the requested information is needed for the purposes of rehabilitation, compensation, prevention of privacy violation or moral harm, or proving the fact that the person has not been a collaborator of the former State Security. The Authority gives written

139 Guide on the rights of family members of the persons disappeared during the communist period, Authority for Information on Former State Security Files, page 8.

140 Article 10 of the Law no. 45, dated 30.4.2015, “On the right to information on documents of former State Security of the People’s Socialist Republic of Albania”.

141 Article 20 of the Law no. 45, dated 30.4.2015, “On the right to information on documents of former State Security of the People’s Socialist Republic of Albania.”

information, unless another form is required.¹⁴²

Articles 22 and 22/1 of this law specifically refer to the right of family members to information on their dead or disappeared family members. The right to information on the existence of former State Security documents on the dead persons or those reported missing, and the access to documents is also recognized to their relatives by this priority order:

- e. Spouses;
- f. Children;
- g. Nephews/nieces, when the persons mentioned in letters “a” and “b” have passed away or are reported missing.
- ç. Parents, when persons mentioned in letters “a”, “b” and “c” have passed away or are reported missing;
- h. Siblings, when persons mentioned in letters “a”, “b”, “c” and “ç” have passed away or are reported missing;
- dh. Children of siblings, when persons of the upper line have passed away or are reported missing.¹⁴³

Family relatives are provided information upon request and after proving their kinship. The aim is to preserve the rights and personality of the dead and missing persons, particularly by shedding light on the allegations of collaboration with the former State Security and on the fate of dead and missing persons.

In the context of cooperation for the identification and recovery of the remains of missing and executed persons, and measures for the preservation of gravesites, AIDSSH cooperates with the central and local state institutions in the process of identification and recovery of the people who disappeared and were executed during communism, and takes measures to protect and properly preserve the current or future sites identified as gravesites.¹⁴⁴ More detailed rules on this cooperation are laid down in the bilateral or multilateral agreements with institutions, and further details of these principles are set out in a decision of the Council of Ministers. However, little progress has been marked in this direction. Secondary legislation in this regard has been incomplete and marred with ambiguities over the application in practice of the principles in Article 22/1. Even the ICMP concludes in its 2021 Report for Albania that *“in order for the Authority to fulfil its role in line with amendments to Law 45/2015, the Office of the Prime Minister should draft without delay the necessary secondary legislation for the effective functioning of the*

142 Article 19 of the Law no. 45, dated 30.4.2015, “On the right to information on documents of former State Security of the People’s Socialist Republic of Albania.”

143 Article 22 of the Law no. 45, dated 30.4.2015, “On the right to information on documents of former State Security of the People’s Socialist Republic of Albania.”

144 Article 22/1 of the Law no. 45, dated 30.4.2015, “On the right to information on documents of former State Security of the People’s Socialist Republic of Albania.”

new department on missing persons within the Authority."¹⁴⁵

However, the law provides for limitations to the right to access these documents. For example, the use of documents containing personal data is allowed by the Authority only for the purposes provided in the law. Some purposes relevant to the scope of this study include:

- rehabilitation of the affected, dead or missing persons;
- reparations in compliance with the applicable legislation;
- protection of the right to privacy and family life;
- clarification of the fate of missing and disappeared persons and deaths in unclear circumstances, etc.¹⁴⁶

If the Authority refuses to respond to a request for information, the applicant has the right to challenge the refusal by filing a complaint with the competent administrative court.¹⁴⁷

ii. The Institute for the Integration of Persecuted Persons

The Institute for the Integration of Persecuted Persons (IIP) is a state institution under the Ministry responsible for social welfare¹⁴⁸ and seeks to take all measures and follow all cases involving the integration in society of the politically persecuted by the communist regime. The IPP organization and functioning is regulated by the Law "On the Institute for the Integration of the Persecuted".¹⁴⁹ It stipulates that the IIP shall process and handle fundamental cases involving persecuted persons, in cooperation with the associations of persecuted by concluding agreements for this purpose.¹⁵⁰

The framework law underlying the IPP activity is the Law "On the compensation of the former politically persecuted by the communist regime".¹⁵¹ As mentioned in the subchapter dedicated to this law, it applies to all the politically convicted and not only to the family members of the victims of enforced disappearance. Usually, the latter were persons convicted to imprisonment, internment or deportation on political grounds. On

145 ICMP report, "Albania, missing persons from the communist area: A Needs Assessment", 02.03.2021, page 16.

146 Article 28 of the Law no. 45, dated 30.4.2015, "On the right to information on documents of former State Security of the People's Socialist Republic of Albania."

147 Article 41 of the Law no. 45, dated 30.4.2015, "On the right to information on documents of former State Security of the People's Socialist Republic of Albania."

148 Currently the Ministry of Health and Social Protection.

149 Law no. 8246, dated 1.10.1997, "On the Institute for the Integration of Persecuted Persons".

150 Article 2 of the Law no. 8246, dated 1.10.1997, "On the Institute for the Integration of Persecuted Persons".

151 Elaborated in a dedicated subchapter in this study.

the other hand, the family members of the victims of enforced disappearance for whom there is no decision for capital punishment, deprivation of freedom, internment, etc., have to cope with more difficulties in proving the disappearance through documentation and in exercising their right to compensation.

The Institute for the Integration of the Persecuted Persons cooperates with the ICMP in finding the victims of enforced disappearances during the Communist regime in Albania.

iii. The Institute for Studies of Communist Crimes and Consequences

The Institute for Studies of Communist Crimes and Consequences is an independent public central institution and enjoys legal personality. It is established under the Law "On the Institute for Studies of Communist Crimes and Consequences in Albania".¹⁵² This law defines, inter alia, the set of requirements for the collection, administration and preservation in the Institute's archive of the documents and materials that testify of the communist crimes in Albania.¹⁵³

This Institute does not only deal with victims of enforced disappearance during the communist era in Albania, but it has some important duties that serve the victims of enforced disappearance and their family members. Some duties of this Institute that are relevant to the scope of this study include:

- Analyse, study and document the crimes committed by the communist dictatorship authorities and the consequences during and after the communism era;
- Identify secret or open secondary legislation prepared or approved by the state and constitutional institutions, authorities and bodies that served as a legal framework for the organization and functioning of the entire apparatus of the communist system;
- Study and evaluate the set-up, institutional organization and anti-democratic and criminal activity of the state authorities, particularly those of the former State Security;
- Study and evaluate the criminal activity of the Communist Party of Albania and, later on, the Party of Labour of Albania and all other organizations established in support of its ideology;
- Analyse the reasons and modalities of the installation of the communist regime, and documents that prove the involvement of Albanian and foreign persons who

152 Law no. 10 242, dated 25.2.2010, "On the Institute for Studies of Communist Crimes and Consequences in Albania".

153 Article 2 of the Law no. 10 242, dated 25.2.2010, "On the Institute for Studies of Communist Crimes and Consequences in Albania".

- supported the establishment of this regime, and those who resisted it;
- Collect information, documents and testimonies to shed light on the structures and mechanisms of the State Security, the forms of persecution and resistance against them, and any activity that led to the violation of the fundamental human rights and freedoms during the Communist regime;
 - Process in electronic format all the documentation on the crimes committed by the Communist regime in Albania;
 - Cooperate with research, cultural, educational and other institutions in sharing information and experience on the scope of work of the Institute; etc.

In the context of the above duties, this Institute has the potential to play a key role in providing documentation and information to the families of victims of enforced disappearance. Additionally, the cooperation of this Institute with the above bodies (special or not), whose goal is to discover the fate of the missing persons and compensate their family members, is important in making these procedures more effective.

III. Conclusions

In the international realm, the domestic legal framework addressing the issues related to the victims of enforced disappearance is complete and without gaps or contradictions to the various international instruments dedicated to them. In addition, the European Court of Human Rights has given a valuable contribution in the interpretation of the Articles 2, 3, 5 and 13 of the ECHR in the context of enforced disappearance, by defining key principles such as:

- Presumption of the violation of Article 2 of the ECHR in the event the victim has been last seen in life-threatening circumstances and the state is unable to provide information on the victim's whereabouts.
- Application of (violation of) Article 3 of the ECHR not only in protection of the direct victim of enforced disappearance, but also in protection of their family members;
- Application of Article 5 of the ECHR in any case of enforced disappearance;
- Application of Article 13 of the ECHR in the context of just satisfaction warranting not only pecuniary compensation, but also the obligation on the State Party to prove all the necessary information to the families of victims of enforced disappearance.

Further, the UN Convention for the Protection of All Persons from Enforced Disappearance, albeit not legally binding, provides a complete definition of “forced disappearance”. In addition, this Declaration defines three-fold liability on the states /authorities involved in acts of enforced disappearance; criminal liability, civil liability and international liability. In the spirit of the above Declaration, the International Convention for the Protection of All Persons from Enforced Disappearance reflects the same principle and builds on the steps taken by the Declaration by being binding on its signatory parties. Both these instruments stipulate that enforced disappearance is a crime against humanity and there is an absolute prohibition against the commission of such a crime.

The ICMP stands out among the various international organizations that implement the international instruments, because its goal is to ensure cooperation between the governments and other stakeholders in finding the missing people from conflicts, human rights abuses, disasters, organized crime, irregular migration and other reasons.

In the domestic realm, Albania went through 45 years of Communist regime and needs a detailed, effective and swift regulation on discovering the fate of the victims of enforced disappearance as well as information and compensation for family members of victims, etc. An official definition of the term “enforced disappearance” was introduced late (considering the moment when Communism collapsed in Albania and the sad practice of enforced disappearances during Communism) in the Law no. 45, dated 30.4.2015, “On the right to information on the documents of the former State Security of the People's Socialist Republic of Albania”.

Albeit not explicitly providing for the terms “enforced disappearance” or “missing person”, the Constitution of the Republic of Albania sets out several principles, analysed in this paper, that condemn acts such as enforced disappearance. As a signatory state of the international conventions mentioned above, Albania has the obligation to respect their provisions. Besides, the Council of Ministers has also signed a cooperation agreement with the ICMP, by which Albania is bound to protect the interests of the families of victims of enforced disappearance. Furthermore, the agreement details the powers and cooperation of the ICMP office in Albania with the Albanian government. In the context of this agreement, the ICMP published a report in 2021, specifically a needs assessment for Albania in the context of persons disappeared during the Communism, in which the ICMP highlighted the main issues, such as the lack of cooperation among Albanian authorities in the exhumation, archiving, or coordinated investigation of the enforced disappearances during Communism, the limited financial resources of some authorities tasked with the information and rehabilitation of the families of victims of enforced disappearance, the lack of modernization of information archiving/filing, etc.

The Criminal Code of the Republic of Albania categorizes the “enforced disappearance” under the section of crimes against humanity. Although this Code came into force after the fall of communism, it is important to note that it qualifies ‘enforced disappearance’ as a continuous criminal offence – in compliance with the international convention – which does not end when the victim loses contacts with his/her family members, but extends in time until the circumstances of the disappearance are clarified.

For this reason, the current Criminal Code is applicable also to disappearances occurred during the communism era in Albania. On the other hand, the Criminal Procedure Code of the Republic of Albania entrusts mainly the prosecution office with the obligation to initiate investigations (including the crime of enforced disappearance), but it also gives an important role to the Judicial Police and Courts.

This study analysed several laws that play a crucial role in addressing the issue of victims of enforced disappearance and their family members. However, some of these laws encounter challenges and problems in practice. For example, the Law “On the compensation of the formerly politically convicted by the Communist regime” focuses on the rehabilitation of the victims (or their family members) of the unjust political sentences rendered during Communism in Albania. However, it poses additional limitations on the family members of the victims of enforced disappearance (not the political convicts in general), which have been reported by national and international organizations. So, reports indicate that compensation is limited only to persons who possess documents that prove their status (or their family members) as politically persecuted persons, leaving many families of these victims outside the scope of this law. The Law “On the right to information on documents of the former State Security of the People’s Socialist Republic of Albania” pays particular importance to the cooperation among state institutions in recovering the remains of disappeared and executed persons, as well as taking measures to preserve the gravesites. However, according to the ICMP 2021 report, such cooperation has not been at the required level.

In the end, this study probes into the main Albanian institutions that address the consequences of the enforced disappearance crime during the Communist era. Some issues noted or reported about these institutions may be summarized as follows: According to the ICMP 2021 Report, the engagement of the prosecution service in finding the remains of victims of enforced disappearance has not always enjoyed special attention; the General Rules of Procedure of the Institute of Legal Medicine do not provide for specific details on how to address cases of remains of persons believed to be victims of enforced disappearance; the Institute of Legal Medicine does not work with forensic archaeologists needed for the excavations and recovery of human remains from mass graves. In addition, the Authority for Information on Former State Security Files (AIDSSH) is a special body tasked with addressing issues of enforced disappearance during Communism in Albania, but it lacks secondary legislation that would allow for the effective operation of the newly established department on missing persons.

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Sokol STOJANI

Director of the Directorate of Institutional Coordination, Decriminalization Sector,
at the General Prosecutor's Office, Albania

“LEGAL AND PRACTICAL CHALLENGES AS WELL AS OPPORTUNITIES THAT THE ALBANIAN PROSECUTION SYSTEM HAS TO CONTRIBUTE TO THE ISSUE OF MISSING PERSONS DURING THE DICTATORSHIP”

Dear Mrs. Istrefi - Peci moderating this panel,

Dear ladies and gentlemen, part of this panel,

Dear participants,

I would like to extend a special greeting to Mr. Pala, as the representative of the OSCE Presence in Albania, who has taken care of organizing this conference, down to the last detail. This meeting is indeed a continuation of several other roundtables and forums. They deal with the treatment of cases of “missing persons” within the meaning of the 2006 United Nations International Convention for the Protection of All Persons from Enforced Disappearance¹, or the identification and recovery of all those persons, who were decimated or died in prisons during the communist period and whose burial sites are still unknown.

It has always been a pleasure as well as our due institutional responsibility to accept invitations to participate in such meetings, as we, likewise this panel, consider them as a good opportunity to discuss and exchange ideas, based on best practices, including international ones. We ultimately deem that they will be useful and will serve the productivity of the state institutions activity, but not limited to, in addressing these cases.

The identification and recovery of the remains of the communist period victims should be regarded as a noble and highly important mission for the Albanian society and government. Although it has been more than 30 years since the dictatorship collapsed, they should serve as evidence or as a historical memory, not only to acquaint other generations with the consequences that emerge from ignoring or disrespecting fundamental human rights and freedoms, but also to understand how important it is to preserve and safeguard personal rights and freedoms in a democratic rule of law system.

This process is quite a bit complex, as it is characterized by two aspects, the one related to the formal one and the one to human sensitivity. Therefore, cases should be handled with maximum professional care, as well as in the simplest and clearest way, to be

¹ Ratified by the Assembly of Albania through law no. 9802, dated 13.9.2007.

understandable to interested persons. Moreover, legal issues and challenges must be addressed in order to ensure objectivity, legality and the most effective solutions.

Thus, following the collapse of the communist dictatorship in Eastern European countries after the 1990s, our Balkan region was involved in wars between republics and ethnicities during the dissolution of the former Yugoslavia. In these wars, state agents, other persons or groups of persons, who acted upon authorization, support or approval of Serbian state structures, forcibly took many people in Bosnia and Herzegovina, Kosovo², and elsewhere, out of their homes, workplaces, on the streets, etc. These people were killed and buried in mass graves, followed by non-acceptance of criminal disappearance, while the whereabouts of these persons were denied.

Following Resolution 47/133, dated 18 December 1992, adopted by the United Nations General Assembly in 2006, in Paris, the United Nations International Convention for the Protection of All Persons from Enforced Disappearance was drafted and signed by state parties.

As an obligation arising upon signing this Convention³, in 2013, the Albanian government introduced a new punitive legal provision into its domestic law. Specifically, Article 109/c of the Criminal Code⁴, envisaged provisions pursuant to the stipulations of the

2 All references to Kosovo, whether to the territory, institutions or population, should be understood in full compliance with United Nations Security Council Resolution 1244

3 Ratified by Law no. 9802, dated 13.09.2007.

4 **Article 109/c Enforced disappearance** (Added by Law no. 144/2013, dated 2.5.2013, Article 25)

Enforced disappearance through arrest, detention, abduction or any other form of deprivation of liberty of the person by public officials or persons acting upon their authorisation, support or approval, followed by the non-acceptance of the deprivation of liberty or by concealment of the fate or whereabouts of the person, by denying the assistance and necessary protection in compliance with the law, shall constitute criminal offence and it shall be punishable by imprisonment from seven to fifteen years.

The superior who:

- a. is aware that the dependents under his authority and effective control are or are about to commit the enforced disappearance, or who does not take into account data and information which clearly point to this fact;
- b. exercises his effective responsibility and control over the activities to which the enforced disappearance is linked with; or
- c. does not take all the necessary and reasonable measures under his/her competence to prevent or punish the person who issues the authorisation, support, and approval of the enforced disappearance or to send the case to the competent bodies of criminal prosecution; shall be punished by three to seven years of imprisonment.

When such offence is committed against children, pregnant women, or persons who because of different reasons cannot protect themselves, or when such offence causes serious physical suffering, it is committed in complicity, against several persons or more than once, it shall be punishable by imprisonment from ten to twenty years.

When such offence causes the death of a person, it shall be punishable by imprisonment of not less than thirty years or with life imprisonment.

Illegal taking of children who are subjects of enforced disappearance or of children whose father, mother

Convention. In order to avoid ambiguities in its implementation by the state parties, Article 2 provided a definition to the legal notion of "enforced disappearance".

In the spirit of this Convention and the meaning given to the legal term "enforced disappearance" herewith, the Albanian prosecution⁵ reopened investigations into the criminal case known as the abduction of Remzi Hoxha, which had been archived some time ago. Despite the investigations carried out and the adjudication of the case, it was not possible to find the victim's body.

I am bringing this case to your attention, as a fact that proves that the criminal process itself is not a guarantee for finding the remains of persons. Hence, there should be a multifaceted approach in this regard, in addition to the legal one, to maximize the inter-institutional effort through efficiently using the potentials of each institution that can and should contribute.

Given the ever-growing concern on the fact that it has been long time ever since, as well as in the spirit of the conventions⁶, the Albanian government, through the Ministry of Interior, decided to include in its agenda the identification and recovery of the remains of persons sentenced to death for "political crimes" or persons who died while serving their sentences in prisons, whose graves were kept hidden from their family members.

For the purpose of technically assisting the responsible Albanian authority, or other supporting institutions, during this activity, the Council of Ministers has signed an agreement with the International Commission on Missing Persons (ICMP)⁷. The agreement, *inter alia*, envisages the responsibilities of the parties in the efforts they should put for searching missing persons during the communist period in Albania, between 29 November, 1944 and 2 July, 1991.

Referring to the responsibilities of parties, it is clearly understood that, in a nutshell, the responsible authority of the Albanian party⁸ should take all administrative and procedural measures to enable the finding and recovery of the bodies of the missing persons in the communist past.⁹ In this activity, the Ministry of Interior is supported by other institutions

or legal representative is the subject of enforced disappearance, or of children born during the period of enforced disappearance, shall constitute criminal offence and shall be punishable by imprisonment of from five to ten years.

5 Former Prosecution for Serious Crimes today SPAK (Prosecution Against Organized Crime and Corruption).

6 European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 and the United Nations International Convention for the Protection of All Persons from Enforced Disappearance, 2006

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8 Ministry of Interior

9 Starting from the use of the archival fund; obtaining data from persons who have information on locations; cooperation with local government and private entities, etc., who own the land where they have to carry out operations; finding logistical means; finding forensic experts; anthropologists; chemists; biologists, etc., in order to enable the finding and recovery of bodies, performing the necessary examinations to identify them and until their re-burial in places where they have to agree with family members)

according to the competence and nature of the service that is needed, or the ICMP technical assistance may be requested, both with experts in various fields and logistical means.

With reference to the discussions held at the technical workshops organized by the OSCE on this topic, it has been found that procedures for the identification and recovery of remains of missing persons in Albania have been in place and have been continuously followed for years by the structures of the Ministry of Interior, Ministry of Defense, Institute of Forensic Medicine, etc. Such activity was carried out in the framework of finding the remains of foreign soldiers who have died¹⁰ in Albania, as well as the remains of persons sentenced to death as opponents or traitors of the communist regime or of those who died in prisons during this period.

Based on this experience, it turns out that two work practices have been applied: one following administrative procedures and another through criminal proceedings.

Thus, there have been cases, such as the one in Tirana in 2010, to mention but a few, when citizens discovered and found remains in a certain area, and handed them over to state bodies. Subsequently, the competent Prosecutor's office registered the criminal proceedings, as it is worth emphasizing the fact that the discovery of a skeleton or part of it, naturally leads to the opening of a criminal investigation, in order to identify the circumstances of death that may not be natural.

While in the cases of recovery of remains, for instance, for the exhumation and identification of those who were thought to be Greek soldiers dead in the Albanian territory, or in other similar cases, administrative procedures have been followed.

Forensic experts, based on their longevous experience in this field in at least 1700 cases¹¹, were convinced and suggested that the best and most efficient practice for the identification and recovery of remains, as long as taking the lives of buried persons does not constitute criminal offence, is organizing work-related tasks and following up administrative procedures. This is due to the very advantage and flexibility that administrative procedures provide on the recovery and identification of human remains, in relation to their prosecution in a criminal proceeding. In this case, the initiation of criminal proceedings should be based on the existence of suspicions of perpetration of a criminal offence, but which is inextricably linked to legal assessments on the extent and implementation of the law in a timely manner, such as the termination of the criminal offence, or much more complex procedures need to be followed.

Even the representative of the Ministry of Interior¹² has admitted that this institution already has sufficient experience to manage and coordinate the process of identification and

10 Italian, German, English, Greek, etc.

11 At a roundtable, IFM experts expressed themselves as engaged in identifying the remains of about 1700 people, in the framework of suspicions that in the identified cemetery the remains of Greek soldiers are found.

12 It heads the directorate that has the authority to take measures to follow this process, pursuant to the Agreement with the ICMP (International Commission on Missing Persons),

recovery of remains of persons, subject to the agreement ratified by Law no. 83/2018. Although it has been about three years from the [signing of the] agreement between the Council of Ministers represented by the Minister of Interior and the ICMP, the activity for identification and recovery of the remains of the missing persons in the communist past, is yet to show any results within expectations. This is because, in my opinion, taking into account the proceeds of working tables, a determining factor is the existence of different views between the institutions tasked in the agreement ratified by law and interest groups, on how this process should be organized and followed. In addition, what derives from these perspectives is that the Ministry of Interior, as the responsible authority, is overlooked.

Thus, as we have repeatedly emphasized in every meeting that has taken place on this topic, accepted by the responsible authority (Mol), both the government and the parliament that ratified the agreement by law, have evaluated it as an administrative process under the direction of the Ministry and, supported by other institutions or interest groups¹³. Meanwhile, some other institutions or interest groups¹⁴ see it as a process to be carried out in the context of criminal proceedings, which are led by the prosecution.

These two stances, it must be said, have dragged on the process of finding and recovering remains, unnecessarily creating a spiral of confusion. The reasons are as follows:

Firstly, as stated in roundtables, in the legal conceptual sense, the agreement has stipulated the Ministry of Interior as the leader (responsible authority). Hence, placing the prosecution under the direction of the latter in function of a criminal process would create a problem of a constitutional nature, as the Constitution recognizes the prosecution as the highest independent body tasked with conducting and supervising criminal investigations, whereas other bodies, such as those of the Mol (state police) etc., carry out its orders and decisions¹⁵.

The Prosecution may be legally invited by the executive to give its contribution, in the framework of institutional cooperation, to other bodies, including the Mol. However, it does not receive orders or may not be placed under the direction of law enforcement bodies of the executive power, which, on the contrary, should enforce its orders, always in function of a criminal process.

Secondly, there are differences in the legal interpretation from the Albanian institutions, interest groups, etc., made in reference to the UN Convention for the Protection of Persons from Enforced Disappearance, the Albanian Constitution, the material and criminal procedural provisions.

These institutions base the concept of handling (investigating, etc.) cases of identification and recovery of bodies under the direction of the prosecution through the registration of

13 Including the prosecution if necessary, a position held by the Ministry of Interior, the Institute of Forensic Medicine, the Prosecution

14 (AIDSSH, organizations of the politically persecuted, etc.)

15 Prosecution orders.

criminal proceedings on Article 109/c of the Criminal Code¹⁶ and the UN Convention. Article 2 of the UN Convention, which envisages the legal notion of enforced disappearance, explicitly states that:

“For the purposes of this Convention, “enforced disappearance” is considered to be the arrest, detention, abduction or any other form of *déprivation* of liberty by agents of the State or by 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”.

Meanwhile, in the case of identification and recovery of remains for convicts sentenced to death during the communist period, these are persons whose whereabouts is not known, but who, objectively, have not been forcibly abducted within the sense of the Convention, without any notice given to family members or citizens. On the contrary, the latter were aware that their family members had been taken by the state, as in reality they had been arrested by the criminal prosecution bodies, adjudicated by the courts and convicted by the latter.

Some were sentenced to capital punishment and executed by police officers tasked with enforcing these final court decisions, and others were sentenced or re-sentenced to imprisonment and, during this phase of their sentence, died in prisons and were buried, but their family members were not informed on their whereabouts.

Thus, under the circumstances when they have been convicted by the courts with final decisions¹⁷ and capital punishments have been provided by law, then pursuant to Article 29 of the Constitution¹⁸ and articles 3¹⁹ and 66 of the Criminal Code of Albania²⁰,

16 Article 109/c of the Criminal Code was adopted as an obligation arising upon signing the 2006 United Nations International Convention for the Protection of All Persons from Enforced Disappearance

17 despite the considerations we may have today regarding due process.

18 **Article 29 of the Constitution**

1. No one may be accused or declared guilty of a criminal offence that was not provided for by law at the time of its commission, with the exception of offences, which at the time of their commission constituted war crimes or crimes against humanity according to international law.

2. No punishment may be given that is more severe than that which was contemplated by law at the time of commission of the criminal offence.

3. A favorable criminal law has retroactive effect.

19 **Article 3 of the Criminal Code “Operation of the criminal law in time”**

Prg. 1 No one shall be sentenced for an offence, which, according to the law at the time it was committed, did not constitute a criminal offence

Prg. 2 A new law not incriminating an offence has retroactive effect. If the person has been sentenced, the enforcement of the sentence shall not commence and, if it has commenced, it shall cease.

Prg. 3 If the law in force at the time when the criminal offence was committed and the subsequent law are different, the law, the provisions of which are more favorable to the person having committed the criminal offence, shall apply.

20 **Article 66 of the Criminal Code** pursuant to law no. 7895, dated 27.01.1995 “**Statute of limitations for criminal prosecution**”

no one who has issued those decisions may bear criminal responsibility, because the principle of non-punishment without law, legal security, etc. is violated.

In sum, pursuant to the Constitution and other domestic laws, a criminal proceeding may not be registered without evidence of the existence of a criminal fact.

Article 290²¹ of the Code of Criminal Procedure clearly lists the circumstances in which the initiation of a criminal proceeding is not allowed, providing, *inter alia*, the cases when the fact is not envisaged as a criminal offence by law, or when the criminal offence has been extinct.

This certainly does not prejudice the investigation of cases where persons may have disappeared in the absence of a documented investigation and trial process under the laws of the time. In these circumstances, the district prosecutor's offices evaluate the data on a case-by-case basis and decide on the initiation of a criminal proceeding, according to the substantive and territorial jurisdiction.

Returning to the argument about the nature of the process of finding and recovering bodies, the state police, as part of the Ministry of Interior, is involved and makes relevant contributions to the exhumation procedures, performing its actions, as in any other ordinary case (event), respecting the legal procedures in obtaining traces and evidence (mortal remains, etc.). If during this activity, the state police is informed or is found before a situation indicating that any criminal act may have been committed, for which it is necessary to register a criminal proceeding, then they approach the prosecutor, refer the specific criminal offence and the name of the perpetrator/s if they possess such information. In this event, further criminal proceedings should be conducted, as well as further investigations, aiming at documenting the criminal event and the perpetrator.

Thirdly, an important element of the agreement signed between the Albanian government and the ICMP is that this process should be as effective as possible.

Criminal prosecution shall not be conducted when from the moment the offence was committed until the moment that the person is held defendant:

- a. twenty years have lapsed for crimes foreseen to be punished by not less than ten years of imprisonment or another more severe punishment;
- b. ten years have lapsed for crimes, foreseen to be punished by five to ten years of imprisonment;
- c. five years have lapsed for crimes, foreseen to be punished by up to five years of imprisonment or fine;
- d. three years have lapsed for misdemeanours foreseen to be punished by up to two years of imprisonment;
- e. two years have lapsed for misdemeanours foreseen to be punished by fine.

21 **Article 290 of the Criminal Procedure Code** "Circumstances that do not allow the initiation of proceedings"

1. Criminal proceedings shall not commence when:

- a) the person has died;
- b) the person has no criminal responsibility or has not reached the criminal liability age;
- c) the complaint of the victim is lacking or he/she withdraws the complaint;
- ç) **the act is not provided by law as a criminal offence** or when it is clearly proven that the act does not exist;
- d) **the criminal offence has been extinct**;
- dh) an amnesty has been issued;
- e) in all other cases provided for by the law.

Considering the complexity of administrative actions, not only in terms of researching the archival funds until the identification of burial sites, where human remains should be taken in a professional manner much alike to an archeological excavation work, but also in the final stage, which involves finding a location where the remains of victims should be respectfully reburied nearby their families, they are such that fully justify the fact that the executive, i.e. the Ministry of Interior, should be in charge of all the work-related process. This nature of investigation and administrative activity, as stated before, provides efficiency and productivity in relation to criminal investigation. The reason is that criminal investigations follow procedures that take a long time, due to different objectives in relation to the administrative process intended by the agreement between the Albanian government represented by the Ministry of Interior and the ICMP.

The Prosecutor's office shall be involved and take the lead in the investigation only if, during the administrative process, data and evidence emerge that cast doubt on a criminal fact, for which a criminal proceeding may be registered. Certainly, finding the remains during the implementation of administrative investigative procedures allows the initiation of a criminal proceeding, as it has already occurred so at least in the aforementioned case.

Carrying out procedural actions to identify and disclose the circumstances related to the loss of life is part of an investigation as a matter of course. The prosecution is fully committed to be involved in the process, as this is a constitutional and legal obligation in any case where suspicions arise on the death of the unidentified person that may have not occurred from natural causes. Nevertheless, as mentioned above, this is the last stage of the process. As such, it should naturally be preceded by an administrative process with the coordinated involvement of the government or local government representatives to find the remains, using the archival data of the Albanian state for the location of the bodies of persons executed by court decisions, or any other legal source that would assist the process.

In conclusion, referring to the legal framework that regulates the process of identification and recovery of the remains of persons who have not been found and died during the communist dictatorship, as well as the analysis of factors that influenced the failure to achieve the expected results related to this process, the following is found:

- on the one hand, the Ministry of Interior as the responsible authority has stated that it has the necessary experience and is ready to take over the direction and coordination of supporting institutions to implement the agreement and to apply in practice the recovery of remains, and;
- on the other hand, in reality, this path defined by the Albanian government in the agreement with the ICMP ratified by law is not always followed, making room for a bit of confusion. However, from meeting to meeting, the institutions involved, thanks to professional discussions, are moving towards clarifying and finding the appropriate legal and technical tools and mechanisms.

This path defined by the government must be pursued, to see and prove its

functioning, or to identify in practice the causes of its shortcomings, in order to know which institutions should be addressed on the issues that pose difficulties, to make the necessary improvements and, ultimately, have a simple process in implementation, with capable professionally flexible structures, to be as efficient and productive as possible.

- Likewise, what is found elsewhere is that, substantially, institutional capacities need to be strengthened with human resources as well as financial and logistical means.

To sum up, in our assessment, the agreement concluded between the Albanian government and the ICMP should not be overlooked. It is precisely this agreement that serves as a basis for all state institutions, but not limited to, to finalize in practice what is required. However, this agreement must be given life according to the will of the government, making each institution work as a team to give their best within their competencies, to enable what is intended by all i.e. the recovery of the remains of the persons whose graves are not known, to find a place to rest in peace with the dignity they deserve, and to give their families the opportunity to see, honor and respect them.

Moreover, in order to improve, organize and coordinate the work, in cooperation with the experts/representatives of the institutions involved, it has become necessary to continue the meetings at the technical level and according to the field of expertise or legal competence that they have for the services they provide, to make concrete proposals to enable the issuance of legal acts on a protocol of rules and actions for the procedure how the process will take place, between the responsible authority and supporting institutions that interact in function of this process, etc., as well as the way institutions should cooperate with one another.

In other words, this will serve a better organization of work, in such a way that all state institutions and other bodies, know "who does what", to be productive and not make room for unnecessary procrastination, accompanied by fatigue and disappointment in the families of the victims, who rightly and eagerly await the remains of their relatives. This ultimately has to do with the success of joint work.

Thank you for your time and opportunity,

PhD Nadia RUSI

Lecturer in International Human Rights at the Faculty of Law, University of Tirana

A HISTORICAL APPROACH TO ENFORCED DISAPPEARANCE AND MISSING PEOPLE IN THE EUROPEAN COURT OF HUMAN RIGHTS JURISPRUDENCE

Abstract

At the European level, the European Convention of Human Rights (ECHR) is the main instrument for protecting human rights. Even though it does not have a specific article dealing explicitly with the protection against enforced disappearance, the consequences and human rights violations linked to enforced disappearance are regulated within many of its articles, such as articles 2, 3, 5, 6 and 8 of the ECHR. On the other hand, the jurisprudence of the European Court of Human Rights (ECtHR) is of the utmost importance in offering interpretation of international standards regarding human rights violations in cases of enforced disappearance. The violations of the rights of both victims and relatives have been raised in a considerable number of applications before this Court. But most of them were declared inadmissible, predominantly due to the lack of *ratione temporis* jurisdiction. This paper aims to analyse the evolution of the jurisprudence of the ECtHR in the field of enforced disappearance. Specifically, it investigates the major human rights violations linked to missing people and enforced disappearances as stated by the ECtHR and the positive obligations of states in those cases. Also, the paper discusses the cases declared inadmissible by the Court, with the aim of discussing the historical approach that the ECtHR has followed in all of them. Looking through the lens of the ECtHR, our analysis reveals that the lack of competence of the Court is mainly linked to the difference between the violations of human rights on the one side and the entry into force of the ECHR in the related states on the other. Moreover, following a historical approach, we demonstrate that there is a gap in the ECtHR jurisprudence in cases of enforced disappearance linked to article 8 of the ECHR, which results from the ECtHR's reluctance to declare a violation of the right to private and family life in cases related to enforced disappearance.

Keywords: ECtHR jurisprudence, enforced disappearance, jurisdiction.

I. Introduction

The issue of missing persons and victims of enforced disappearance constitutes a very important part of the political, legal, and social transition processes that many European countries have to go through, or will have to go through, especially following conflicts

or repressive regimes.¹ In this regard, enforced disappearance is one of the most serious human rights violations which affects a number of human rights, namely the right to security of the person, the right not to be arbitrarily deprived of one's liberty, the right not to be subject to torture or other inhuman or degrading treatment or punishment.² In other cases, depending on the circumstances, it might be also related to violations of the right to life, of freedom of expression, the right to privacy and family life, the right to an effective remedy and the right to know the truth.³ Taking into consideration the fact that enforced disappearance is a continuous crime which lasts until the fate and whereabouts of the victim are established with certainty⁴, relatives of missing and disappeared persons are at the same time exposed to extreme suffering, often nourished by the indifference of the authorities vis-à-vis their ordeal and by the anguish of not knowing what has happened to their loved ones.⁵ For this reason, the notion of victims of enforced disappearances should include not only missing persons, but also all the members of their families understood in the broadest possible sense.⁶

At the European level, the European Convention of Human Rights (ECHR) is the main instrument for protecting human rights. Even though it does not have a specific provision dealing explicitly with the protection against enforced disappearance, the consequences and human rights violations linked to enforced disappearance have been found by the European Court of Human Rights (ECtHR) to be related to many fundamental rights of the ECHR, such as the ones guaranteed by Articles 2, 3, 5, 6, 13 and 8 of the ECHR. As a result, the Court's practice is dedicated to addressing the phenomenon of enforced disappearances within the framework of other violations of the rights guaranteed under the ECHR.⁷ Admitting that there is no universally recognized definition of enforced disappearance, the ECtHR has made an important contribution to the development of the

1 Council of Europe (2016) "Missing persons and the victims of enforced disappearance in Europe", Issue Paper, Chapter I "Introduction: overview of the situation", p 17.

2 Scovazzi. T and Citroni. G (2007) "The Struggle against Enforced Disappearance and the 2007 United Nations Convention", Chapter I "The dimension and Purposes of Enforced Disappearance", p 1, Leiden, Boston.

3 Ibid.

4 Council of Europe (2016) "Missing persons and the victims of enforced disappearance in Europe", Issue Paper, Chapter I "Introduction: overview of the situation", p 18. See also: ECtHR Case *Cyprus v. Turkey* (2001), app. No. 25781/94, para. 83, 127, 136, 150; ECtHR Case *Varnava and Others v. Turkey*, app. no. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 1070/90, 16071/90, 16072/90, 16073/90, (2009), para. 134, 139, 148; Regarding the continuing nature of enforced disappearance, see also: IACHR Case *Velásquez-Rodríguez v. Honduras* (1988), para. 181; IACHR Case *Blake v. Guatemala* (1998) para. 54; UN General Assembly (2020) "Report of the Working Group on enforced or Involuntary Disappearances on standards and public policies for an effective investigation of enforced disappearances", Human Rights Council, Forty-fifth session, August 2020, pg. 8.

5 Council of Europe (2016) "Missing persons and the victims of enforced disappearance in Europe", Issue Paper, Chapter I "Introduction: overview of the situation", p 18.

6 Crettol. M and Marie la Rossa. A (2006) "The missing and transitional justice: the right to know and the fight against impunity", *International Review of the Red Cross*, Vol. 88, No. 862, p. 356.

7 Kumskova. M (2016) "The Crime of Enforced Disappearance: A comparative study of the Inter-American and the European Courts of Human Rights", p. 9, *E-International Relations*. Retrieved from: <http://www.e-ir.info/2016/01/03/the-crime-of-enforced-disappearance/>

legal rules on this subject.⁸ In addition, the jurisprudence of the ECtHR is of the utmost importance in offering interpretation of international standards regarding human rights violations in cases of enforced disappearances in European countries.

But, unlike the Inter-American Court of Human Rights (IACHR), which has been adjudicating allegations of enforced disappearances since 1988 (*Velasquez Rodriguez v Honduras* case), the ECtHR has only addressed the first case of enforced disappearance 10 years later, in response to increased claims by victims' families against Turkey⁹. Later on, cases of forced disappearances in the European context stemmed from the conflict concerning Bosnia and Herzegovina, Croatia, Russia, and Spain. In developing much of its nascent forced disappearance jurisprudence, the ECtHR has looked to the IACHR case law. Both Courts are founded on the same assumption: human rights are "attributes of the human being"¹⁰. Unlike IACHR, the ECtHR jurisprudence on the subject has not been wholly consistent.¹¹ For this reason, and taking into account the current tremendous caseload before the European Court related to enforced disappearances, in the following we seek to make an evolutionary analysis of the ECtHR jurisprudence, with a focus on the notion and the rights violated in disappearance cases in the European system and the criteria set up by the ECtHR for those cases.

II. **The continuous nature of enforced disappearances and the *ratione temporis* criterion of the ECtHR**

Even though the Court has not yet offered a definition of enforced disappearance, in several cases it has accepted the continuous nature of the violations alleged in enforced disappearance cases. As the Court has stated in *Aslakhanova and Others v. Russia*, "a disappearance is a distinct phenomenon, characterised by an ongoing situation of uncertainty and unaccountability in which there is a lack of information or even a deliberate concealment and obfuscation of what has occurred. This situation is very often drawn out over time, prolonging the torment of the victim's relatives... Thus, the procedural obligation will, potentially, persist as long as the fate of the person is unaccounted for; the ongoing failure to provide the requisite investigation will be regarded as a continuing violation."¹² In the same direction, the Court has stated in *Cyprus v. Turkey* that there has been a continuing violation of Article 2 on account of the failure of the authorities of the respondent State to conduct an effective investigation aimed at clarifying the whereabouts and fate of Greek-Cypriot missing persons who disappeared in

8 Pourgourides. Ch (2005), PACE, Report on "Enforced Disappearances", doc 10678, para. 45/73.

9 *Kurt v. Turkey* (1998) was the first case of the ECtHR to address human rights violations linked to enforced disappearances.

10 Kumskova. M (2016) "The Crime of Enforced Disappearance: A comparative study of the Inter-American and the European Courts of Human Rights", p. 9, E-International Relations. Retrieved from: <http://www.e-ir.info/2016/01/03/the-crime-of-enforced-disappearance/>

11 Gobind Singh Sethi (2001) "The European Court of Human Rights' Jurisprudence on Issues of Forced Disappearances" 8 No. 3 HUM. RTS. BRIEF p. 29 (2001).

12 Para. 214

life-threatening circumstances”¹³.

As a general rule, the Court applies the six-month rule in order for a claim to be considered admissible. The object of the six-month time-limit under Article 35/1 of the ECHR is to promote legal certainty by ensuring that cases raising issues under the Convention are dealt with in a reasonable time and that past decisions are not continually open to challenge.¹⁴ According to the Court, as a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies.¹⁵ Nonetheless, it has accepted that the six-month time-limit does not apply as such to continuing situations because, if there is a situation of ongoing breach, the time-limit in effect starts afresh each day, and it is only once the situation ceases that the final period of six months will run to its end.¹⁶ In *Varnava and Others v. Turkey*, the Court articulated the following principle concerning the application of the six-month time-limit to continuing situations, especially in disappearance cases:

“Nonetheless, the Court considers that applications can be rejected as out of time in disappearance cases where there has been excessive or unexplained delay on the part of applicants once they have, or should have, become aware that no investigation has been instigated or that the investigation has lapsed into inaction or become ineffective and, in any of those eventualities, there is no immediate, realistic prospect of an effective investigation being provided in the future. Where there are initiatives being pursued in regard to a disappearance situation, applicants may reasonably await developments which could resolve crucial factual or legal issues. Indeed, as long as there is some meaningful contact between families and authorities concerning complaints and requests for information, or some indication, or realistic possibility, of progress in investigative measures, considerations of undue delay will not generally arise.”

However, when the Court identifies that the applicants have done nothing to bring their allegations of enforced disappearance to the attention of the authorities for a long time, it considers the case inadmissible due to *ratione temporis*. As the European Court did in *Karabardak and others* and *Baybora and others*, only in the event of manifested inactivity from the victim’s next-of-kin is it possible to reject the cases based on the long time elapsed.¹⁷ Concretely, in *Karabardak and others v. Turkey*, the Court noted that nothing was done by the applicants to bring the alleged disappearance to the attention of the

13 ECtHR Case *Cyprus v. Turkey*, app. no. 25781/94, para. 136.

14 ECtHR Case *Karabardak and Others against Cyprus*, app. no. 76575/01, Decision as to the Admissibility

15 ECtHR Case *Varnava and Others v. Turkey*, app. no. [16064/90](#), [16065/90](#), [16066/90](#), [16068/90](#), [16069/90](#), [1070/90](#), [16071/90](#), [16072/90](#), [16073/90](#), (2009), para. 157

16 ECtHR Case *Varnava and Others v. Turkey*, app. no. [16064/90](#), [16065/90](#), [16066/90](#), [16068/90](#), [16069/90](#), [16070/90](#), [16071/90](#), [16072/90](#), [16073/90](#), (2009), para. 159

17 [Carlos Rafael Urquilla Bonilla](#) (2021) “A Lost Opportunity: The Human Rights Committee Decision on an Enforced Disappearance Case During the Civil War in Spain”, retrieved from <http://opiniojuris.org/2021/07/05/a-lost-opportunity-the-human-rights-committee-decision-on-an-enforced-disappearance-case-during-the-civil-war-in-spain/>, November 2021.

authorities of the respondent State in the first twentyfive years following the alleged disappearance and they waited another twelve years before lodging their application with the Court. Since the applicants have not explained why they waited such a long time before invoking the assistance of the national authorities and, subsequently, before lodging an application with the Court, the Court considered that case out of time and contently declared the case inadmissible. The same logic has been followed by the Court in *Baybora and Others against Cyprus*¹⁸ when declaring it inadmissible.

III. **Human Rights Violations during enforced disappearances from the perspective of the ECtHR**

a. **The conservative approach of the ECtHR on enforced disappearance cases**

The ECtHR has dealt with many allegations of enforced disappearances and the failure of investigations in different Member States during the last two decades. It is important to highlight since the beginning of this section that the ECtHR has not yet elaborated on a definition of enforced disappearance. In the absence of it, the ECtHR makes reference to international documents on the issue of enforced disappearance, such as the United Nations Declaration on the Protection of All Persons from Enforced Disappearance, the case-law of the United Nations Human Rights Committee (HRC), and the case-law of the Inter-American Court of Human Rights.¹⁹ But, in the absence of a unified definition on enforced disappearance, the approach followed by the ECtHR often differs from that of the IACHR. On account of this, while in the Inter – American Court system “every case constitutes a violation of rights”²⁰, the European Court adopts a more conservative approach while stating that “a case of enforced disappearance may constitute a violation of several provisions, but this is not strictly necessary”²¹. Based on this approach, the ECtHR considers the alleged violations of each right separately as if they came from different situations, which has resulted in some cases in the refusal of the ECtHR to find a violation of important rights, such as the right to life or the right to be free of inhuman and degrading treatment.²²

18 ECtHR case *Baybora and others v. Turkey* (2001), app. 77116.01.

19 ECtHR Case *Kurt v. Turkey* (1998), app. no. 24276/94 published in Reports 1998-III, dated 25/05/1998, para. 63-71.

20 Known as multiple-rights approach.

21 Maria Fernanda Perez Solla (2006) “Enforced disappearances in International Human Rights 12 (2006) cited by Claude. O (2010) “A comparative approach to enforced disappearances in the Inter-American Court of Human Rights and the European Court of Human Rights Jurisprudence”, *Intercultural Human Rights L. Rev.* p. 432-33.

22 ECtHR Case *Kurt v. Turkey* (1998), app. no. 24276/94 published in Reports 1998-III, dated 25/05/1998.

b. **The ECtHR jurisprudence on enforced disappearance and the fundamental rights violated**

The first case of enforced disappearance considered by the European Court of Human Rights was that of *Kurt v. Turkey* (1998), which concerned the disappearance of the applicant's son during an unacknowledged detention. In this case, the ECtHR, following rigid reasoning, found a violation of articles 5 and 13 of the ECHR and article 3 of the ECHR in respect of the applicant herself and no violation of articles 2 and 3 of the ECHR in regard to the applicants' son's disappearance.

b.1 Cases of disappearance and violations of Article 5 of the ECHR

In *Kurts'* case, the Court linked enforced disappearance with Article 5 of the ECHR. In the Courts' view, the authors of the Convention reinforced the individual's protection against arbitrary deprivation of his or her liberty by guaranteeing a corpus of substantive rights which are intended to minimise the risks of arbitrariness by allowing the act of deprivation of liberty to be amenable to independent judicial scrutiny and by securing the accountability of the authorities for that act.²³ The Court emphasized in this respect that the unacknowledged detention of an individual is a complete negation of these guarantees and a most grave violation of Article 5. For this reason, Article 5 must be seen as requiring the authorities to take effective measures to safeguard against the risk of disappearance and to conduct a prompt and effective investigation into an arguable claim that a person has been taken into custody and has not been seen since.²⁴ Following this reasoning, in the view of the Court, the absence of holding data recording such as the date, time, and location of the detention, the name of the detainee, as well as the reasons for the detention, and the name of the person effecting it, must be seen as incompatible with the very purpose of Article 5 of the Convention.²⁵ This view is now well established in the Court's jurisprudence related to disappearance cases.²⁶ Although it is important to highlight that, unlike the IACHR, which follows a broader interpretation of the right to liberty and security, the ECtHR follows a more narrow approach, restricting the positive obligation of responsive states under Article 5 of the ECHR in disappearance cases only to taking effective measures to safeguard against the risk of disappearance and conducting a prompt and effective investigation into an arguable claim that a person has been taken into custody and has disappeared. The approach followed by the ECtHR in this regard is seen by many authors as restrictive, incomplete and unclear, failing to explain why the Court does not include the other aspects of the

23 ECtHR Case *Kurt v. Turkey* (1998), app. no. 24276/94 published in Reports 1998-III, dated 25/05/1998, para. 123.

24 ECtHR Case *Kurt v. Turkey* (1998), app. no. 24276/94 published in Reports 1998-III, dated 25/05/1998, para. 124.

25 *Ibid.*

26 Claude. O (2010) A Comparative Approach to Enforced Disappearances in the Inter-American Court of Human Rights and the European Court of Human Rights Jurisprudence, *5 Intercultural Human Rights Law Review* 407, p. 42.

right to liberty and security foreseen in Article 5 of the ECHR, such as the duty to bring detainees promptly before a judge (Article 5.3) or the duty to bring detainees before a court to determine the lawfulness of their detention (Article 5.4).²⁷

b.2 The dimensions of and violations of the right to life in cases of disappearance

Another issue that we consider important to analyze regarding the genesis of the ECtHR on enforced disappearance jurisprudence is its approach regarding the right to life. According to Ovey and White "...the European Court was disappointingly timid in its treatment of the first case of disappearance in relation to its approach of the right of life"²⁸ In *Kurt v. Turkey*, the Court found no violation of article 2 of the ECHR, even though it accepted that the applicant had no information about her son's whereabouts or fate for almost four and a half years, and the applicant's fears that her son may have died in unacknowledged custody at the hands of his captors could not be said to be without foundation²⁹. However, it reasoned that it must carefully scrutinize whether in *Kurt's* case there was in fact concrete evidence which would lead it to conclude that the disappeared person was, beyond reasonable doubt, killed by the authorities either while in detention in the village or at some subsequent stage. The Court also noted in this respect that in those cases where it had found that a Contracting State had a positive obligation under Article 2 to conduct an effective investigation into the circumstances surrounding an alleged unlawful killing by the agents of that State, there existed concrete evidence of a fatal shooting which could bring that obligation into play³⁰.

Fortunately, the ECtHR departed from this narrow reasoning in *Timurtas v. Turkey*, in which it accepted that when the State has not provided a plausible explanation for the disappearance and there is "sufficient circumstantial evidence, the Court will make the finding that the individual died in State custody."³¹ According to ECtHR:

*"Whether the failure on the part of the authorities to provide a plausible explanation as to a detainee's fate, in the absence of a body, might also raise issues under Article 2 of the Convention will depend on all the circumstances of the case, and in particular on the existence of sufficient circumstantial evidence, based on concrete elements, from which it may be concluded to the requisite standard of proof that the detainee must be presumed to have died in custody."*³²

27 Ibid.

28 Ovey. C & White. R (2006) "The European Convention on Human Rights", forth edition, Oxford Press, p. 59, cited by Claude. O "A comparative approach to enforced disappearances in the Inter-American Court of Human Rights and the European Court of Human Rights Jurisprudence", 5 *Intercultural Human Rights Law Review* 407, p. 29.

29 ECtHR Case *Kurt v. Turkey* (1998), app. no. 24276/94 published in Reports 1998-III, dated 25/05/1998, para. 107.

30 Ibid. Para. 107.

31 Claude. O (2010) A Comparative Approach to Enforced Disappearances in the Inter-American Court of Human Rights And the European Court of Human Rights Jurisprudence, 5 *Intercultural Human Rights Law Review* 407, p. 30

32 ECtHR Case *Timurtas v. Turkey* (2000), app. no. 23531/94 published in ECHR 2000-VI, para. 80.

Since this decision, when the Court presumes the disappeared person dead, there is a violation of the substantive right to life.³³ For the person to be presumed dead, the Court accepted that the period of time which has elapsed since the person was placed in detention was a relevant factor to be taken into account, and the more time goes by without any news about the detained person, the greater the likelihood that he or she has died.³⁴ Based on this standard, in *Çiçek v. Turkey* it stated that "...taking into account that no information has come to light concerning the whereabouts of the applicant's son for a period of six and a half years, the Court is satisfied that Tahsin and Ali Ihsan Çiçek must be presumed dead following an acknowledged detention by the security forces."³⁵ Consequently, in this case, the Court accepted the responsibility of the respondent State in being engaged in the death of the disappeared persons and found a violation of Article 2 in the absence of any explanation from the State following the disappeared person's apprehension.

Apart from the violation of the right to life in substantive meaning, the Court has expanded the interpretation of the right to life and the obligation of the states in relation to its protection. According to the Court, the obligation of the states to protect life under article 2 also requires the obligation of the respondent State to conduct an effective investigation when individuals have been killed as a result of the use of force or in State custody. This is known as the "procedural right to life". The essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. In *Orhan v. Turkey*, the Court emphasized the elements and standards to be followed by States in relation to their duty to conduct an effective investigation on account of loss of life. According to ECtHR in this case:

"What form of investigation will achieve those purposes may vary in different circumstances. However, whatever mode is employed, the authorities must act of their own motion, once the matter has come to their attention. They cannot leave it to the initiative of the next of kin either to lodge a formal complaint or to take responsibility for the conduct of any investigatory procedures...for an investigation into alleged unlawful killing by State agents to be effective, it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events...the investigation must also be effective in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances and to the identification and punishment of those responsible".³⁶

33 Claude. O (2010) A Comparative Approach to Enforced Disappearances in the Inter-American Court of Human Rights and the European Court of Human Rights Jurisprudence, *5 Intercultural Human Rights Law Review* 407, p. 30.

34 ECtHR Case *Timurtaş v. Turkey* (2000), app. no. 23531/94 published in ECHR 2000-VI, para. 83.

35 ECtHR Case *Çiçek v. Turkey* (2001), app. no. 25704/94), ECHR 2001, para. 147.

36 ECtHR Case *Orhan v. Turkey* (2002), app. no. 25656/94, ECHR 2002, para. 334-5.

Moreover, the Court offers a distinction between investigations into disappearances and those in cases different from disappearances. In *Aslakhanova and Others v. Russia*, the Court has stated that:

“Investigation into a disappearance does not serve the sole purpose of establishing the circumstances of the killing, and finding and punishing the perpetrator. The crucial difference in investigations into disappearances is that, by conducting an investigation, the authorities also aim to find the missing person or find out what happened to him or her. When conducting investigations into disappearance cases the authorities often have to start with very little evidence and have to search for the evidence in order to trace the disappeared person or discover his or her fate.”³⁷

The third aspect of the obligations imposed under the protection of the right to life is the obligation of States to take steps to prevent the loss of life and safeguard the lives of those within their jurisdiction. In this regard, in order for a positive obligation to arise for States, it must be established that the authorities knew or should have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk³⁸. If we read carefully the Court’s jurisprudence on enforced disappearance, we can point out that the Court has only used this interpretation of the right to life in disappearance cases on a rare basis and mainly in cases where the authors of disappearances are unknown and their acts are not attributable to the State.³⁹ The first time the Court applied this positive obligation-to-protect reasoning in a disappearance case was in *Koku v. Turkey*. In its reasoning in this case, the Court confirmed that despite the fact that State agents were not responsible for the disappearance and subsequent death of the victim, this did not necessarily exclude the responsibility of the government for the victim’s death.⁴⁰ The same reasoning of the Court was re-stated three years later in *Osmanoglu v. Turkey* case⁴¹.

b.3 Disappearance cases and violation of the right not to be subject of torture or other inhuman or degrading treatment or punishment

The Court reiterates in its jurisprudence that Article 3 of the Convention, which safeguards the right not to be subject to torture or other inhuman or degrading treatment or punishment, ranks as one of the most fundamental provisions in the ECHR and en-

37 CASE OF ASLAKHANOVA AND OTHERS v. RUSSIA (Applications nos. 2944/06 and 8300/07, 50184/07, 332/08, 42509/10) JUDGMENT STRASBOURG 18 December 2012 FINAL 29/04/2013.

38 ECtHR Case *Koku v. Turkey* (2005), app. no. 27305/95, ECHR 2005, para. 128

39 Claude. O (2010) A Comparative Approach to Enforced Disappearances in the Inter-American Court of Human Rights and the European Court of Human Rights Jurisprudence, 5 *Intercultural Human Rights Law Review* 407, p. 31.

40 ECtHR Case *Koku v. Turkey* (2005), app. no. 27305/95, ECHR 2005, para. 125

41 ECtHR Case *Osmanoglu v. Turkey* (2008), app. no. 48804/99, ECHR 2008, para. 75.

shrines one of the basic values of the democratic societies making up the Council of Europe. Even in the most difficult of circumstances, such as the fight against terrorism, the Convention prohibits, in absolute terms, torture or inhuman or degrading treatment or punishment.⁴² However, the Court usually does not find a violation of Article 3 in enforced disappearance cases. This can be a consequence of, and mostly linked to the strict, beyond-reasonable-doubt standard of proof applied by the Court in the interpretation of Article 3 and according to which ill-treatment must attain a minimum level of severity to fall within the provision's scope and the applicant is required to prove beyond reasonable doubt that ill-treatment of such severity has occurred in its regard.⁴³ Although the ECtHR has removed the mentioned standard for violations of the right to life, it has not discharged this burden for an applicant who attempts to hold a State accountable for violating the right to be free from torture under article 3 of the Convention⁴⁴. In the perspective of the Court, allegations of ill-treatment must be supported by appropriate evidence, the assessment of which must be proofed beyond reasonable doubt.⁴⁵ As a result, in most of the cases, the Court did not link enforced disappearance to Article 3 of the Convention due to its insufficient evidence to conclude that allegations on enforced disappearances had also been a violation of Article 3.

But, unlike the resistance to asserting that a disappeared person is subject to torture in the absence of appropriate evidence, the Court has proved to be less rigorous when the suffering of relatives of disappeared persons is in question. In *Kurt v. Turkey* case, the Court took into consideration the intensity of suffering of the relatives of persons disappeared when in the hands of the authorities, accepting for the first time that enforced disappearance may affect whole families, rather than only the persons who disappeared and the relatives of disappeared persons may be also subject to grave human rights violations, such as the right not to be subject to torture or other inhuman or degrading treatment or punishment.⁴⁶ According to the ECtHR, in this case, the mother of the victim of a human rights violation was herself the victim of the authorities' complacency in the face of her anguish and distress resulted from the uncertainty, doubt and apprehension suffered by her over a prolonged and continuing period of time in a complete absence of official information as to her son's subsequent fate⁴⁷. For the abovementioned reasons, the Court founded in *Kurt's* case that Turkey was in breach of Article 3 in respect of the mother of the disappeared person.

However, the *Kurt* case does not establish any general principle that a family member of a "disappeared person" is thereby a victim of treatment contrary to Article 3 of the

42 ECtHR Case *Orhan v. Turkey* (2002), app. no. 25656/94, ECHR 2002, para. 351

43 ECtHR Case *Çiçek v. Turkey* (2001), app. no. 25704/94, ECHR 2001, para. 154.

44 Gobind Singh Sethi (2001) "The European Court of Human Rights' Jurisprudence on Issues of Forced Disappearances" 8 No. 3 HUM. RTS. BRIEF p. 29 (2001).

45 ECtHR Case *Bazorkina v. Russia* (2006), app. no. 69481/01, ECHR 2006, para. 130.

46 ECtHR Case *Kurt v. Turkey* (1998), app. no. 24276/94 published in Reports 1998-III, dated 25/05/1998, para. 131.

47 ECtHR Case *Kurt v. Turkey* (1998), app. no. 24276/94 published in Reports 1998-III, dated 25/05/1998, para. 133.

ECHR. The Court, in latter cases, has developed the criteria to be taken into consideration in order for a relative of the disappeared person to be considered at the same time a victim of enforced disappearance and to have the possibility to claim directly to be a victim of the authorities' conduct. In *Çakıcı v. Turkey*, the Court stated that:

“Whether a family member is such a victim will depend on the existence of special factors which gives the suffering of the applicant a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human rights violation. Relevant elements will include the proximity of the family tie – in that context, a certain weight will attach to the parent-child bond –, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, the involvement of the family member in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those enquiries”⁴⁸

Based on this interpretation, the Court refrained from setting a general rule according to which family members of a missing person would automatically be victims based on their connection to the missing person and the anxiety they experienced in the absence of information on the fate of their relatives. According to the ECtHR, the essence of the violation of the rights of family members of “missing” or “disappeared” persons does not so much lie in the fact of the “disappearance” of the family member, but rather concerns the authorities' reactions and attitudes to the situation when it is brought to their attention.⁴⁹

In applying the above mentioned criteria, in *Çakıcı v. Turkey*, the Court found no violation of Article 3 in relation to the applicant himself, mainly due to the fact that the applicant was the brother of the disappeared person, and unlike the applicant in the Kurt case, he was not present when the security forces took his brother, as he lived with his own family in another town. However, three of the judges had a dissenting opinion in this regard, arguing that:

“The Turkish Government has been found responsible for one of the gravest possible violations of human rights, a failure to respect the right to life. Moreover, they left the applicant in uncertainty, doubt and apprehension about his brother for more than five and a half years... Apart from failing in their obligation to respect his brother's right to life, the Government must also be held responsible for the severe mental distress and anguish the applicant has suffered for a prolonged and continuing period of time as a consequence of their acts and negligence”⁵⁰

The above decision confirms once again that family members of a missing person would

48 ECtHR Case *Çakıcı v. Turkey* (1999), app. no. 23657/94 published in Reports 1999-IV, 8 July 1999, para. 98

49 ECtHR Case *Çakıcı v. Turkey* (1999), app. no. 23657/94 published in Reports 1999-IV, 8 July 1999, para. 98.

50 ECtHR Case *Çakıcı v. Turkey* (1999), app. no. 23657/94 published in Reports 1999-IV, 8 July 1999, partly dissenting opinion of Judge THOMASSEN joined by judges JUNGWIERT and FISCHBACH.

not automatically be victims of Article 3 of the ECHR based only on their connection to the missing person and the anxiety they experienced in the absence of information on the fate of their relatives.

b.4 The ECtHR approach on allegations of ineffective remedies in cases of enforced disappearance (Article 13 of the ECHR)

Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. It thus requires the provision of a domestic remedy to deal with the substance of an “arguable complaint” under the Convention and to grant appropriate relief, although the Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision.⁵¹

The scope of the obligation under Article 13 also varies depending on the nature of the applicant’s complaint under the Convention. Nevertheless, the Court has confirmed that the remedy required by Article 13 must be “effective” in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State.⁵² In disappearance cases, the Court has assessed Article 13 of the ECHR both as an autonomous right and linked to other rights, such as Articles 2, 3 and 5 of the Convention. In the view of the Court, where the relatives of a person have an arguable claim that the latter has disappeared at the hands of the authorities, the notion of an effective remedy for the purposes of Article 13 entails, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the relatives to the investigatory procedure. Therefore, the requirements of Article 13 are broader than a Contracting State’s obligation under Article 5 to conduct an effective investigation into the disappearance of a person who has been shown to be under their control and for whose welfare they are accordingly responsible.⁵³ For this reason, the ECtHR has shown particular attention on interpreting the effectiveness of domestic remedies and on linking the ineffectiveness of investigation with the effectiveness of other remedies, including the newly initiated investigation, legislative proposals or monetary compensation⁵⁴.

51 ECtHR Case *Çakıcı v. Turkey* (1999), app. no. 23657/94 published in Reports 1999-IV, 8 July 1999, para. 112.

52 ECtHR Case *Çakıcı v. Turkey* (1999), app. no. 23657/94 published in Reports 1999-IV, 8 July 1999, para. 112.

53 ECtHR Case *Kurt v. Turkey* (1998), app. no. 24276/94 published in Reports 1998-III, dated 25/05/1998, para. 140.

54 Kumskova. M (2016) “The Crime of Enforced Disappearance: A comparative study of the Inter-American and the European Courts of Human Rights”, p. 30, E-International Relations. Retrieved from: <http://www.e-ir.info/2016/01/03/the-crime-of-enforced-disappearance/>

b.5 The ECtHR approach regarding the right to truth

The right to truth is arguably one of the most problematic issues in disappearance cases.⁵⁵ Indeed, the European Convention on Human Rights does not expressly refer to a right to truth. Yet, the ECtHR has examined the right to truth as a combination of different violations of the conventionally protected rights. These are perceptible both at an individual and collective level and often involve damage to the procedural and substantive aspects of the right to life, the right of the next of kin of victims to not suffer inhuman treatment due to prolonged pain caused by the lack of news about their loved ones, the right to freedom and security, and the social right to information.⁵⁶ Before explicitly referring to the right to the truth, the ECtHR had already regularly emphasized the importance of investigating the truth about gross human rights violations, in particular enforced disappearance⁵⁷. The first case where the ECtHR explicitly formulated the right to know the truth was *Association '21 December 1989' v. Romania* case, where the Court emphasized not only the importance of the right of victims and their families and heirs to know the truth about the circumstances surrounding events involving a massive violation of rights, such as that of the right to life, but also the importance to Romanian society of knowing the truth about the events of December 1989.⁵⁸

Similarly, in *Janowiec v. Russia*, the Court acknowledged a right to truth, here emerging from Article 3.⁵⁹ According to the Court, “Article 3 requires [the State] to exhibit a compassionate and respectful approach to the anxiety of the relatives of the deceased or disappeared person and to assist the relatives in obtaining information and uncovering relevant facts”, and that it was inhuman treatment to refuse to allow relatives of victims “for political reasons, to learn the truth about what [...] happened and force [them] to accept the distortion of historical fact”, particularly as the “denial of crimes against humanity... runs counter to the fundamental values of the Convention and democracy”.⁶⁰

In 2012, in *El-Masri v. the Former Yugoslav Republic of Macedonia*, the Court addressed another aspect of the inadequate character of the investigation, namely its impact on the right to the truth regarding the relevant circumstances of the case. In this respect, the

55 Claude. O (2010) A Comparative Approach to Enforced Disappearances in the Inter-American Court of Human Rights and the European Court of Human Rights Jurisprudence, 5 *Intercultural Human Rights Law Review* 407, p.

56 Oriolo. A (2016) “Right to the truth and international jurisprudence as the “conscience” of humanity. Comparative insights from the European and Inter-American Courts of Human Rights”, *Iura & Legal Systems*, 2016, C(8):66-95, p. 86.

57 Marloes van Noorloos, A Critical Reflection on the Right to the Truth about Gross Human Rights Violations, *Human Rights Law Review*, Volume 21, Issue 4, December 2021, pp. 874–898,

58 ECtHR case *Association “21 December 1989” and others v. Romania*, app. no. 33810/07, ECHR 2011, para. 144/194.

59 Written comments of The Open Society Justice Initiative on application nos. 55508/07 and 29520/09 – *Janowiec and others v. Russia*, p. 4.

60 *Janowiec v. Russia*, ECtHR [5th Sec.], Judgment of 16 April 2012, paras. 156, 163, 165 cited by The Open Society Justice Initiative on Written comments on application nos. 55508/07 and 29520/09 – *Janowiec and others v. Russia*, p. 4.

Court has underlined the great importance of the case not only for the applicant and his family, but also for other victims of similar crimes and the general public, who had the right to know what had happened.⁶¹ Of great importance in this regard is also the concurring opinion of judges Tulkens, Spielmann, Sicilianos, and Keller, according to whom:

“In practice, the search for the truth is the objective purpose of the obligation to carry out an investigation and the *raison d’être* of the related quality requirements (transparency, diligence, independence, access, disclosure of results, and scrutiny). For society in general, the desire to ascertain the truth plays a part in strengthening confidence in public institutions and hence the rule of law. For those concerned – the victims’ families and close friends – establishing the true facts and securing an acknowledgment of serious breaches of human rights and humanitarian law constitute forms of redress that are just as important as compensation, and sometimes even more so. Ultimately, the wall of silence and the cloak of secrecy prevent these people from making any sense of what they have experienced and are the greatest obstacles to their recovery.”⁶²

Lastly, considering the right to truth as a collective right, in 2014 the ECtHR linked the right to truth with the “general” interest in knowing what happened.⁶³ As the Court emphasized in this decision, where allegations of serious human rights violations are involved in the investigation, the right to the truth regarding the relevant circumstances of the case does not belong solely to the victim of the crime and his or her family, but also to other victims of similar violations and the general public, who have the right to know what has happened.⁶⁴

61 ECtHR Case *El-Masri v. the Former Yugoslav Republic of Macedonia*, app. no. 39630/09, Reports of Judgments and Decisions 2012, para. 191.

62 ECtHR Case *El-Masri v. the Former Yugoslav Republic of Macedonia* (2012), app. no. 39630/09, Reports of Judgments and Decisions 2012, Jointly Concurring opinion of Judges Tulkens, Spielmann, Sicilianos and Keller, para. 6.

63 ECtHR Case *Al Nashiri v. Poland* (2014), app. no. 28761/11.

64 ECtHR Case *Al Nashiri v. Poland* (2014), app. no. 28761/11, para. 495.

IV: Conclusions

At the European level, the European Convention of Human Rights (ECHR) is the main instrument for protecting human rights. Even though it does not have a specific provision dealing explicitly with the protection against enforced disappearance, the consequences and human rights violations linked with enforced disappearance have been founded by the European Court of Human Rights (ECtHR) to be related to many fundamental rights of the ECHR, such as ones guaranteed by Articles 2, 3, 5, 6, 13 and 8 of the ECHR.

Even though the Court has not yet offered a definition of enforced disappearance, in several cases it has accepted the continuous nature of the violations alleged in enforced disappearance cases. In regard to this, it has accepted that the six-month time-limit for a claim to be accepted as admissible does not apply as such to continuing situations. Nevertheless, it has developed the principle that applications can be rejected as being out of time in disappearance cases where there has been excessive or unexplained delay on the part of the applicants.

Unlike the IACHR, the ECtHR considers the alleged violations of each right separately as if they came from different situations, which has resulted in some cases in the refusal of the ECtHR to find a violation of important rights, such as the right to life or the right to be free of inhuman and degrading treatment. In other cases, the ECtHR, following a narrow approach, restricts the positive obligation of responsive states under the ECHR in disappearance cases, as in the case of Article 5. Moreover, due to the strict beyond-reasonable-doubt standard of proof applied in the interpretation of Article 3, the Court usually does not find a violation of Article 3 in enforced disappearance cases. The practice of the Court shows that although the ECtHR has not yet removed its standard for violations of the right to life, it has not discharged this burden for an applicant who attempts to hold a State accountable for violating the right to be free from torture under Article 3 of the Convention.

Regarding the right to life, the Court has now a well-established practice allowing it to find a violation of Article 2 when the Court presumes the disappeared person dead. In this regard, the period of time which has elapsed since the person was placed in detention is a relevant factor to be taken into account, and the more time goes by without any news about the detained person, the greater the likelihood that he or she has died. Apart from the violation of the right to life in substantive meaning, the Court has expanded the interpretation of the right to life and the obligation of the States in relation to its protection, including the obligation of the respondent State to conduct an effective investigation and the obligation of states to take steps to prevent the loss of life and safeguard the lives of those within their jurisdiction.

In disappearance cases, the Court has assessed Article 13 of the ECHR both as an autonomous right and linked to other rights, such as Articles 2, 3, and 5 of the Convention. In the view of the Court, where the relatives of a person have an arguable claim that the latter has disappeared at the hands of the authorities, the notion of an effective remedy for the purposes of Article 13 entails, in addition to the payment of compensation where

appropriate, a thorough and effective investigation, capable of leading to the identification and punishment of those responsible and including effective access for the relatives to the investigatory procedure.

The ECtHR has examined the right to truth as a combination of different violations of conventionally protected rights. The Court's jurisprudence has emphasized not only the importance of the right of victims and their families and heirs to know the truth about the circumstances surrounding the events involving a massive violation of rights, such as that of the right to life, but also the importance to the whole society of knowing the truth about past events.

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Bogusław Tomasz Czerwiński

Prosecutor of the Institute of National Remembrance -Commission
for the Prosecution of Crimes against the Polish Nation.

INVESTIGATING THE CRIMES OF COMMUNISM IN POLAND – LEGAL AND INSTITUTIONAL BASIS

*“The freedom without the justice is
only half-freedom”.*

Oriana Fallaci

Why do we prosecute crimes committed in the past ?

The alliance between Nazi Germany and the Soviet Union



Demonstrations against communist regime



Solidarity Trade Union



Duties of the state –
criminal proceedings,
rehabilitation, compensation

The communist crimes –
core international crimes



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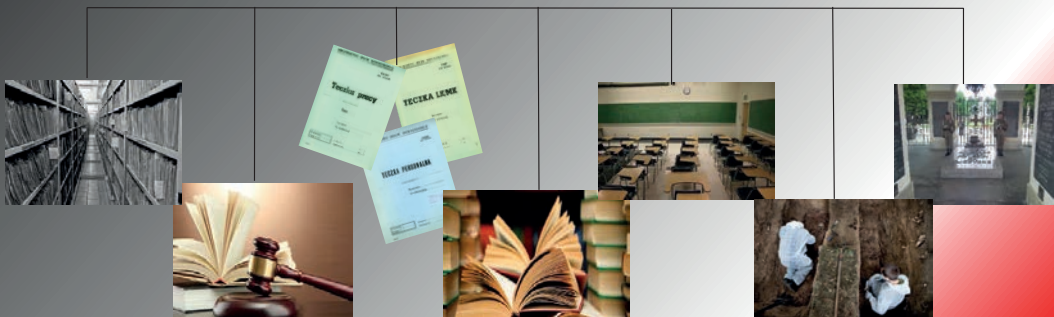
**INSTITUTE
OF NATIONAL
REMEMBRANCE**



**The activity of the Institute is based on the provisions of
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- The Archive
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- The Commission for the Prosecution of Crimes against the Polish Nation



The Commission for the Prosecution of Crimes against the Polish Nation



What are the legal bases of the investigations ?

The statistics

- The number of indictments: **382**
- The indictments against: **573**
- Interrogated witnesses: **125 859**
- From 2000 to 2021, **23 019** proceedings were completed

Communist crimes are actions performed by the officers of the communist state between November the 8th, 1917 and July the 31st, 1990 which consisted in applying reprisals or other forms of violating human rights in relation to individuals or groups of people or which as such constituted crimes according to the Polish penal act in force at the time of their perpetration

The examples of investigations conducted by the prosecutors from the IPN

Unforced disappearance of Stefan Starzyński



The Mayor of Warsaw in 1939

Katyn massacre – unforced disappearance of Polish officers



Martial law in Poland



Massacre in Wujek Coal Mine



The victims of the communists in Poland

The priest of Solidarity Trade Union - Jerzy Popiełuszko



In 1984 he was killed by the officers of secret police



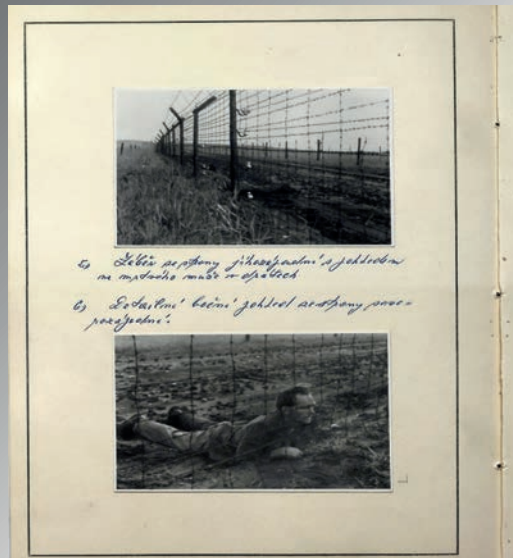
Grzegorz Przemyk - young poet, was one of the victims of the communists. In 1983 he was beaten to death by the functionaries of Civic Militia.



Kiszczak case



Polish refugees killed by high – voltage electricity on the former Czechoslovak-Austrian border



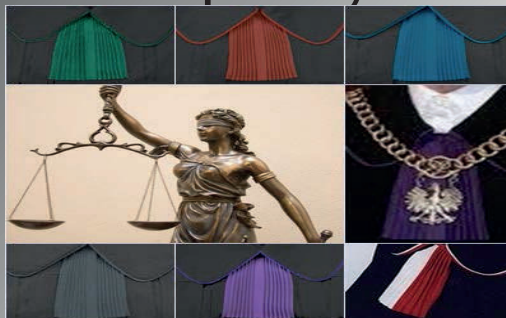
No warning saying that the fence is under deadly electric power



“The freedom without the justice is only half-freedom”.

Thank you for your attention

The fight against impunity



It was also a form of struggle



As conceived of by the Act, the communist state officer is a public functionary, as well as a person who was granted equal protection to that of a public functionary and in particular, a public functionary and a person who performed executive functions within the statutory body of the communist parties.

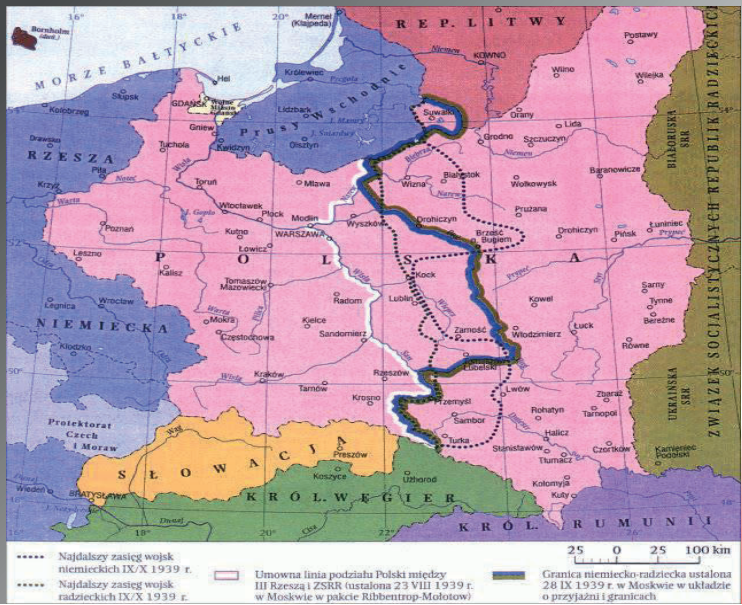
Kukuczka case



The Act on the IPN regulates the recording, collecting, storing, processing, securing, making available and publishing of the documents of the state security authorities, produced and accumulated from July 22, 1944 until July 31, 1990, as well as the documents of the security authorities of the Third Reich and the Soviet Union concerning the crimes committed against the Polish nation and Polish citizens of other nationalities from November 8, 1917 until July 31, 1990.

- **German repressions**
- **Soviet repressions**

German and Soviet zones in occupied Poland



Dragana Spencer

Senior Lecturer in Law at the University of Greenwich, UK

ENFORCED AND INVOLUNTARY DISAPPEARANCES AS A CRIME AGAINST HUMANITY IN INTERNATIONAL CRIMINAL LAW LEADING TO STATE RESPONSIBILITY TO INVESTIGATE AND PROSECUTE

Overview

International criminal law has struggled in the last thirty years or so to come up with a doctrinally coherent and durable definition of enforced disappearances as a crime against humanity. The roots of this crime, as a specific crime against humanity can be seen in international humanitarian law, and more specifically in the MTC and Nuremberg trials. Both of these sources indicate that prohibition of enforced disappearances as a crime against humanity is a norm of customary international law, the breach of which constitutes both individual and state liability in international law. On one hand, the presentation aims at highlighting the uniqueness of the crime of enforced and involuntary disappearances as a crime against humanity in international criminal law under the ICC Statute, and on the other, the overlooked connection between international individual criminal and international state responsibility, which is specific to this crime. The main reasons for this are threefold:

1. One type of accountability (individual/state) does not preclude the other;
2. The formation of a new state or a new political regime does not break the chain of criminal causation; and
3. The distinctive and continuing nature of this crime (searching for the missing and providing information about them) in customary international law creates continuous individual and state responsibility to investigate and prosecute crimes against humanity, of which enforced and involuntary disappearances form part; state obligations here are derived either through customary international law (*aut dedere aut judicare*) or delegated jurisdiction of international courts and tribunals, as well as the complementarity model (domestic primary jurisdiction) of the International Criminal Court (ICC).

It follows that an ICC state party develops state responsibility both through treaty obligations and international customary law:

1. Under the ICC Statute (treaty obligation), which now, largely, represents customary international law; and

2. Existing customary international law rooted in international humanitarian and international human rights law.

Therefore, the commission of an act of disappearance and a continued failure to look for the missing persons, investigate and prosecute the crime necessarily constitutes a serious infringement of a *treaty obligation* and a *jus cogens* norm. As such, it requires decisive and proportionate measures on the part of the state or concerned authorities to prevent, investigate and/or remedy the violation of rights arising from the commission of such act(s). Here, victims are not just the disappeared, but also their close relatives, who suffer from the continuous anguish of not knowing the fate of their loved ones.¹ Given the ongoing nature of the crime, they continue to hold the right to request that the state searches for the disappeared and to seek investigations, prosecutions, and remedies. Violations of rights arising from an act of disappearance do not cease until that time when the authorities have satisfied their procedural obligations to diligently investigate the circumstances of the disappearance.² This means that, until that point, the authorities continue to have a responsibility to look into and remedy those violations.

This is supported by the ILC Draft Articles on the Responsibility of States for Internationally Wrongful Acts 2001, in particular Art. 14 (2), which provides that a “breach of an international obligation by an act of the state having a continuing character extends over the entire period during which the act continues and remains not in conformity with the international obligation”. Importantly, Art. 3 stipulates that the legality of the act under national law (including statutes of limitations) cannot be a defence for an internationally wrongful act. The ILC Draft Articles capture both armed conflict and peacetime situations, and specifically address the frequent geo-political changes which blur the demarcations of state responsibility; under Art. 10, insurrectional movements that are successful either in becoming the new government of a state or in establishing a new state in part of the territory of the pre-existing state, inherit responsibilities for the activities prior to the assumption of authority.

1. Enforced and Involuntary Disappearances as a Crime against Humanity under the ICC Statute

If key international criminal law statutes are examined, a disjointed approach to the definition of the crime of enforced and involuntary disappearances can be seen:

1. The ICTY Statute requires that crimes against humanity are committed during an (initially, international only) armed conflict, but enforced disappearances are not mentioned as a specific crime against humanity;

1 Baranowska G., “Advances and progress in the obligation to return the remains of missing and forcibly disappeared persons”, *International Review of the Red Cross*, 2017, 99 (2), p. 718.

2 See e.g. L.O against EULEX, 214-32, Decision and Findings, 11 November 2015, para. 46.

2. In the ICTR Statute, adopted only a year after the ICTY, the requirement of armed conflict was abandoned but the crime requires a discriminatory motive;
3. The ICC Statute, adopted merely five years later, drops both requirements of armed conflict (it applies to all non-conflict situations) and of discriminatory motive, but now requires a “*state or organizational policy*”.

The crime of enforced disappearances need to be either widespread or systematic and either in times of conflict or peace. During the drafting of the Rome Statute it was left unresolved whether these acts needed to take place during armed conflict, and if they had to occur on discriminatory grounds. In the end, neither of these elements were included.

Specifically, the ICC Statute Art. 7 qualifies the crimes as follows:

Article 7 (1) (i)

Enforced disappearance of persons is a crime when committed as a part of a widespread or systematic attack against any civilian population, with the knowledge of the attack.

Article 7 (2) (a)

Requires multiple commissions of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organisational policy to commit such attack;

Article 7 (2) (l)

Enforced disappearance means the arrest, detention or abduction of persons by, or with authorisation, support or acquiescence of a state or political organisation, followed by the refusal to acknowledge the deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

The focus of the discussion here are the elements of ‘*policy*’ and ‘*prolonged period of time*’:

a. Policy

1. These acts do not need to constitute a military attack: the “*policy to commit such an attack*” requires that the state or organisation *actively promote or encourage* such an attack against civilian population (positive act).

2. Exceptionally, such a policy may be implemented by a *deliberate failure* to take action, which is consciously aimed at encouraging such an attack through a refusal to acknowledge the deprivation of freedom or to give information on the fate or whereabouts of those persons (omission).

The policy requirement is not fully developed in customary international law. In *Kunarac*, the ICTY Appeals Chamber declared unequivocally that there is “*nothing*”³ in customary law that required a policy element and an “*overwhelming*” case against it and that:

*“To prove these elements, it is not necessary to show that they were the result of the existence of a policy or plan. It may be useful in establishing that the attack was directed against a civilian population and that it was widespread or systematic (especially the latter) to show that there was in fact a policy or plan, but it may be possible to prove these things by reference to other matters. Thus, the existence of a policy or plan may be evidentially relevant, but it is not a legal element of the crime.”*⁴

Noting in particular that a state or state organ can include non-state actors (e.g. paramilitary forces) under the ‘*overall control*’ principle (*Tadic*, ICTY), this raises questions in relation to international state responsibility. Firstly, should the state have known of such a policy or plan in the circumstances? And has the state taken all reasonable steps in the circumstances to inform itself as to whether these crimes were taking place?

b. Prolonged period of time

This second element of the crimes is problematic, and it is dubious whether it represents customary international law. To date, no case has been decided before the ICC regarding the crime of enforced disappearance, and therefore the quantifying of this element is underdeveloped. Moreover, this element results in a somewhat strange departure from UN-based conventions, which regard enforced and involuntary disappearances as crimes independent of any further conditions. This element also seems to be at odds with the ECtHR jurisprudence.⁵ Therefore, this temporal requirement, as an element of the crime found in the ICC Statute, is *sui generis* and does not represent customary international law. It also fails to recognise and include the widely used ‘short-term’ disappearances where individuals are detained for a limited period of time and then freed.⁶

3 Prosecutor v. *Kunarac et al.*, Case No. IT-96-21/1A, ICTY Appeals Chamber, Judgment, 12 June 2002, para. 98

4 *Ibid.*

5 See e.g. *Mahmut Kaya v. Turkey*, Application No. 22535/93, 28 March 2000.

6 See e.g. Sarkin J., “*The Role of the International Criminal Court (ICC) in Reducing Massive Human Rights Violations Such as Enforced Disappearances in Africa: Towards Developing Transitional Justice Strategies*”, *Studies in Ethnicity and Nationalism*, 11 (1), 2012.

2. Triggering of ICC Jurisdiction under ICC Statute Art. 17

The ICC Prosecutor has the autonomy, under the ICC Statute Art. 53 (1), in deciding to initiate an investigation following the referral of a situation (e.g. direct victims, families, NGOs, other states). Under the ICC's complementarity model (Art. 17), the jurisdiction of the Court may also be triggered when a state party is unable or unwilling to investigate and prosecute crimes under the Statute. The determination of whether a state is able to carry out genuine proceedings or is unwilling to pursue them is a matter of international procedural and substantive standards and an assessment by the ICC - inaction and/or bad faith investigations amount to continuing violation of the prohibition of enforced disappearances as a crime against humanity under the ICC Statute.

In this context, the necessary international standards of investigative diligence, independence, and effectiveness imply four general elements:

- Authorities are required to act in every case with appropriate diligence, promptness and effectiveness. The assessment of whether these substantive and procedural standards have been satisfied is a matter of international, not domestic law.
- In all cases, due to the *nature* and *gravity* of the crime, state authorities must take diligent, prompt and demonstrably effective steps that are adequate for the search of the disappeared and the identification of suspects.
- Diligence means that state authorities have to organise themselves in a way that ensures the effective protection of rights.
- The lack of resources is generally insufficient to meet the state's obligations.

If there is preliminary evidence that these standards are not adequately followed, the ICC can make a determination as to state's:

a. Inaction/unwillingness to search for the disappeared and investigate and prosecute the crime

In this case, there are clearly no impediments to admissibility. If a state does not have the resources to open investigations, then the state is unable to meet its obligations and the ICC jurisdiction can be triggered. Here the determination of the ICC is based on these factors:

1. Objective of shielding suspects from criminal responsibility or willingness to investigate only certain groups;
2. Unjustified delay which indicates bad faith intent to investigate and prosecute the relevant crime and identify the perpetrator(s);
3. Lack of due process fairness, independence and impartiality;
4. Proof of political interference or deliberate obstruction and delay; and

5. Institutional deficiencies and dysfunctional processes that indicate deliberate delaying strategies.

b. Bad faith/ineffective proceedings

The jurisdiction of the ICC may be triggered if state proceedings exist, but are assessed as non-genuine and where a genuine outcome is unlikely.

In making an assessment, the ICC Prosecutor may consider the following:

1. Extent to which state proceedings comply with international duties to end impunity;
2. How extensive and effective are the investigations into the facts?
3. Is the relevant competent authority equipped with the necessary resources/expertise to fulfil its mandate?; and
4. Is there a deliberate delay in the initiation/continuation of effective procedures with the aim of shielding perpetrators from justice?

c. Inability to carry out genuine proceedings

The state may be initiating proceedings but they are so inadequate that they cannot be characterised as 'genuine'. The determination of the ICC is based on these factors:

1. Lack of adequate personnel, judges, investigators and prosecutors;
2. Lack of an independent judicial infrastructure;
3. Lack of substantive and/or procedural criminal legislation which renders the system 'unavailable';
4. Lack of access to justice mechanisms/remedies which renders the system 'unavailable';
5. Amnesties and immunities. These alternative transitional justice mechanisms can supplement but not substitute criminal justice (in which case the ICC jurisdiction may be triggered);
6. The nature and quality of proceedings cannot provide adequate reparations and a sense of justice for the victims.

PR. Bernard DUHAIME, UQAM

Professor on International Law at the Faculty of Political Science and Law of the University of Quebec in Montreal. Duhaime.bernard@uqam.ca. www.juris.uqam.ca
<https://www.ohchr.org/en/issues/disappearances/pages/disappearancesindex.aspx>

ENFORCED DISAPPEARANCES: 40 YEARS OF UNITED NATIONS ACTION TO COMBAT IMPUNITY

WHAT IS AN ENFORCED OR INVOLUNTARY DISAPPEARANCE?

- Deprivation of liberty against the will of the person;
 - Involvement of government officials, at least by acquiescence;
 - Refusal to acknowledge the deprivation of liberty or concealment of the fate or whereabouts of the disappeared person.
-
- And as a consequence
 - ... removing the person from the protection of the law.



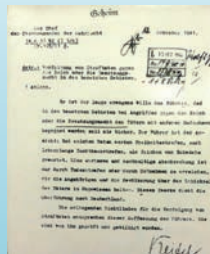
MULTIPLE VIOLATIONS

- The right to recognition as a person before the law;
- The right to liberty and security of the person;
- The right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment;
- The right to life, when the disappeared person is killed;
- The right to an identity;
- The right to a fair trial and to judicial guarantees;
- The right to an effective remedy, including reparation and compensation;
- The right to know the truth regarding the circumstances of a disappearance
- Other violations?



EIDS IN RECENT HISTORY

- “Nacht und Nebel Erlass”
- Russia
- Guatemala, Brazil
- Chile, Argentina

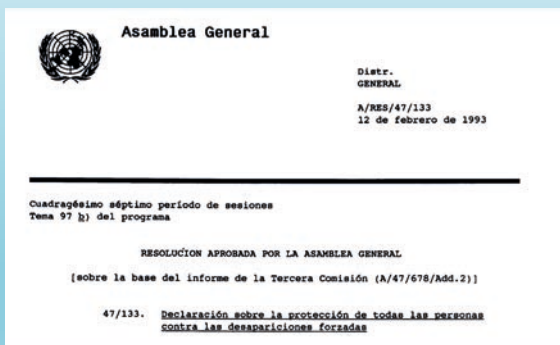


PROGRESSIVE CODIFICATION OF EID

- Nuremberg trials /IHL
- Chile and Argentina
- 1980 UN HR Commission : RES-1980-20, XXXV
- 1988 IACHtHR Velasquez Rodriguez Case
- 1992 Declaration
- 1994 IACEDP
- 1998 Rome Statute
- 2006 Convention
- 2010 Convention enters into force
- ILC draft Convention on crimes against humanity



CODIFICATION OF EIDS



STATE OBLIGATIONS

- General prohibition to undertake EIDs
 - No exception
- Prevention
 - Criminalize
 - Document detentions
 - Ensure complaint mechanisms and judicial protection
 - Train civil servants – public education



STATE OBLIGATION TO SEARCH

- The search for a disappeared person should be conducted under the presumption that he or she is alive;
- The search should respect human dignity;
- The search should be governed by a public policy;
- The search should follow a differential approach;
- The search should respect the right to participation;
- The search should begin without delay;
- The search is a continuing obligation;
- The search should be conducted on the basis of a comprehensive strategy;
- The search should take into account the particular vulnerability of migrants;
- The search should be organized efficiently;
- The search should use information in an appropriate manner;
- The search should be coordinated;
- The search and the criminal investigation should be interrelated;
- The search should be carried out safely;
- The search should be independent and impartial;
- The search should be governed by public protocols



CED Guiding principles for the search for disappeared persons, 2019

STATE OBLIGATIONS TO INVESTIGATE, PROSECUTE, SANCTION



- (a) Define enforced disappearance as an autonomous crime in national legislation and establish different modes of criminal liability, including abetting, instigating, acquiescing and actively covering up an enforced disappearance, as well as criminal liability for command or superior responsibility;
- (b) Create mechanisms that can promptly receive and process complaints of enforced disappearances, under the responsibility of authorities who are independent of the institutions to which the alleged perpetrators belong or may be linked. These mechanisms should be empowered to trigger prompt investigations of the complaints received. It is imperative that complaints of disappearances that involve the alleged participation of State officials, or of non-State actors with the support or acquiescence of State officials, are recognized as cases of enforced disappearance and immediately trigger the application of the principles that guide the investigation of such crimes. States cannot invoke the lack of a formal complaint to refuse to initiate investigations;

WGEID report on standards and public policies for an effective investigation of enforced disappearances (2020)

STATE OBLIGATIONS TO INVESTIGATE, PROSECUTE, SANCTION

- (c) Guarantee unrestricted access to all the competent judicial authorities and investigators that work with them to any place where people deprived of their liberty are kept or to any place, official or unofficial, where there is reason to believe disappeared persons could be found;
- (d) Ensure that the authorities in charge of investigations have access to all the relevant information, including any contained in records and archives pertaining to military, police, intelligence and other national security bodies;
- (e) Remove obstacles in national law that may lead to impunity in cases of enforced disappearances,

WGEID report on standards and public policies for an effective investigation of enforced disappearances (2020)



STATE OBLIGATIONS TO INVESTIGATE, PROSECUTE, SANCTION

- (f) Establish a swift and effective judicial recourse system in order to ascertain the whereabouts of disappeared persons and to ensure their mental and physical well-being and identify the authorities, including the specific individuals or bodies, who ordered or carried out the deprivation of liberty. This remedy should be applicable in all circumstances and with no exceptions;
- (g) Ensure the independence, autonomy and integrity of investigations.
- (h) Establish mechanisms for the protection of victims, their family members, witnesses and other persons involved in the investigation, including defendants who may provide relevant information on cases, which should operate under the auspices of an independent institution with sufficient resources to meet their objectives;

WGEID report on standards and public policies for an effective investigation of enforced disappearances (2020)



STATE OBLIGATIONS TO INVESTIGATE, PROSECUTE, SANCTION

- (i) Facilitate the participation of those who survived and of the families of disappeared persons in the different proceedings. To this end, mechanisms should be established to ensure they receive psychosocial support from professionals with experience in dealing with cases of enforced disappearance and who are trusted by the victims. Follow-up mechanisms should also be established;
- (j) Create specialized multidisciplinary units for the investigation and criminal prosecution of cases of enforced disappearances and foster joint contextual investigations, in order to ensure better coordination of criminal policy and reduce the fragmentation of investigations;
- (k) Promote the use of scientific evidence, on the basis of the Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016), including through the creation of local, autonomous forensic teams with access to sufficient resources;
- (l) Develop policies for the conservation and disclosure of records, both public and confidential, and take steps to ensure that qualified professionals and adequate material resources are available to search those records;

WGEID report on standards and public policies for an effective investigation of enforced disappearances (2020)



STATE OBLIGATIONS TO INVESTIGATE, PROSECUTE, SANCTION



- (m) Establish clear mechanisms to ensure coordination, cooperation and exchange of information between all State agencies involved in the investigations, in particular those responsible for the criminal investigation and prosecution and for the search for disappeared persons, in order to guarantee that progress and results are achieved on all sides;
- (n) Cooperate with other States, both during the search for disappeared persons and during criminal investigations, including by producing any relevant evidence in their possession, establishing cooperation frameworks focused on offering comprehensive assistance to the victims, surrendering or extraditing alleged perpetrators and ensuring their investigation and trial;
- (o) Reform intelligence, military and security agencies that have actively participated in acts of enforced disappearances, in order to help ensure their transparency and enhance oversight by democratic institutions

WGEID report on standards and public policies for an effective investigation of enforced disappearances (2020)

STATE OBLIGATION TO ENSURE REPARATIONS

- **International Convention for the Protection of All Persons from Enforced Disappearance (2006) Article 24:**

4. Each State Party shall ensure in its legal system that the victims of enforced disappearance have the right to obtain reparation and prompt, fair and adequate compensation.

5. The right to obtain reparation referred to in paragraph 4 of this article covers material and moral damages and, where appropriate, other forms of reparation such as:

- (a) Restitution;
- (b) Rehabilitation;
- (c) Satisfaction, including restoration of dignity and reputation;
- (d) Guarantees of non-repetition.



OTHER STATE OBLIGATIONS

- Non refoulement
- Cooperate
- Children



THE UN WORKING GROUP ON ENFORCED OR INVOLUNTARY DISAPPEARANCES

- Creation
- Nature
- Composition
- Sessions
- Reporting to UN HR Council and GA
- Functions and procedures
 - Cases
 - Urgent procedure
 - Urgent appeals
 - Prompt interventions
 - General allegations



THE UN WORKING GROUP ON ENFORCED OR INVOLUNTARY DISAPPEARANCES

- Since its inception, the Working Group has transmitted a total of 59 212 cases to 108 States. The number of cases under active consideration that have not yet been clarified, closed or discontinued stands at 46 490 in a total of 110 States (July 2021)



THE UN WORKING GROUP ON ENFORCED OR INVOLUNTARY DISAPPEARANCES

- Recent country visits

- Peru
- Sri Lanka
- Turkey
- Albania
- The Gambia
- Ukraine
- Central Asia



COUNTRY VISITS REPORTS

Country	Mission Report	Follow-up
Ukraine	A/HRC/42/46/Add.2 E F S R C A	
Gambia	A/HRC/39/46/Add.1 E F S R C A	
Albania	A/HRC/36/39/Add.1 E F S R C A	
Peru	A/HRC/33/51/Add.3 E F S R C A	A/HRC/42/45/Add.1 S
Sri Lanka	A/HRC/33/51/Add.2 E F S R C A	A/HRC/42/45/Add.1 E
Turkey	A/HRC/33/51/Add.1 E F S R C A	
Croatia	A/HRC/30/38/Add.3 E	A/HRC/39/46/Add.2 E
Montenegro	A/HRC/30/38/Add.2 E	A/HRC/39/46/Add.2 E
Serbia Kosovo	A/HRC/30/38/Add.1 E	A/HRC/39/46/Add.2 E
Spain	A/HRC/27/49/Add.1 E F S C A	A/HRC/36/39/Add.3 E F S R C A
	A/HRC/27/49/Add.3 S	Comments by the State S
Chile	A/HRC/22/45/Add.1 (August 2012) E F S R C A	A/HRC/36/39/Add.3 E F S R C A
	A/HRC/22/45/Add.4 S only	
Pakistan	A/HRC/22/45/Add.2 E F S R C A	A/HRC/33/51/Add.7 (2018)

Pakistan	A/HRC/22/45/Add.2 E F S R C A	A/HRC/33/51/Add.7 (2018) E
Republic of the Congo	A/HRC/19/58/Add.3 (September/October 2011) E F S R C A	
Mexico	A/HRC/19/58/Add.2 (March 2011) E F S R C A	A/HRC/30/38/Add.4 (2015) E
	E/CN.4/1492/Add.1 (22 February 1982)	
Timor-Leste	A/HRC/19/58/Add.1 (February 2011) E F S R C A	A/HRC/30/38/Add.4 (2015) E
Bosnia and Herzegovina	A/HRC/16/48/Add.1 (June 2010) E F S R C A	A/HRC/27/49/Add.2 E F S R C A
Morocco	A/HRC/13/31/Add.1 (June 2009)	A/HRC/22/45/Add.1 E F S only
Argentina	A/HRC/15/9/Add.1 (July 2008)	A/HRC/27/49/Add.2 E F S R C A
Guatemala	A/HRC/4/41/Add.1 (February 2007)	A/HRC/16/48/Add.1 (2010)
Honduras	A/HRC/7/2/Add.1 (26 October 2007)	A/HRC/16/48/Add.1 (2010)

COUNTRY VISITS REPORTS

El Salvador	A/HRC/7/2/Add.2 (26 October 2007)	A/HRC/22/45/Add.3 E F S only
Colombia	E/CN.4/2006/56/Add.1 (July 2005)	A/HRC/19/58/Add.4 (2011) English/Spanish only
	E/CN.4/1989/18/Add.1 (November 1988)	
Nepal	E/CN.4/2005/65/Add.1 (December 2004)	A/HRC/19/58/Add.4 (2011) English/Spanish only
Democratic Republic of Congo	A/57/349 A/58/122 E/CN.4/2003/44	
Sri Lanka	E/CN.4/2000/64/Add.1 (October 1999)	
Turkey	E/CN.4/1999/62/Add.2 (September 1998)	
Yemen	E/CN.4/1999/62/Add.1 (August 1998)	
Republic of Croatia and the Republic of Bosnia and Herzegovina	E/CN.4/1997/55	
Republic of Croatia and the Republic of Bosnia and Herzegovina	E/CN.4/1995/37 (July 1994)	E/CN.4/1998/36 (February 1996)

Former Yugoslavia Joint mission with SR on Former Yugoslavia	E/CN.4/1994/26/Add.1 (August 1993)	
Sri Lanka	E/CN.4/1993/25/Add.1 (October 1992)	
	E/CN.4/1993/18/Add.1	
Philippines	E/CN.4/1991/20/Add.1 (10 January 1991)	
Guatemala	E/CN.4/1988/15/Add.1 (21 December 1987)	
Peru	E/CN.4/1986/18/Add.1 (June 1985)	E/CN.4/1987/15/Add.1 (October 1986)
Bolivia	E/CN.4/1985/15	



SPECIFIC OBLIGATIONS IN CONTEXTS OF TRANSITIONAL JUSTICE

- For the United Nations system, **transitional justice** is the full range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. (Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice 2010).
- The notion of “**transitional justice**” discussed in the present report comprises the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof. (Report of the Secretary-General :The rule of law and transitional justice in conflict and post-conflict societies, 2004)
- **Transitional justice** consists of both judicial and non-judicial mechanisms, including prosecution initiatives, reparations, truth-seeking, institutional reform, or a combination thereof) (OHCHR, 2021)



SPECIFIC OBLIGATIONS IN CONTEXTS OF TRANSITIONAL JUSTICE

- Enforced disappearances are a violation of norm of customary international law
- Norm of *jus cogens*
- Torture
- Crime against humanity



WGEID REPORT ON 2016 VISIT TO ALBANIA GENERAL RECOMMENDATIONS RELATED TO TRANSITIONAL JUSTICE



- (a) Expand the current legislative framework in order to comprehensively secure the rights of both society and victims of enforced disappearance to know the truth about what happened during the dictatorship, the right of families to have the remains of their loved ones found, identified and returned to them, the right to access to justice, the right to reparation, including compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition, and the right to memory;
- (b) Consolidate the institutional framework for addressing the enforced disappearances of the past; consider establishing a broadly mandated, multidisciplinary, “one-stop shop” type of institution to secure the rights of victims and to achieve national reconciliation; such an institution should, inter alia, be responsible for receiving and verifying complaints of enforced disappearance; keep a national register of disappeared persons and identified burial sites;
- (c) Grant the status of victim of enforced disappearance to family members of persons who disappeared or whose remains disappeared during acts of repression, whether this was a result of political persecution or not; as an immediate step, amend the existing mechanism to compensate for the suffering endured by Albanians under the authoritarian regime by expressly including victims of enforced disappearance as beneficiaries, without the requirement that they must provide evidence of political persecution;
- (d) Introduce in relevant legislation the possibility of obtaining a certificate of absence due to enforced disappearance to define the legal status of forcibly disappeared persons and to guarantee pertinent rights to their family members;
- (e) Expressly provide that enforced disappearance is a continuous crime to which amnesties and immunities cannot be applied.

SPECIFIC OBLIGATION TO SEARCH: IN CONTEXTS OF TRANSITIONAL JUSTICE

- On going until the person is found irrespective of statutes of limitation: consequences of continuous nature of the crime?
- Exhumation, Identification (DNA data)
- Preservation of sites and of evidence
- Funding and institutionalization
- Restitution of the body in case of death
- Psycho-social assistance
- Intrinsicly linked to the right to truth



SPECIFIC OBLIGATIONS TO ENSURE THE RIGHT TO TRUTH IN CONTEXTS OF TRANSITIONAL JUSTICE

- Background :
 - Geneva Convention 1929
 - Third Geneva Convention 1949



Article 32 General principle

In the implementation of this Section, the activities of the High Contracting Parties, of the Parties to the conflict and of the international humanitarian organizations mentioned in the Conventions and in this Protocol shall be prompted mainly by the right of families to know the fate of their relatives.

Additional Protocol 1977

SPECIFIC OBLIGATIONS TO ENSURE THE RIGHT TO TRUTH IN CONTEXTS OF TRANSITIONAL JUSTICE



- The Commission and the Court affirmed that the victims' successors definitely have a "right to the truth" or the right to know the fate of their loved ones.

IACourt Bámaca Velásquez Case (2002)

- "Irrespective of any legal proceedings, victims and their families have the imprescriptable right to know the truth about the circumstances in which violations took place and, in the event of death or disappearance, the victims' fate."

Set of Principles for The Protection And Promotion of Human Rights Through Action To Combat Impunity (E/CN.4/2005/102/Add.1) Principe 4

SPECIFIC OBLIGATIONS TO ENSURE THE RIGHT TO TRUTH IN CONTEXTS OF TRANSITIONAL JUSTICE



Working Group on Enforced or Involuntary Disappearances

General Comment on the Right to the Truth in Relation to Enforced Disappearances

Preamble

The right to the truth – sometimes called the right to know the truth – in relation to human rights violations is now widely recognized in international law. This is witnessed by the numerous acknowledgements of its existence as an autonomous right at the international level and through State practice at the national level. The right to the truth is applicable not

SPECIFIC OBLIGATIONS TO ENSURE THE RIGHT TO TRUTH IN CONTEXTS OF TRANSITIONAL JUSTICE

- Ensure the participation of relatives
- Access to information on the process and access to archives
- Very limited exceptions (provided by law, exceptional cases, presumptions, reviews, etc)



WGEID COMMENTS ON RIGHT TO TRUTH IN ALBANIA REPORT



“The Working Group, in its general comment on the right to the truth in relation to enforced disappearances, states that the right to the truth means the right to know about the progress and results of an investigation, the fate or the whereabouts of the disappeared persons, and the circumstances of the disappearances, and the identity of the perpetrator(s). Furthermore, the Working Group highlights that when a disappeared person is found to be dead, his or her family has the right to have the remains of the loved one returned to them, and to dispose of those remains according to their own tradition, religion or culture.” (para 31).

As stated in the Working Group’s general comment on the right to the truth in relation to enforced disappearances, when a disappeared person is found to have died, the remains of the person should be clearly and indisputably identified, through DNA analysis or otherwise. The Working Group has stressed that the State, or any other authority, should not undertake the process of identification of the remains, and should not dispose of those remains, without the full participation of the family and without fully informing the general public of such measures. States ought to take the necessary steps to use forensic expertise and scientific methods of identification to the maximum of its available resources, including through international assistance and cooperation. (para 41)

WGEID RECOMMENDATIONS TO ALBANIA: TO ENSURE THE **RIGHT TO TRUTH** IN CONTEXTS OF TRANSITIONAL JUSTICE



- (a) Take firm and decisive steps for the swift adoption of a comprehensive policy to search, locate and identify the remains of persons executed during the dictatorship, including:
 - (i) Establishing a disaggregated register with the exact or approximate number of disappeared persons;
 - (ii) Identifying locations of potential burial sites and establishing centralized mapping for all these locations;
 - (iii) Establishing and enforcing standard operating procedures for the proper preservation of currently identified burial sites and of any samples found therein;
 - (iv) Opening investigations at some of the identified burial sites;
 - (v) Launching the creation of a national DNA bank to which families can contribute samples, and raising awareness among families about its use and purpose;
 - (vi) Ensuring annual budgetary allocations for the above-mentioned endeavours;

WGEID RECOMMENDATIONS TO ALBANIA: TO ENSURE THE **RIGHT TO TRUTH** IN CONTEXTS OF TRANSITIONAL JUSTICE



- (b) Finalize the accession of Albania to the Agreement on the Status and Functions of the International Commission on Missing Persons, and swiftly take any other legal and policy measures required to enable the immediate launch of the Commission's project in Albania;
- (c) Swiftly promulgate the necessary regulation to frame the practical functioning of the new authority for the opening of the Sigurimi files, and ensure the allocation of adequate financial and human resources in order to maximize its results;
- (d) Take immediate measures to preserve all existing records and documentation relating to the human rights violations of the past, including enforced disappearances, regardless of the government institution holding them.

WGEID RECOMMENDATIONS TO ALBANIA: TO ENSURE **OTHER ELEMENTS OF THE RIGHT TO REPARATION**



Other recommendations related to reparations:

- a) Develop a reparation mechanism tailored to the nature of the violation, namely enforced disappearance, which guarantees the right of victims and their families to compensation, restitution, rehabilitation and memory — this mechanism should consider the families of the disappeared as victims just like the direct victims of other serious human rights violations perpetrated under the dictatorship;
- b) Offer a new opportunity for reparation to families of victims of enforced disappearance who were excluded under the initial deadline for surviving victims;
- c) Reparation should also take into account medical, psychological and moral support for the harm suffered, as well as support for families during the search for and exhumation, identification and recovery of remains, in addition to compensation;

SPECIFIC OBLIGATIONS TO ENSURE THE RIGHT TO MEMORY IN CONTEXTS OF TRANSITIONAL JUSTICE

“A people’s knowledge of the history of its oppression is part of its heritage and, as such, must be ensured by appropriate measures in fulfilment of the State’s duty to preserve archives and other evidence concerning violations of human rights and humanitarian law and to facilitate knowledge of those violations. Such measures shall be aimed at preserving the collective memory from extinction and, in particular, at guarding against the development of revisionist and negationist arguments.”

Set of Principles for The Protection And Promotion Of Human Rights Through Action To Combat Impunity (E/CN.4/2005/102/Add.1) Principe 3



SPECIFIC OBLIGATIONS TO ENSURE THE **RIGHT TO MEMORY** IN CONTEXTS OF TRANSITIONAL JUSTICE

WGEID 2017 recommendations to Albania:

(d) Establish a strategy of memory based on the identification of places of reflection for families and places of remembrance for Albania as a whole;

(e) Adopt a participatory approach with the families of victims and associations working in the field of memory for the design, implementation and celebration of memory;

(f) Provide the necessary budgets for memory projects and ensure their sustainability and visibility.



WGEID 2020 SPECIFIC RECOMMENDATIONS TO ENSURE THE RIGHT TO JUSTICE IN CONTEXTS OF TRANSITIONAL JUSTICE



- (d) Ensure that the authorities in charge of investigations have access to all the relevant information, including any contained in records and archives pertaining to military, police, intelligence and other national security bodies;
- (e) Remove obstacles in national law that may lead to impunity in cases of enforced disappearances, including by:
 - (i) When applicable, only initiating statutes of limitations from the date of the clarification of the fate and whereabouts of the person;
 - (ii) Prohibiting amnesties, pardons and other measures that may be aimed at avoiding or indirectly hindering the obligation to investigate, prosecute and punish the perpetrators of said crimes;
 - (iii) Prohibiting the defence of superior orders;
 - (iv) Limiting the application of the principles of res judicata and ne bis in idem in cases of fraudulent investigations;

SPECIFIC OBLIGATIONS TO ENSURE THE RIGHT TO JUSTICE IN CONTEXTS OF TRANSITIONAL JUSTICE



- [...]
- (g) Ensure the independence, autonomy and integrity of investigations. To this end, States should:
 - (i) Suspend any alleged perpetrator from official duties, in order to help prevent them from influencing the investigation, or from putting pressure on, intimidating or carrying out reprisals against those directing or participating in the investigation;
 - (ii) Take steps to limit the participation in the investigations of the institution to which the alleged perpetrators belong;
- [...]
- (l) Develop policies for the conservation and disclosure of records, both public and confidential, and take steps to ensure that qualified professionals and adequate material resources are available to search those records;

SPECIFIC OBLIGATIONS TO ENSURE THE RIGHT TO JUSTICE IN CONTEXTS OF TRANSITIONAL JUSTICE



- (m) Establish clear mechanisms to ensure coordination, cooperation and exchange of information between all State agencies involved in the investigations, in particular those responsible for the criminal investigation and prosecution and for the search for disappeared persons, in order to guarantee that progress and results are achieved on all sides;
- (n) Cooperate with other States, both during the search for disappeared persons and during criminal investigations, including by producing any relevant evidence in their possession, establishing cooperation frameworks focused on offering comprehensive assistance to the victims, surrendering or extraditing alleged perpetrators and ensuring their investigation and trial;
- (o) Reform intelligence, military and security agencies that have actively participated in acts of enforced disappearances, in order to help ensure their transparency and enhance oversight by democratic institutions

WGEID ALBANIA REPORT COMMENT ON THE RIGHT TO JUSTICE



The Working Group is not persuaded by the justifications offered during the visit for the lack of investigations into past enforced disappearances. In the course of the meetings, some views were expressed that perpetrators of serious crimes during the dictatorship could not be investigated and tried, as they had acted in accordance with the law then in force. To put this view in legal terms, this position appears to suggest that prosecution for acts that were not considered crimes when they were carried out would contradict the principle of non-retroactivity. The Working Group recalls, firstly, that the Declaration states that no circumstances whatsoever may be invoked to justify enforced disappearance. Secondly, enforced disappearance is a single consolidated act, not a combination of isolated, unconnected facts and prototypical continuous crime. This means, inter alia, that the crime extends for the whole period of time when it is not complete, that is until the fate or whereabouts of the disappeared person are clearly established, irrespective of whether that person is alive or dead. Consequently, cases of enforced disappearance can, and should, be investigated and tried if the commission of the act had begun before, and continues after, it was criminalized in national law, notwithstanding the principle of non-retroactivity(para 51).

Furthermore, in accordance with the Declaration, States are under an obligation to investigate alleged enforced disappearances ex officio. Therefore, the justification given to the Working Group for the absence of investigations, i.e. that there have been no requests from concerned individuals for the launching of an investigation, runs counter to the State's international obligations and does not justify lack of action. Albanian investigative and prosecutorial authorities are duty-bound to investigate and bring cases to courts on their own motion, and they should act with a sense of urgency because of the significant amount of time elapsed since the enforced disappearances occurred. Further delay will not absolve Albania from its obligation to secure the right to justice for victims, but will make investigations and trials increasingly difficult, as victims and witnesses age and pass away. Also, in the face of the passivity of State authorities, families carry out their own investigations, thereby tampering with the would-be evidence (para 52).

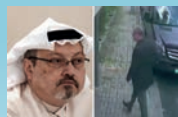
WGEID RECOMMENDATIONS TO ALBANIA TO ENSURE **THE RIGHT TO JUSTICE**



- (a) Communicate to law enforcement institutions a sense of urgency and encourage them to initiate ex officio investigations into cases of enforced disappearance, regardless of the time that has elapsed since these occurred, and provide them with all the necessary means to this end;
- (b) Without delay, organize professional training for law enforcement officials, judges and lawyers representing victims relating to applicable international standards, specific characteristics of crimes of enforced disappearance and corresponding investigative and judicial practices, including the need for heightened sensitivity in dealing with victims;
- (c) Provide victims of enforced disappearance with legal avenues to obtain truth and justice, and take specific measures to encourage the use of those avenues in preference to private inquiries or exhumations; to this end, the State should make available free legal aid and promote the active participation of victims in official investigations and judicial proceedings;
- (d) Carry out immediate judicial reforms as envisioned by recently adopted constitutional and legislative provisions, including implementation of the vetting mechanism.

ENFORCED DISAPPEARANCES: A PROBLEM OF THE PAST?

- On going suffering, intergenerational damage, impacts on reconciliation.
- Persistent impunity and its effects on public confidence, the Rule of Law and the consolidation of democratic institutions.
- Dangers of negationism and revisionism.
- Current EIDs in the context of migration, of the fight against organized crime and against terrorism.
- Recent report on transnational transfers and SP UA ALB 1/2020.



Panel III:

Institutional Setting and Identification Processes

DR. Arsim GERXHALIU

Forensic Pathologist
Director 2008-2021 Institute of Forensic Medicine
Ministry Of Justice - Republic of Kosovo¹

THE RIGHT OF FAMILY MEMBERS TO THEIR RELATIVES E DREJTAE FAMILJAREVEPER TE AFERMITE TYRE

Kosova pas 1999- shtet I ri



¹ All references to Kosovo, whether to the territory, institutions or population, should be understood in full compliance with United Nations Security Council Resolution 1244

The Balkans



Bal
Mjalte
Honey

otomans

Kan
Gjak
Blood



1st & 2nd World War - refugee's



Communism in Yougosllavia Komunizmi ne Jugosllavi

- Murder - liquidation of ballist's and opponents of the communist party
- Vrasja (likuidimi) i ballisteve dhe kundertshtareve te Partise Komuniste.
- Tivar massacre over 4000 murders
- Masakra e Tivarit mbi 4000 te vrare
- Thousands of murders during Rankoviq's time
- Mijera vrasje gjate kohes se Rankoviqit

Masakra e Tivarit



Communism - Albania

- In the period 1944-1991, over 6,000 people were executed in Albania with or without a court order (mostly by shooting or hanging) and their bodies were almost never returned to their families for burial. According to the Institute for the Study of the Crimes and Consequences of Communism (ISKK) in Albania, 5,577 men and 450 women were sentenced to death and killed
- Në periudhën 1944 – 1991, mbi 6.000 persona u ekzekutuan në Shqipëri me ose pa urdhër të gjykatës (kryesisht me pushkatim ose varje) dhe trupat e tyre nuk iu kthyen pothuajse asnjëherë familjeve të tyre për varrim. Sipas Instituti të Studimeve për Krimet dhe Pasojat e Komunizmit (ISKK) në Shqipëri, 5.577 burra dhe 450 gra u dënuan me vdekje dhe u vranë.

Komunizmi ne Shqiperi

- There are also numerous reports that political prisoners died in prisons or labor camps as a result of torture or other causes such as suicide. Even in these cases the bodies were not returned to the family, because in the communist regime the body of the convict remained at the disposal of the state for the entire duration of the sentence even if he died.
- Ka edhe raporte të shumta ku thuhet se të burgosur politikë vdiqën në burgjet apo kampet e punës si rezultat i torturave apo shkaqeve të tjera si për shembull, vetvrasje. Edhe në këto raste trupat nuk i ktheheshin familjes, sepse në regjimin komunist trupi i të dënuarit mbetej në dispozicion të shtetit gjatë gjithë kohëzgjatjes së dënimit edhe në qoftë se ai vdiste.

1998 – 1999 Army and Police repression



There were 1 million refugees



Civilians were murdered



*As a result, there were over
13,000 people murdered*



*There were 6500 missing
(2002 y.)*

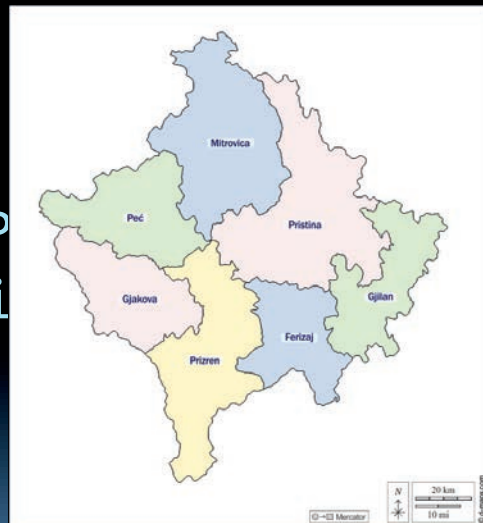


July 1999 – July 2002 ICTY

- 4019 autopsy – from ICTY (classical methods - mostly - only external examination. No DNA analyses
- Over 2000 cases buried from families (no autopsy- no DNA analyses)

ICTY team's

German-Pz, Gjk
Canada-Kaq. Lip
British-Rahovec
Danish-Kaq. Gjk. P
French- Vushtrri
Spain – Istog
Belgium- Drenas
Austria-Gjilan



2002-2017 - more than 4500
bodies identified



Mass graves in Serbia



The right to know...

- Families of missing persons have the right to know the fate of their missing family members and relatives, their place of (temporary) residence, or if dead, the circumstances and cause of death and location of burial, if such location is known, and to receive the mortal remains.
- Familjet e personave të zhdukur kanë të drejtë të dinë fatin e familjarëve dhe të afërmve të tyre të zhdukur, vendbanimin e tyre (të përkohshëm), ose nëse kanë vdekur, rrethanat dhe shkakun e vdekjes dhe vendndodhjen e varrimit, nëse dihet vendndodhja e tillë, dhe marrin mbetjet mortore.

Who is considered a missing person?

LAW ON MISSING PERSONS

Kush konsiderohet si person i zhdukur ?

LIGJI PER PERSONAT E ZHDUKUR

Pas Bosnes - vendi i dyte ne bote

- **Law No.04/L –023**

Ligji nr. 04/L-023

- 1. This Law aims to protect the rights and interests of missing persons and their family members, in particular the right of family members to know about the fate of missing persons, who were reported missing during the period 1 January 1998 – 31 December 2000, as a consequence of the war in Kosovo² during 1998-1999.
- 1. Ky ligj synon të mbrojtë të drejtat dhe interesat e personave të zhdukur dhe të familjarëve të tyre, në veçanti të drejtën e familjarëve për të ditur fatin e personave të zhdukur, të cilët janë raportuar të zhdukur gjatë periudhës 1 janar 1998 – 31 dhjetor 2000. si pasojë e luftës në Kosovë gjatë viteve 1998-1999.

Rights of the missing persons

- *There shall be no prejudice to the rights and interests of a missing person due to his or her status as a missing person.*
- *Nuk do të ketë asnjë paragjykim për të drejtat dhe interesat e një personi të zhdukur për shkak të statusit të tij/saj si person i zhdukur.*

2 All references to Kosovo, whether to the territory, institutions or population, should be understood in full compliance with United Nations Security Council Resolution 1244

The right of family members to get informed on the fate of missing persons

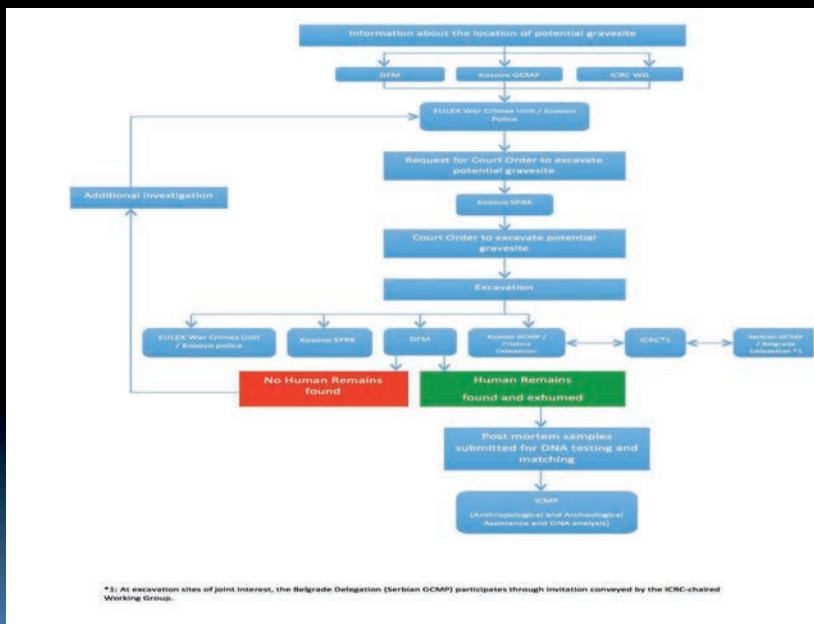
- 1. Everyone shall have the right to know about the fate of his or her missing family member(s), including the whereabouts, or in case they deceased, the circumstances of their death and location of burial, if such location is known, and they shall also have the right to recover the mortal remains.
- 2. Governmental Commission on Missing Persons (hereinafter: Commission) shall inform, in writing, the family members of the outcome of searching requests.
- 3. Commission reviews all requests relating to missing persons, including the request referred to in the paragraph above.
- 4. Nobody holds criminal liability nor shall be exposed to threats, violence or any other form of threat when he or she wants to know about the fate or whereabouts of his or her missing family members.

Rights of the family members in relation to the legal status of missing persons

- 1. The civil status of the spouse of a missing person does not change until the identification of mortal remains of a missing person is conducted and a death certificate is issued, or the missing person is proclaimed dead by the court pursuant to Law on Noncontested Procedure.
- 2. In case where both parents are reported missing to the Commission, the custody shall be imposed pursuant to Family Law of Kosovo.³ The custody shall protect the best interest of the child.
- 3. A family member of the missing person may request from the Basic Court of the last residence address of the missing person to take an authorization on temporary administration of property and assets belonging to the missing person. The court may issue such authorization if this petition is in the best interest of the missing person. In case the missing person is proclaimed dead thereafter pursuant to provisions of Law on Non-contested Procedure, the same person (family member) may be appointed as a custodian pursuant to the same Law.
- 4. A family member of the missing person, who can prove his or her material dependency on the incomes of the missing person, may apply to the Basic Court of the last residence address of the missing person to receive a payment (daily fee) from the properties of the missing person, so that the family member could fulfill their needs.
- 5. The expenses of reburial after the identification of mortal remains of missing person shall be covered by Governmental Commission on Missing Persons.

³ All references to Kosovo, whether to the territory, institutions or population, should be understood in full compliance with United Nations Security Council Resolution 1244

Schematic excavation



Efforts in IFM

- Clarify the fate of missing persons
- Search for unidentified human remains in order to provide answers to the justice system and families
- Assessment and exhumation of suspected grave sites
- Identification of remains of missing persons, using anthropological methods and DNA analysis whenever necessary
- The identified remains are returned to the affected families in a timely and respectful manner
- Zbardhet fati i personave të zhdukur
- Kërkojme mbetjet njerëzore të paidentifikuara për t'i dhënë përgjigje sistemit të drejtësisë dhe familjeve
- Vlerësimi dhe zhvarrosja e varreve të dyshuara
- Identifikimi i mbetjeve të personave të zhdukur, duke përdorur metoda antropologjike dhe analiza të ADN-së (ICMP)
- Eshtrat e identifikuara u kthehen familjeve në kohë dhe me respekt

WHAT IS FORENSIC ARCHAEOLOGY? ÇFARË ËSHTË ARKEOLOGJIA MJEKO- LIGJORE?

- *Sub-discipline of Archaeology*
- *Archaeology: study of culture through material artefacts*
- ***Nëndisiplina e Arkeologjisë***
- ***Arkeologjia: studimi i kulturës përmes artefakteve materiale***

- *Forensic Archaeology:*
- *Potential gravesites and graves*
- *Surface body disposals*
- *Small buried items or personal effects*
- **Arkeologjia Forenzike:**
- **Varrezat dhe varret e mundshme**
- **Kontrolli i sipërfaqes për mundësinë e gjetjes së trupave.**
- **Gjesende të vogla (pjesë të trupit) të varrosura ose sende personale**

Njoftimi I familjareve



Urdheresa – Court order

18
14.05.2021 -
Urdhëresë

07-05-2021

REPUBLICA E KOSOVËS / REPUBLIKA KOSOVA

PTT

PNDS.nr.6/21

GJYKATA THEMELORE NË PRISHTINË - Departamenti Special, gjyqtarja e procedurës paraprake ~~Meles Namani~~ duke vepruar në bazë të kërkesës Prokurorisë Speciale të Republikës së Kosovës, Prokurorit Special ~~Meles Namani~~, me numër PPN.nr. ~~1405~~2021, të datës 30.04.2021, për lëshimin e urdhrit për zvarrosje (Ekshumim), në kuptim të nenit 139 par.1 të KPPRK-së lidhur me nenin 8 par.1 të Udhëzimit Administrativë me numër MD-nr.10/2014, të datës 12.09.2014, për autopsitë mjeko-ligjore, udhëzimet dhe standardet lidhur me autopsinë, me datë 05.05.2021 lëshon këtë:

**URDHËR
PËR ZHVARROSJE (EKSHUMIMI)**

I. **APROVOHET** kërkesa për lëshimin e urdhrit për zvarrosje (Ekshumimi), kërkesë e Prokurorisë Speciale të Republikës së Kosovës, me numër PPN.nr. ~~1405~~2021, të datës 30.04.2021, ashtu që **URDHËROHEN** veprimet sikurse më poshtë:

II. **Urdhërohet** zhvillimi i procedurave për zvarrosjen (Ekshumimin), e mbetjeve mortore ende të pa identifikuar në lokacionin ~~21 km-032007544~~, në varrezat e qytetit të Shtimes.

III. **Urdhërohet** Policia e Kosovës-Spektori i Hetimeve të Krimeve të Luftës DHKR-DPP në Prishtinë, së bashku me Institutin e Mjekësisë Ligjore-Ministria e Drejtësisë në Prishtinë, që të bëjnë ekzaminim, autopsinë dhe procedurat tjera të mbetjeve mortore për identifikim në këtë rast.

Arsyetim

INDICATIONS OF POTENTIAL EVIDENCE RECOVERED AT EXHUMATION

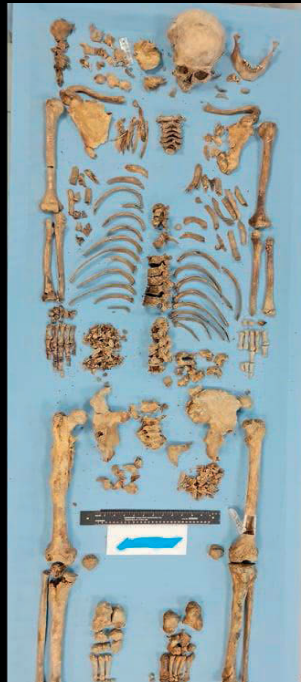
- ***Excavating a grave under archaeological conditions can provide evidence on:***
- ***Time and circumstances of burial (e.g.- Dating, Primary or Secondary burial)***
- ***Cause of Death (e.g.- Strangulation)***
- ***Manner of Death***
- ***Victimology***
- ***Tools and Techniques used for immobilization, execution and burial (e.g.- Bindings and blindfolds, Ballistic evidence)***

TIME AND CIRCUMSTANCES OF BURIAL



CAUSE AND MANNER OF DEATH







FINDING SITES (PRELIMINARY STEPS) **Gjetja e vendeve të dyshuara – hapat preliminar**

- *Desk-based research (study of documents, maps, photos, sat. imagery, LOCAL KNOWLEDGE)*
- *Coordination with investigating officers and Authorities*
- *Search Strategy Design*
- *Risk assessment, logistical preparations*
- *Site perimeter designation, assessment and evaluation*
- *Test excavation*

- **Hulumtim i bazuar në (studim dokumentesh, hartash, fotosh, imazhe të ulura, NJOHURI LOKALE)**
- **Koordinimi me oficerët dhe autoritetet hetuese**
- **Dizajnimi i strategjisë së kërkimit Vlerësimi i rrezikut, përgatitjet logjistike**
- **Përcaktimi, vlerësimi dhe vlerësimi i perimetrit të vendit**
- **Gërmim provë**

IF REMAINS ARE FOUND: NËSE GJENDEN MBETJET;

- *Area mapping*
- *Photographing*
- *Drawing*
- *Horizontal excavation (in situ principle)*
- *Observing and recording stratigraphy and interpreting context*
- *Establishing chain of custody*
- *Exhumation*

- **Harta e zonës**
- **Duke bere fotografi te shumta sipas standardeve**
- **Vizatime-skicime**
- **Gërmimi horizontal (parimi in situ)**
- **Vëzhgimi dhe regjistrimi i stratigrafisë dhe interpretimi i kontekstit**
- **Krijimi i zinxhirit të ruajtjes**
- **Xhvarrosja**

CONTEXT PRESERVATION RUAJTJA E KONTEKSIT

- *Archaeology is a destructive activity*
- *Excavation of grave sites are unrepeatable exercises*
- *Notes become the only record of the site*
- *Become an essential part of the case file*
- Arkeologjia është një veprimtari destruktive
- Gërmimet e varreve janë 'ushtrime' - veprime të papërsëritshme
- Shënimet janë e vetmja ndermarje në terren
- Duhet të bëhemi pjesë thelbësore e dosjes së çështjes

*Are 1620 bodies still
missing?*



*Thank you for your attention!
Ju faleminderit për vëmendje !*



Hamza Kazazi

Relative of seven missing persons, victims of the communist regime.

SPEECH OF MR. HAMZA KAZAZI, RELATIVE OF SEVEN MISSING PERSONS

I am Hamza Kazazi, who out of a few families in Albania out of 9 killed I have 7 missing. I also speak here on behalf of my sister Liri Kazazi Karagjozi. I thank and greet the participants and organizers for the invitation and opportunity given to me to present a very important and delicate issue like the loss of a parent and relatives. I especially thank and congratulate the OSCE Presence in Albania with H.E. Ambassador Vincenzo Del Monaco and especially Mr. Claudio Pala for this event and the Deputy Head of the Presence Mrs. Clarisse Pazstory, who touched me with her remarks. Thank you H.E. Ambassador Peter Zingraf of the Federal Republic of Germany for the contribution and financing not only in this instance but also the Minister of Justice H.E. Mr. Ulsi Manja and the Ombudsmand Ermonela Ruspi, which in this instance is also my lawyer.

I will emphasize two things that impressed me but I think and judge them like this for years Mrs. Ardita Repishti relayed a concise but significant expression from her uncle Prof. Sami Repishti, a former political prisoner, fugitive and today a personality of ours in the US: "Oblivion is the second murder of the victim." I add that it is also a "Serious injury to family members and that this wound remains open", as in the case of me and my sister. We have deep gouging wounds, until we bury our Father with our two brothers.

It is true that none of the political forces acted or wanted to know about this. This relayed also by Prof. Robert Austin. I have seen this for years.

I greet and thank Mrs. Gentiana Sula, director of AIDSSH who I appreciate and respect with all her group, but I ask and insist: Pursuant to the decision of the Albanian Assembly, published on 11/05/2020, the AIDSSH is in charge of "discovering burial sites of persons disappeared during the communist regime". Expectations increased with the improvement of Law No.45/2015 with Law No.114/2020, the decision of the Assembly and the order of the Chair for finding the missing and charging the AIDSSH with this issue. Municipalities should be ordered when places are known, as is my case in Shkodra.

I very much agree with Mr. Matthew Holliday who said that the agreement of the Albanian State with the ICMP is incomplete and insufficient, I add also that the ICMP has no authority.

Funds must be provided by the State and it is very important, why so far there are none, so what is the way forward? It is also very important and key that prosecutors,

i.e. the justice system, should open the way and not block it. The Ministry of Justice, the High Council of Justice and the Chief Prosecutor should intervene and act to instruct district prosecutors. Justifying that there is no special law on the missing is not enough, although such should be done as soon as possible. We are part of the OSCE, we have signed the Convention and the decisions and international laws on Human Rights of the UN, and EU, so justice must apply such, as is the case in other countries. The Assembly and especially the Government must also act and intervene.

I emphasize that they cannot be called death sentences carried out on persons mainly for motives of ideas and without any guilt, but only to eliminate them as potential opponents and since from the documents they turn out to be innocent and many of them were decorated by the Presidency or the Assembly. It is beyond any reason to say today that they were convicted with regular trials, when it is known and accepted by all the injustice and terror of the dictatorship we went through.

In searching the remains of my father and others in 1994 through my own initiative, I searched the location near the former Drainage Board, now the Water Company owns it and a part of it is privatized, behind the area of "Rrmaj" Cemetery in Shkodra. A 13-year-old at the time saw my Father being buried.

When we started the excavations we came across a human skull and immediately after we came across the hand of a priest with rosaries (church relics) on their chest. Both buried in shallow graves without coffins. I handed over the skull, some rosary beads and 3-4 pieces of black Valadon cloth to the Archbishop Monsignor Zef Simoni.

It should be searched back from the old wall in a distance of about 30 m., maximum of 40 and in width about 10-15m. Searches have low costs. There must also be some priests. Many old Shkodra residents and I know about this area as a place of shootings and burials. On 4/10/2018, the Association of the Former Politically Persecuted in Shkodra, chaired by Mr. Zenel Drangu, confirmed the burial place that I say in a letter addressed to the AIDSSH and ICMP. On 31/08/2018 from 13.30-14.00, TVSh2 talked about the massacre of the church and in the half that I captured, the researcher spoke about three of them saying that they were shot and buried behind the Catholic Cemetery. In May of 2018 in Shkodra, Dom Gjergj Simoni, now 90 years old, confirmed to me and said that they saw from home many times when they were shooting people, given that he had lived in the area next to the cemetery.

I have officially started these requests since 1999, especially in 2013 and 2018. I have repeated the requests on the 5/11/2019 where I addressed: The Prosecutor's Office of the Shkodra District Chief Prosecutor Mr. Albert Murçaj and on the 6th notified: the General Prosecutor, Mrs. Arta Marku, The Institute for Integration of Former Political Persecuted, Mr. Bujar Kola. The same was done with the ICMP, International Commission on Missing Persons, Mr. Luigj Ndou, the AIDSSH, Authority for Information on Documents of the former State Security, Mrs. Gentiana Sula. The response of the Chief Prosecutor of Shkodra is unsatisfactory. A year later, I wrote again to the Mayor of Shkodra and the AIDSSH.

Together with me for finding the Catholic Church that has about 30 missing priests searched the missing in this area and the Bishop of Shkodra Monsignor Angelo Massafra signs this and Mr. Luigj Mila of the Justice and Peace Commission of the Catholic Church charged for this by the Bishop. With us is the Association of the Former Politically Persecuted of Shkodra who have also written and confirm this location. In addition, Evald Serreqi who seeks Cin Serreqi, an honored man convicted and shot without any guilt.

This location is behind the wall of the cemetery and has satellite views and photos. In the satellite view of the area, the "Island of those that were killed as anti-communist" continues to be marked on the riverbed. This is malicious, to lose track and provide no possibility for someone to uncover these crimes of communism.

I am 80 years old and I do not want to end my life without burying my father and I do not want to leave him thrown away somewhere by criminals. I promised this to my mother, who left me the flag embroidered in silk by her as a girl, to bury him with that flag.

My human rights have been totally violated and I have no way of feeling free. I believe you understand me. I turn to all organizers, participants and all who have the opportunity, to help and contribute with this, to help all of us who ask for our family members. I have faith and hope that this conference will yield results and I thank the OSCE Presence in Albania very much.

My greetings. Hamza Kazazi



Original
disappeared

Rule of Law

Liberal democracy

Middle class

Modern nation-state

Civil rights

Neither alive nor dead, a new state of being



"The missing person is an unknown (...). He has no entity. He is not there. Neither dead nor alive. He is missing" (General J. R. Videla, Argentina, 1978)

"We just want to know where our children are. **Alive or dead**. But we want to know where they are (...). **Anguish** because we don't know if they are sick, if they are cold. If they are hungry. We don't know anything. And **despair**." (Madre de Plaza de Mayo, Argentina, 1978).

Forced
disappearance
logic: a
catastrophe
for identity

“State terrorism dissolved and dissociated: [it] made an identity and a body separate. It [broke] the basic relationship that we all have between our identity and our body.” (Equipo Argentino de Antropología Forense)

Person [Identity + body]

Enter the **"disappearing machine"**

Leaves as

- 1) **Whole person (identity + body, alive or dead)**
- 2) **Broken person (identity without body)**
- 3) **Broken person (body without identity)**

forced
disappearance:
nothing is as it
should be

"A missing person is neither alive nor dead, he is a disappeared person."

"Before there were people who died. And now there are missing people, a non-person, something you don't know exists."

"Disappearance is an attack on logic. It provokes a sense of absurdity."

"They do not exist, it is an entelechy, they have no entity."

forced
disappearance:
nothing is as it
should be

- "Since the body is not there, it is impossible to mourn. We are left with the unknown of that body that is denied to us. Without it, we cannot elaborate the death and give it the burial it deserves. It is being and not being. Anguish becomes a litany. The questions do not close and the tragedy does not close either. One questions oneself permanently. Our children are not dead. They are missing". Nora Cortiñas, presidenta de Madres de Plaza de Mayo (línea fundadora)

Dominant narrative for the management of the forced disappearance of persons: the **recovery of the broken sense.**

forced disappearance = catastrophe = Broken identity

To overcome the catastrophe → reconstruction of the broken identity = restitution of meaning

The professions of the recovery of meaning

- Psychologists who **REPAIR** traumas
- Archaeologists who **REBUILD** ruins
- Archivists who **RESCUE** secrets
- Historians who **RECOVER** memory
- Sociologists who **REMAKE** everyday life
- Jurists who **REPAIR** normative frameworks and rule of law (transitional kit)
- Political scientists who **[RE]THINK** democracy
- Forensic anthropologists who **REBUILD** bodies



“State terrorism dissolved and dissociated: [it] made an identity and a body separate. It [broke] the basic relationship that we all have between our identity and our body” (Equipo Argentino de Antropología Forense)

Narratives of the recovery of meaning

The hope of hundreds of relatives of missing persons lies in the job of the Argentine Forensic Anthropology Team, which has been recovering and identifying the remains of missing persons for 30 years in more than thirty countries.

Antropólogos forenses

"Lo que vos querés es llegar a darle identidad a la víctima, que le fue retaceada la identidad"

"Claro, yo rompo esta taza y la tengo que pegar de vuelta, ¿cómo hago con los pedacitos? ¿Qué era esto? Era una taza, entonces tengo que volver a tener una taza, si tengo todos los pedacitos... nunca tengo todos los pedacitos, pero tiene que ser lo más parecido a una taza"

"[El modelo de trabajo del EAAF] es lo increíble, ¡es que funciona! Creo que si hay alguna contribución es ésa, funciona, se reconstruye [la identidad]. Cómo se reconstruye es una cosa en algunos sentidos... Casi mágica... Van apareciendo las formas"

Narratives of the recovery of meaning

The Internationalized Argentinean Disappeared

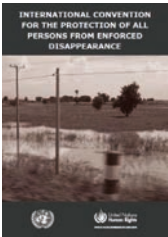
The universalized clichés of the disappearance of persons



The missing Argentinean transnationalized: a leap into international humanitarian law.

"The arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge such deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, removing him from the protection of the law."

"The forced disappearance of persons violates multiple essential rights of the human person of a non-derogable nature (...): the right to liberty and security of the person, the right to be recognized everywhere as a person before the law, the right to defense, the right not to be subjected to torture, and constitutes a serious threat to the right to life."

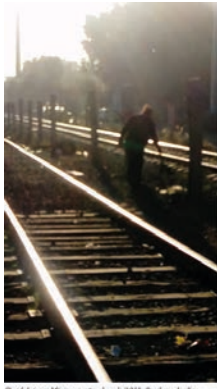


Sombras que aparecen al lado del tren. Bogotá, junio de 2013.

Doubts, I: New disappearances



Vida de batey. La Higuera, República Dominicana, noviembre de 2018.



Guadalupe, Mérida, septiembre de 2018. Sombras de día



Troneras para el desagüe en la construcción del río Tijuana, con ropas secándose al sol, Tijuana, diciembre de 2019.

Doubts, I: New disappearances

- Are all the disappearances something of the past?
- Are all disappearances something of the State?
- Do disappearances affect only death persons or families?
- And if all those questions can be answered with a no, and they all can, can we really think that the management model of the enforced disappearances originated in Argentina that international human rights law and its apparatuses (even transitional narratives) legitimizes are really universal?

Doubts, II: Disappearances in contexts different from the original disappeared



- Is “Bad death” managed equally elsewhere?
- Do disappearances that happen in non “rule of law” contexts (i.e. stalinism, Spanish Civil war) have to be thought alike?
- Is the concept of enforced disappearance of human right law not sometimes too impositive, colonizing?

Prof. Dr. Anja MIHR

OSCE-Academy, Bishkek, Kyrgyzstan
Center on Governance through Human Rights, Humboldt-Viadrina Governance Platform,
Berlin, Germany

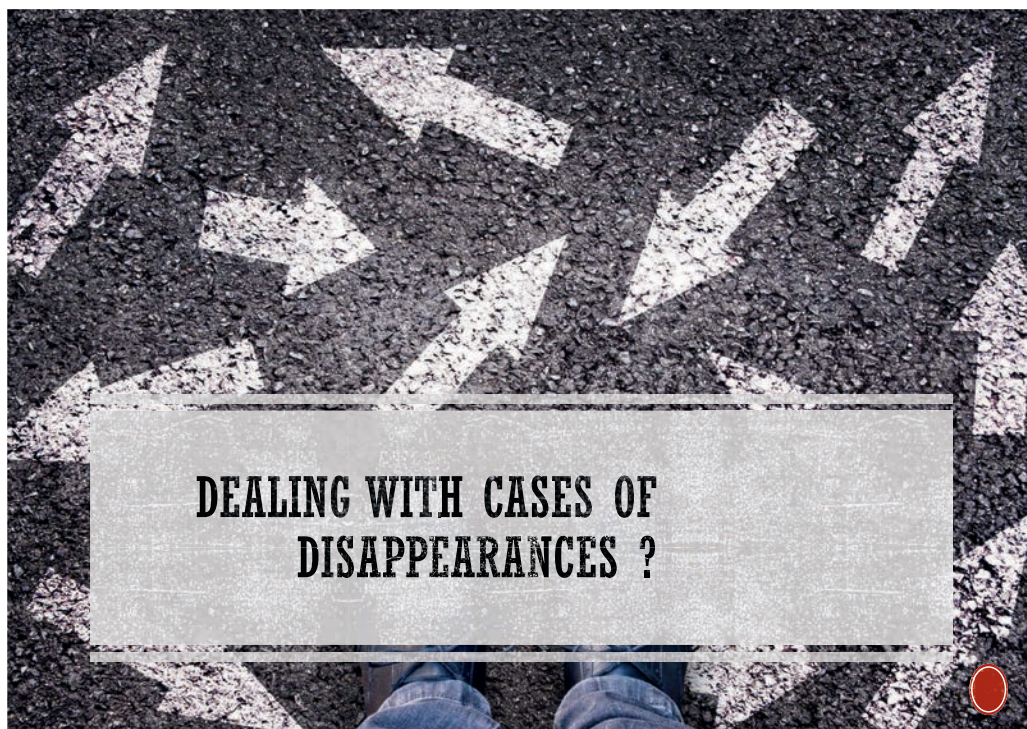
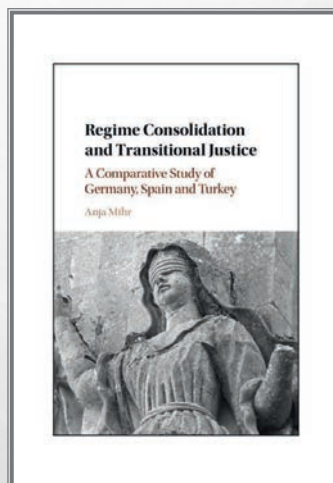
**TRANSITIONAL JUSTICE
FROM AUTOCRACY TO DEMOCRACY**

**PEOPLE
SEEK
DEMOCRATIC
REGIME CHANGE
BECAUSE...**

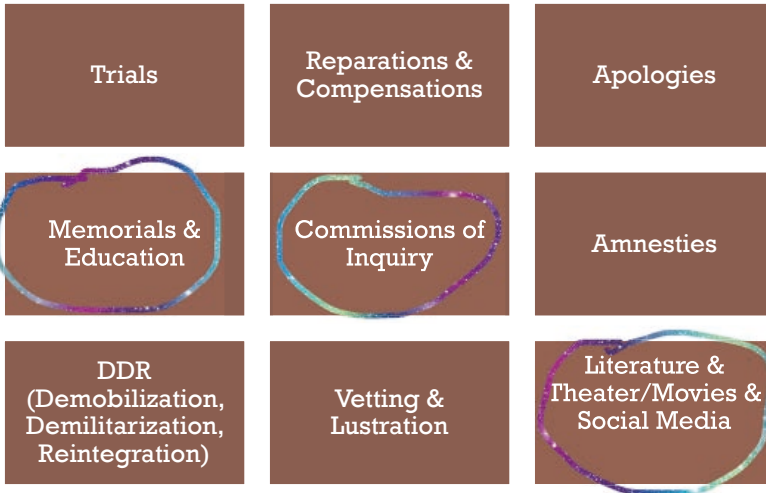
- 1. Disaffection with Fundamental Matters**
- 2. Lack of Transparency, Accountability and responsiveness**
- 3. Level of full and free participation**
- 4. Lack of egalitarian principle**
- 5. Non-functioning of independent judiciary**
- 6. level of Civic & social trust in state institutions**

REGIME CONSOLIDATION *THROUGH* TRANSITIONAL JUSTICE

- TJ impacts regime consolidation depending on whether TJ measures are **exclusively or inclusively** applied
- TJ measures lead to a **mutual reinforcing process** between political-institutional and societal consolidation and TJ measures



TOOLBOX OF TRANSITIONAL JUSTICE



VICTIM



...is a person who has been harmed according to **IHRL/ICL**

harmed (unlawful) during an armed conflict, betrayal (corruption, blackmailing) **violence (physical and mental)** & Systematic discrimination (exclusion) based on ethnicity, age, gender, religion, disability, language...

(Nepal, Victim of 2001 attacks)



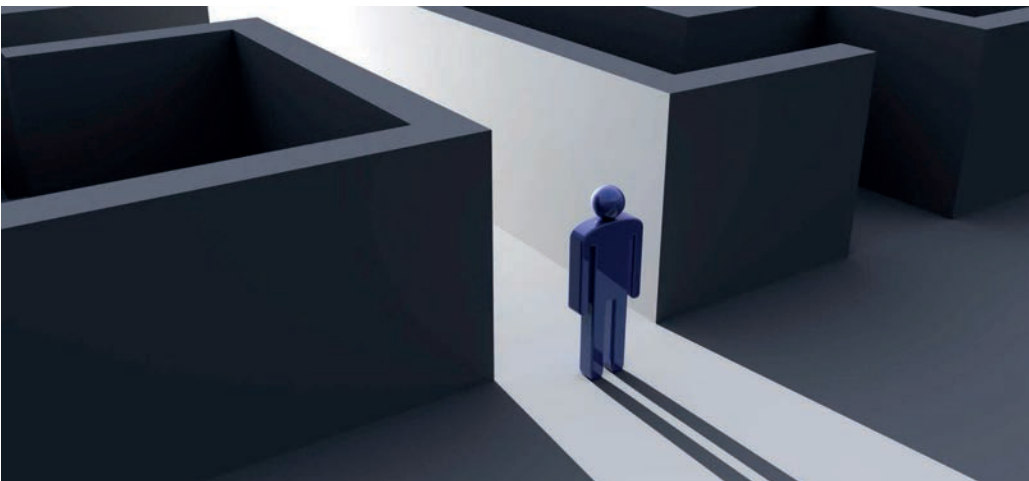
VICTIMIZER

...a person that

- harms others (unlawfully) by means of
- physical and mental violence, systematic or widespread discrimination or exclusion, lying, fraud, betrayal, corruption.
- is a perpetrator
- ...who's crimes and doings have to be brought to light through trials, truth commissions, vetting and lustrations, memorials, etc.



992 x 333



COMMISSIONS OF INQUIRY

TRUTH & RECONCILIATION COMMISSION

Formal (parliamentarian) Commission has..

a (limited) mandate:

Indian Residential Schools Settlement Agreement.

- Read reports
- View findings/photographs
- Listen (oral history)
- Issue an TRC report
- 2008-2015
- **CSO driven**

(<http://www.trc.ca/about-us/our-mandate.html>)

Canada



The Truth and Reconciliation Commission of Canada



FACT FINDING COMMISSION

Commissioner have to...

To monitor and report on the situation of human rights, of all alleged violations by all parties to the conflict since September 2014,

Yemen, 2017

(Radhya Al-Mutawakel)



HISTORY COMMISSION

UN War Crimes

- UN War Crimes Commission on WWII, 1945-1948
- Issues report 22.184 pages
- Advise national, local administration/ governments in Europe
- Flexible mandate

WW II / Nazi-Germany (London 1945)



UN SUPPORTED COMMISSIONS OF INQUIRY, 2020

[HTTPS://LIBRARYRESOURCES.UNOG.CH/FACTFINDING/MAPS](https://libraryresources.unog.ch/factfinding/maps)





Conferences

Memorials

Literature

Autobiographies

Movies & Theater

VICTIM DRIVEN CONFERENCES

Armenian Genocide

1915-1918

- Open Ended
- Academics, experts, forensics...
- 2005 Public Debate Bilgi University, Istanbul
- 2009/2010 Armenian-Turkish „normalization protocols“
- No concrete outcome
- Public awareness

Turkey, 2005 (Bilgi University)





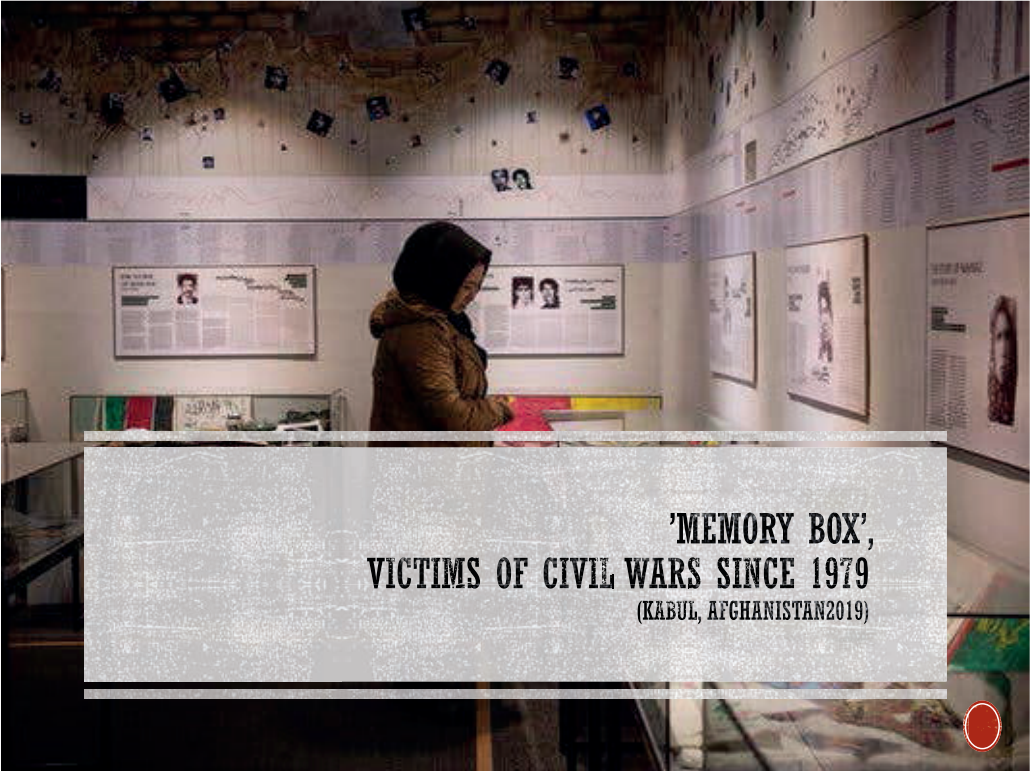
LATE MEMORIALS . . .

Memorial (2017) on 228 incident in Taiwan, Feb 1947, massacres between nationalist chinese and taiwanese citizens 10.000 victims



PUBLIC MEMORIALS

ALBANIA, POST 1991



**'MEMORY BOX',
VICTIMS OF CIVIL WARS SINCE 1979**
(KABUL, AFGHANISTAN 2019)



'YAD VASHEM'
SHOA / HOLOCAUST

**JERUSALEM,
ISRAEL**



**MEMORIAL & APOLOGY
GERMANY-POLAND, WWII**

1970 prostration by chancellor
Willi Brandt in the former Jewish
Ghetto in Warsaw

Impact on East-West
governmental relationship



FILM & MOVIES

- 1939. (cancel culture2020)



- 2004 (public narrative)



LITERATURE & NOVELS

Diary &
Autobiography



Graphic Novel &
Comics



Research &
Documentation



MURALS

Faces of the victims of police&military brutality, tortured to death, including Khaled Said, Egypt, 2012ff





PAINTING

LA GUERNICA, PICASSO, 1937

INTERLINKING TRANSITIONAL JUSTICE & DEMOCRATIC REGIME CHANGE

National Catharsis

- Commissions of Inquiry
- Memorials
- Literature, Movies
- Trials
- Lustration, Vetting
- Compensations
- & other TJ measures

Democratic Institution

- Re-Building **trust** in Institutions
- Strengthening Rule of Law
- Reforming Security Sector
- Strengthening of Civil Society (Victims, Bystanders, Victimizers)
- Public Dialogue & Collective narrative 'never again'
- Political & Historical Education
- & much more

Teuta STAROVA

Lecturer of Sociology at the University of Tirana

A SOCIOLOGICAL ANALYSIS ON THE POLITICAL PERSECUTION AND DISAPPEARANCE OF PERSONS UNDER THE COMMUNIST REGIME

Introduction

In many studies by Albanian and foreign authors, Albania has been described as a former communist country, which had the most brutal dictatorial regime, and even after thirty years of transition, there is still much to be done in restoring justice for the victims of that dictatorship, or in the field of transitional justice.

The main objective remains the full investigation of human rights violations during the communist period, as one of the key mechanisms of transitional justice in Albania. This study represents an attempt to analyse and present information, and to research and reflect on the facts of persecutions carried out in Albania by the communist regime.

Particular attention is paid to addressing the issue of people disappeared during the communist regime and the political persecution of women, including other women who, albeit not directly persecuted, suffered the brutalities of political persecution on themselves and their families. One of the major difficulties of this study was the lacking information that affects the attempt to conduct a thorough analysis. However, best efforts were made to collect the information that allows us to analyse from a gender perspective the cases of persecuted women of Tirana Region.

The key aim of the study is to go beyond the concrete research of the facts, drawing some conclusions regarding the causes that impeded a full-fledged transitional justice in Albania and the role of the political factor.

The study material relies mainly on archive files on persecuted people, testimonies of representatives of persecuted families, the Authority for Information on Former State Security Files (AIDSSH) publications, memoirs, Internet resources, and other secondary sources.

The whole paper is guided and based on the theoretical foundations and practical experience of transitional justice, a relatively new field of study of about thirty years. The methodological framework of this paper consists of qualitative research through special studies in the field of transitional justice.

I. Initial attempts to launch transitional justice in post-communist Albania

Historical and life experience has shown that public opinion in all post-dictatorship societies has had to deal with important questions about the past regime and its stand to it.

Questions have been and are being asked in post-communist Albania, such as: Should the crimes and criminals of the dictatorship period be properly convicted? How should the nature of communist crimes be determined if they were committed based on the law? Who were the real criminals of the communist regime: political leaders, or investigators and judges? Are the top political leaders of the communist dictatorship accountable? What is the criminal accountability of the collaborators of the former communist State Security for the murders, tortures, and other crimes committed? How should justice be served for crimes committed under a dictatorship? Should victims and their families be compensated and rehabilitated? What should be done to inform the public opinion, and above all, the younger generation, of the truth about dictatorship? Can a democratic society be built without doing justice on the old communist regime? Is there a danger that rendering of justice for communist crimes will lead to social disruption and undermine social peace?

The answer to such questions and the analytical discussion of similar problems can be found extensively in the new field of study, transitional justice, and its case law. However, it is important to analyse and reflect on some of the problems posed above.

How should the nature of communist crimes be determined if they were committed based on the law?

The communist regime was overthrown by a popular revolution that did not caution to abide by the applicable laws back then, entirely disregarding them as laws established through violence, demagoguery, and voting processes devoid of freedom of choice for the people. Seen in this light, those laws (such as that on punishing anti-communist agitation and propaganda) could not serve as the basis of just and irrefutable punishments, but only as a means of defending that regime. Some of the violations of those laws that demonstrated opposition to the communist policy can be regarded as the beginning of the popular revolution that would later overthrow the communist regime.

Consequently, we can respond to the question "Who were the real criminals of the communist regime: political leaders, or investigators and judges?" by saying that the real criminals were, above all, the top political leaders of the communist regime. This does not exclude from responsibility the investigators and judges, because many of the trials were based on false investigations and facts, or on no facts at all. The existence of a substantial number of disappeared persons during the communist regime is an even stronger proof of this. Of course, for investigators and judges, accountability must be sought and held concretely based on the accusatory facts.

Therefore, even the question "Can a democratic society be built without doing justice on the old communist regime?" implies a negative answer. Albania has not fully done justice on the old communist regime and, as a result, its transition is lingering longer than in other former communist countries. The political discourse between the left wing and the right wing is very fierce and many people feel frustrated by democracy, especially the former politically persecuted.

In their book "Emergence of Transitional Justice as a Professional International Practice", the authors/experts of transitional justice, Lefranc and Vairel, write: "Transitional justice [...] has recently become among the most recommended means of building peace in a country having experienced a civil war or violent state repression. [...] Transitional justice, however diverse may be its components, gives a new definition of justice: the rehabilitation of victims, partly through reparations, is generally favoured upon judgment of the perpetrators."¹

In the same book, they further write: "The model of transitional justice has thus progressively become a tool constituting and expanding an international job market, extending it beyond the international promotion of human rights. For example, training sessions organized by the International Center for Transitional Justice (ICTJ) function as a space toward which 'agents of the international' converge, preparing a passage from the governmental toward the inter-governmental just as from the inter-governmental toward the non-governmental (and inversely). [...] The intervention of the ICTJ in more than thirty countries in a brief period of time is explained by the talent deployed by members of the organization in order to arouse the interest of varied local elites in transitional justice 'best practices'".²

Speaking about the need for transitional justice action in Albania, the Albanian scholar Altin Gjeta states that: "Transitional justice is shaped as an activity and research tool that focuses on how societies deal with the legacy of past human rights violations, massive brutalities, or other forms of serious social trauma, intended to create a more fair, democratic and peaceful future".³

Based on the studies and practical experience of many post-dictatorship circumstances, starting with the Nuremberg trials that convicted Nazi war perpetrators, Transitional Justice has elaborated and supported many of its mechanisms that are generally reparations for the people who suffered human rights violations under dictatorship, regular court hearings on human rights violations under dictatorship, setting up truth commissions on the dictatorial past, lustration or ban from public office of persons who committed

1 Lefranc, Sandrine and Vairel, Frederic, "The Emergence of Transitional Justice as a Professional International Practice", Internet, link.springer.com/chapter/10.1007/978-90-6704-930-6_14, Abstract.

2 Lefranc, Sandrine and Vairel, Frederic, "The Emergence of Transitional Justice as a Professional International Practice", Internet, link.springer.com/chapter/10.1007/978-90-6704-930-6_14, pg. 246

3 Gjeta, Altin, "Transition without justice in post-communist Albania: Its implications to collective memory building and democracy promotion", OSCE, Justice and Transformation in Albania, 2020, pg. 8

human rights violations in the former dictatorial society, property compensation and restitution, access to secret files of human rights violations, installing monuments and museums, commemorative activities, publication of books and documents on crimes under dictatorship, the proclamation of the past totalitarian period as illegal, seeking public apology, etc.

Several important international bodies have been established in support of the practical implementation of transitional justice in post-dictatorial countries. We are mentioning some of them.

The International Center for Transitional Justice (ICTJ), founded in 2001 and based in New York, is a global non-profit organization handling serious human rights violations across the world. It also cooperates with Albania in pursuing the investigation and accountability for communist crimes.

In the international arena, there is also the International Commission on Missing Persons (ICMP), established at the initiative of President Bill Clinton in 1996. It cooperates with governments to find people missing as a result of conflicts, human rights violations, organized violence, etc. ICMP initially met with the Albanian government in 2010 and managed to sign a cooperation agreement in 2018.

There are also two UN bodies under the Office of the High Commissioner on Human Rights (OHCHR), established in 1993: WGEID (Working Group on Enforced or Involuntary Disappearances) and CED (Committee on Enforced Disappearances).

In Albania, as in all former communist countries, the first attempts to pave the legal way for transitional justice began immediately after the establishment of democracy.

Following these democratic changes in Albania in the early 1990s, the Albanian parliament passed three important laws. In 1991, it passed the Law "On the Innocence, Amnesty and Rehabilitation of Former Politically Convicted and Persecuted". In 1995, two other important laws were passed, called the "Law on Genocide and crimes against humanity committed in Albania during the communist regime for political, ideological and religious reasons" and the "Law on the vetting of officials and other persons related to the protection of democratic state" (the so-called Law on Verifications).

The "Law on Lustration", adopted in 2008 provided that all people of the old communist regime were banned from public office, but it was repealed by the Constitutional Court in 2010. This decision created problems to the implementation of transitional justice in Albania. Equally important was the law "On the Compensation of Former Politically Convicted by the Communist Regime", adopted in 2007, amended and improved several times afterwards. Particularly important for the persons disappeared during the communist regime was the amendment introduced to Article 74 of the Criminal Code (2013), which defines enforced disappearance among the crimes against humanity and serves as a basis for the searching of disappeared persons during the communist era.

Shortly afterwards, in 2010, the Institute of the Former Politically Persecuted was established. Scholar Sokol Lleshi says: "The establishment of the Institute was officially sup-

ported by the Democratic Party, a centre-right political party [the first opposition party in Albania, note of author T. Starova]. It was hoped that that Institute would have, legally and practically, all the symbolic power of a state institute with unlimited access to the archives of the communist secret police. From the point of view of official institutional features and symbolic power, the Institute would have the same achievements as the other similar institutions. Founded in 2010 and housed in the same building that had housed the representative of Fascist Italy in Tirana, the Institute focused on gathering evidence of the politically persecuted, presenting graphic reconstructions of concentration camps, and publishing a database on victims".⁴

The post-communist period saw the establishment of many NGOs of former politically persecuted that would deal with the multitude of human rights violations during the communist dictatorship.

On 30 March 2015, the Authority for Information on Former State Security Files (AIDSSH) was established as an independent public institution that would focus on the tasks of collecting, storing and processing the former State Security documents of the communist era. This institution was intended as a mechanism to facilitate the challenging work of transitional justice in Albania. During the few years of its existence, this institution made significant efforts to raise awareness on transitional justice issues in Albania through publications, conferences, and dissemination of information requested by the families of former politically persecuted.

However, there is still much to be done for transitional justice in Albania. As scholar Altin Gjeta puts it, "Transitional justice has been largely overlooked in post-communist Albania, partly due to a lack of human resources, funding, and research interest in the issue. Most research has been done by foreign scholars. [...] There is a general agreement among scholars that the Albanian authorities have failed to address human rights violations by the communist state."⁵

At the Scientific Conference organized by AIDSSH in May 2019, the Director of this institution, Gentiana Sula, stated: "The usual approach to certain behaviours, crimes, acts of violence, ill-treatment or support of the regime is relativized through expressions like 'that was the time back then', 'that was the law', 'everything was done in accordance with the law', resulting in accepting attitudes in the face of a state that appears to have been well-organized with just laws"⁶

This is an incredibly sad fact for Albania, but it is entirely true even today. The administration of justice for the perpetrators of the communist persecution has been left in oblivion, except for some farce trials against the former communist elite where the cause

4 Lleshi, Sokol, *European Politics and Society*, ISSN: 2374-5118 (Print) 2374-5126 (Online) Journal homepage: <https://www.tandfonline.com/loi/rpep21>

5 Gjeta, Altin, "Transition without justice in post-communist Albania: Its implications to collective memory building and democracy promotion", *OSCE, Justice and Transformation in Albania*, 2020, pg. 6

6 Sula, Gentiana, *AIDSSH, "Profile të 'Armikut të Popullit' në diktaturë"*, Tiranë, bot. 2021, pg. 6

of punishment was simply personal economic abuse, or as it is commonly said ironically in public opinion 'the wasteful consumption of a certain amount of coffee'.

II. Tragic dimensions of human rights violations in communist Albania and persons disappeared during the regime

The scale of communist crimes in Albania is very painful. There are at least four facts that make those crimes extreme compared to other former communist countries: the targeting of the intellectual elite, the brutality of persecution and crime against women, the seizure of private property and assets, and the considerable number of disappeared persons.

As author Fatbardha Saraçi states in her book *The ordeals of women in communist prisons*, "[...] around 10% of those executed by firing squad in Albania by the communist dictatorship were women [457]. Out of 308 persons who lost their mental balance, some were girls and women. 7,367 girls and women were politically convicted and 10,792 were interned."⁷ Compared to the population, the scale of the communist crimes was enormous.

Most of the people persecuted and disappeared by the communist regime were educated people and intellectuals in various fields. Some of them were killed immediately after the end of World War II and the liberation of Albania, without any charges or trial, simply as alleged collaborators with the occupiers. Others were killed in entirely fabricated trials, like the group of 16 opposition MPs in 1947 (Shefqet Beja, Riza Alizoti, Sulo Klosi, Selaudin Toto, Salim Kokalari, Irfan Majuni, Enver Sazani, etc.), the 10 engineers engaged in drying the Maliqi swamp executed in 1946 (Abdyl Sharra, Kujtim Beqiri, Zyraka Mano, Pandeli Zografi, Vasil Mano, Jani Vasili, etc.), the 22 intellectuals executed in 1951 for alleged plot to place a bomb at the Soviet Embassy in Tirana (Sabiha Kasimati, Tefik Shehu, Hekuran Troka, Haki Kodra, Ali Qoralju, Jonuz Kaceli, Gafur Jegeni, Qemal Kasoruh, Reiz Selfo, Gon Temali, Mehmet Shkupti, etc.), and many others politically persecuted and convicted during the existence of the communist regime, like Gjergj Kokoshi, Pjetër Arbnori, Qenan Dibra, Irfan Hysenbegasi, Thoma Orogollai, etc..

All their personal stories of political persecution were largely fabricated and very tragic, but the major truth is that they were heralds of the savage communist dictatorship that was being installed in Albania. Meanwhile, the political persecution of persons kept under surveillance by the secret collaborators of the State Security - for whom secret files were compiled - reaches a much higher figure. Among those files we single out persecuted and executed women, such as the prominent intellectual Sabiha Kasimati, Zyraka Mano (shot while pregnant with the rest of Maliqi group), Elisabeta Spiragu, Mergjuze Cafaj, Mime Hamzaj, Katerina Nik Bibaj, Erifili Bezhani, Musine Kokalari, Drita Kosturi, Raile Luzi, Frida Sadedini, etc.

7 Saraçi (Mulleti), Fatbardha, "Kalvari i grave në burgjet e komunizmit", pg. 10

The following are some little-known facts from the stories of the inhuman persecution of women.

The tragic fate of lawyer Erifili Bezhani⁸ is an example of how Hoxha's dictatorial regime persecuted a large number of intellectuals to extinction. An excellent law graduate in France, Bezhani returned to Albania in 1943. After the war, she told her relatives about the communist terror that *"it is a scary reprisal, far from the example of European countries, so it has to be stopped"*. She was arrested for her political opinions and sentenced to 20 years in prison. After her release in 1958, she was condemned to working as a street sweeper in Tirana, doing only night shifts. After this humiliating job, she fell ill and died during a hospital surgery in February 1959.

There is also the painful story of Marie Tuci,⁹ the only woman among the 38 martyrs of the Catholic Church, who was killed by barbaric physical and psychological torture in October 1950. She was arrested and suffered her tragic fate at the age of 22, when she was a teacher in Mirdita, only because she spoke out against the humiliation of the Catholic Church by the communists.

Several thousand other women who refused to divorce their husbands to make ends meet for themselves and their families experienced savage suffering along with their families in internment camps. As the author Saraçi puts it again in her book about those women, *"They became heroines, being chased for years, traveling in cold or hot weather, on foot or on trucks loaded with wood, sleeping on the streets, because the house-doors of the residents near the prisons and labour camps were not opened for them, from fear of the State Security."*¹⁰

Written documents and accounts of the relatives of the former persecuted show a large number of disappeared persons during the regime. A Study Report conducted by the ICMP experts and supported by the EU in 2018-2020 states that: *"It is estimated that around 6,000 persons went missing under the communist regime in Albania in the period between 1944 and 1991. According to official data, 5,501 persons convicted for political reasons were executed during this period. Their bodies were never returned to their families. Official data also indicates that an additional 987 political prisoners died from various causes in prisons and detention centres in Albania. The whereabouts of their mortal remains are unknown to surviving relatives."*¹¹

Based on the extensive literature on transitional justice and numerous documents on communist persecution in Albania, the lawless disappearance of persecuted people or the disappearance of the bodies of those shot by the Albanian communist regime makes one think that it followed in the footsteps of the legacy of political terror that originated from the Jacobin dictatorship of France, or the communist dictatorship of the proletariat

8 <https://kujto.al/fati-tragjik-i-erifili-bezhanit-avokatja-e-pare-shqiptare-qe-vuajti-burgun-e-burrelit-dhe-perfundoi-si-fshesaxhije/>

9 <https://kujto.al/mesuesja-qe-vdiq-nga-torturat-si-e-percmoi-kryehetuesin-e-tmerrshem/>

10 Saraçi (Mulleti), Fatbardha, "Kalvari i grave në burgjet e komunistit", pg. 191.

11 ICMP Report, Press Release, 2 March 2021

of Lenin and Stalin in the Soviet Union. Like any dictatorship, the Albanian communist regime was aware that if political executions were infrequent, persecuted people would pose a permanent threat, through the expression of their critical views on the communist regime and the lack of freedom and a normal life for the people. Also, if the bodies of people shot for political reasons were to be buried in a normal way, they could become inspiring symbols of disappointment and hatred towards the communist regime. The disappearance of the bodies of the executed politically persecuted created a strong psychological pressure on their families and the society as a whole, implying that their crimes had been so serious as to be denied a grave and the posthumous honours that were part of ordinary human traditions of all times and of all peoples.

The blatant and inhuman human rights violations in Albania included property plunder through the seizure of assets, houses, money or other valuable items.

At least two forms of political persecution can be clearly observed during the communist dictatorship, in line with two historical periods. From 1944 to the mid-1950s, more public and savage forms of political persecution were practiced, perhaps also due to the fact that there were still illusions among intellectuals that the new regime would be a type of Western democracy, and for this reason, they were outspoken about the shortcomings of the regime. It is well known that Sabiha Kasimati once openly and ironically told dictator Enver Hoxha that "by killing all intellectuals, he would have to build the country only with shoemakers and tinsmiths".

Another significant case is that of the intellectual and patriotic teacher Edip Tërshana who openly stood against the dictator's policy. In a letter found in his pocket before being executed on 18 January 1948, he wrote to Enver Hoxha, accusing him of betraying Albania and Kosovo¹² in collusion with the Yugoslavs. In that letter he says, "I am against the executions of people with or without trials... This is treason ... I am against this power, because it is speculative and robs the people by law, and sells the goods seized from traders at a higher price than theirs, throwing on the street many families of traders labelled as speculators. I am against the call 'We are the children of Stalin'... I am against it, because there is no freedom of speech and free press. There is only terror..."¹³

The next period, from the mid-1950s until the 1990s, displayed other equally cruel but more hidden forms of political persecution. During this period, Hoxha's dictatorship launched persecution among the communist leadership and his collaborators, after the Party Conference of April 1956 in Tirana, where members voiced strong criticism against the cult of the individual - directed at the dictator. During this period, the covert surveillance of people of intellectual descent and rich families expanded exponentially.

In this period the communist regime tried to keep alive and amplify the sense of fear for anyone who could think or talk about the shortcomings of that regime. There was even

12 All references to Kosovo, whether to the territory, institutions or population, should be understood in full compliance with United Nations Security Council Resolution 1244

13 "Rajoni" magazine, <https://gazetarajoni.com/shqipshqiptari-i-vetem-ne-planet-qe-guxoi-dhe-i-tha-te-verteten-e-never-h-oxhes-po-vr-et-popullin-po-i-kthen-ne-skll-ever/>, 28 October 2021.

an unwritten policy on the number of punishments that had to be imposed on potential opponents of the regime. Quite interesting in this context is an episode told by a young graduate employed as an investigator in Korça by the early 1980s, who had some dose of liberalism due to his age and background. But, after one year on the job, he still had not brought any facts about the activity of the "enemies of the class". Given that he was looking bad and incompetent, his boss, seeking to save him from criticism, told him: "If you remain dry, with no facts to show, then go to a grocery store where some Soviet women married to Albanians go shopping and, since they always complain, you can note down their words in a denunciation file. That way you will be okay with the job."¹⁴

Another episode told by a former prisoner shows even more clearly that there was a certain policy of the communist regime on the number of sentences to be imposed, simply as a means of strong psychological pressure on the people. It is confessed by an elderly prisoner put behind bars on entirely fabricated reasons. In his wise manner, he made it known to all, even to the prison guards, that he had been convicted on false charges. Thus, whenever the word 'investigator' came up in a conversation, he deliberately distorted it by saying 'instigator'. The implication for the smart ones was clear: the investigator is the one who writes what he wants in the formal accusation, while the absent-minded guards corrected him by telling him that he should say 'investigator' and not 'instigator'.¹⁵

Another typical example of the persecution of women is the Standard Form 2/A (the highest category of political persecution by the State Security) on Tefta Koço Tase. In 1975, she was interned to Grabian village in Lushnja, and in 1979 she was processed (surveillance by security agents) as a propagandist on behalf of the Italians, claiming that Albania was in a poor economic situation and that the Italian radio stations had much better programmes than the Albanian ones. The file shows how different agents with nicknames like "Lily", "Hope", "Volga", "Lindita", "Mountain", etc., gathered information on Tefta to unmask her before the people in 1979; a few months later, she was arrested and convicted to 8 years in prison. Persecution persisted even while in prison. Through provocations from various informants inside the prison, they filled her file with various information, such as: Tefta prefers the Yugoslav television programmes, she appreciates the figure of Tito, she said that Albanian 50-year-old women look older than their foreign peers, she said that prison food is so bad that even a dog would refuse to eat it, or that Tefta did not trust the Albanian press, etc. Even after her release from prison in 1982 and her resettlement in Grabian, Tefta was persecuted through covert surveillance by State Security informants who obtained information about her through their friendship with her brothers. Her file was archived only on 11 June 1991, after the democratic changes.

We find comparable stories of other women in Tirana region, such as Laura Gjeto Keqi, Fatbardha Qorri, Emine Muharrem Shima, Fatime Dega, Asamble Hatibi, Fatime Hoxha, Fatime Reka, Rukije Pame and Xhuljeta Cuka, amongst others.

14 From a direct talk with the former investigator Mr. P. Lamaj.

15 From a direct talk with the former prisoner I. Farka

There are many such tragic cases and let us mention just a few.¹⁶

The location of the graves of several women persecuted and executed by the communist regime is still unknown. For all of Albania, there are about 22 missing women persecuted by the communist regime, but this is still not a final figure.

These are the women from Tirana region who disappeared during the communist regime for political reasons, and who still do not have a resting place:

Liri Besim Gega [Ndreu] (born on 17 February 1917 in Gjirokastra, convicted by trial and executed on 23 September 1956).

Hanife Ramadan Karkuli (born in 1902 in Çamëria, convicted by trial for her activity during the war and executed on 25 June 1945).

Hatlije Beqir Tafani (born in 1913 in Tirana, died in investigation offices on 16 September 1945 before standing trial).

Taho Sejko was kidnapped on 28 July 1960 by three State Security agents and was killed without trial on 24 February 1962 – as told by his son Hektor Sejko – and the whereabouts of his remains are still unknown.

Galip Hatibi was kidnapped by the State Security when he was 26 years old. After being tortured, he was doused in gasoline and burned alive – as told by his son Durim Hatibi – and the whereabouts of his remains are still unknown.

Dom Engjëll Kovaçi, a priest, was arrested for a second time and accused of having killed someone inside the church – as told by his sister Angjelina Preka (Kovaçi). He was executed by firing squad and his remains have not been found.

The religious communities in Albania did not escape the savage persecution by the communist dictatorship. The Catholic Clergy, in particular, endured brutal reprisals. A short extract from Father Zef Pllumi's book would suffice to comprehend the dimensions of the tragedy inflicted on Albanians by the communist dictatorship: "The titanic so-called proletariat violence exerted day and night, restlessly and everywhere, with no distinction between villages and cities, associated with the parrot-like shouted slogans and inhuman tortures, lies and fabrications by servile or paid persons: after all those bloody executions, imprisonments and violent mass displacements, they managed to subdue the free people of Albania and thus partisan violence managed to form the government."¹⁷

16 <http://evenwallshaveears.org/story/shoresa-ballolli-merdani-3/>
17 Pllumi, At Zef, "Rrno vetëm për me tregue", Printing House "55", 2006 edition, pg. 35.

III. Political persecution of women under the communist regime

Following is the case of persecuted and political prisoner Asamble Rexhep Hatibi from Tirana.¹⁸

Born in 1924 to a family of traders, Asamble Hatibi graduated from the Tirana Women's Institute and actively engaged against the Italian fascist invaders in Albania, even being arrested and convicted by them. She spoke several languages fluently and was well-cultured thanks to her incessant readings and broad interests. After working for several years at the Ministry of Agriculture and the High Institute of Agriculture, she was purged as an ordinary worker in the Handicraft Enterprise "Migjeni".

Through various State Security secret agents, and especially the agent "Arrow", whom Ms. Hatibi thought to be her friend, suspicions had aroused that she was conducting agitation and propaganda activities against the "party and the people's power". According to the extensive information provided by the "Arrow", Ms. Hatibi thought that "Koçi Xoxe and the First Secretary [Enver Hoxha, author's note] were the same, they had worked together, but when Hoxha saw that Xoxe enjoyed more support and threatened to replace him, he attacked Xoxe"... "every decade there is a campaign to kill the opponents..." , "...she considers the leader to be a murderer, criminal, guilty, collaborator of the enemies of the party, murderer of Musine Kokalari... the economic situation of the country is such that one has to wait in line to buy cucumbers"... etc., etc. Following a lot of such information from the agent "Arrow" and other agents, as the one with the pseudonym "Arbëri", who was instructed to monitor and provoke Ms. Hatibi, and after insistent surveillance of her apartment and the conversations that took place there, she was finally arrested in October 1978 for "keen and hostile agitation and propaganda activities against the party and the people's power". After that, a meticulous plan was put into motion to complete her "hostile" file before sending it to court. The investigation office gave instructions to study the hostile materials on her husband Galip Hatibi, convicted as an agent of the Americans, study the calligraphy of Mrs. Hatibi on suspicion that she had sent an anonymous letter to the party leadership, check the correspondence she had with her relatives in Turkey and Yugoslavia, check and seize the books that Mrs. Hatibi had at home, conduct intensive investigation actions on Mrs. Hatibi to discover her connections with people abroad and find the inspirers of her propaganda, find the source of information that underlay her opinions, find hostile elements among her friends, find her assets abroad, especially process her in the isolation room (which meant forcing her to confess something), preserve the secrecy of agent "Arrow", survey her son Durim Hatibi, and explore the possibility of recruiting as secret agents those who had talked to Ms. Hatibi, etc.

Following this intensive investigative activity, the file was sent to Tirana Court on 17

18 All the information presented in this section relies on the Intelligence File by the agent a.k.a. "Witch", File 11554-A, Binder 1, No. 1334.

March 1979 on charges of hostile agitation and propaganda based on Article 55 of the Criminal Code. The subsequent court decision stated that her hostile activity had begun in 1964, and Ms. Hatibi was sentenced to 7 years in prison.

Such extensive information about a single person suffices to understand quite clearly the giant state mechanism set in motion to protect the regime from the dangerous ideas of many people.

Ms. Hatibi was released under an amnesty in 1982, but her case was closed only in 1991. During those eight years, she continued to be under State Security surveillance.

It should be noted that during the intensive investigation process of Ms. Hatibi, two people were recruited as secret agents through psychological pressure on them. Meanwhile, another person committed suicide only to not become a State Security secret agent [we are not giving their names, but they are in the file; author's note].

Today, many years later, we all know that Ms. Hatibi and all the people who were politically persecuted and disappeared during the communist regime were only telling the truth in their conversations, but it contradicted the great lie of the communist regime, which was protected by "law" and law enforcement authorities.

IV. Legal framework and official practical efforts to search for and find disappeared persons under the communist regime

With the establishment of democracy in Albania in 1992, important steps were taken to bring justice to the thousands of victims of communist crimes and their families, along with their rehabilitation and economic reparation. Finding the remains and graves of persons executed during the communist dictatorship was part of this very essential process for the new democratic Albanian state.

In relation to persons disappeared as a result of political violence, there is relevant international legislation, such as the International Convention for the Protection of All Persons from Enforced Disappearance. The first two paragraphs of Article 1 stipulate that: "1. No one shall be subjected to enforced disappearance. 2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance."¹⁹

Albania also assumed legal obligations to administer justice to people who went missing during the communist era and their families.

The crime of enforced disappearance is a crime against humanity, according to the Statute of the International Criminal Court (Rome Statute), which Albania signed on 18 July 1998 and deposited its instrument of ratification on 31 January 2003. This legal instrument sets out the obligations of states to conduct effective investigations into missing

19 Authority for Information on Former State Security Files [AIDSSH], "Guide", 2021 edition, pg. 9.

persons' cases.²⁰ Thus, Albanian families have a long-standing legal right to demand investigations into their disappeared relatives during the communist dictatorship and to be assisted by the State.

Later, at the Peace Forum in Paris on 12 November 2018, the International Commission on Missing Persons [ICMP] revised the ICMP Declaration on the Role of the State in Addressing the Issue of Missing Persons... in order to support the universal implementation of the principles of the Declaration in all circumstances where persons disappear...".²¹

Also, in the same ICMP Study Report 2018-2020 funded by the EU, the expert Matthew Holliday, team leader of this ICMP programme for the Balkans stated that "The report's recommendations seek to ensure missing persons cases are investigated effectively and the rights of families of the missing to truth, justice and reparations are upheld. The Albanian authorities have a legal obligation to account for persons missing from the communist era – state responsibility and state action are essential."²²

In Albania, the institutions that have the legal obligation to deal with missing persons are the Police, the Prosecution Service, the Courts, the AIDSSH, local government bodies, the Institute of Legal Medicine and some specialised civil society organizations.

Despite the existence of a clear national and international legal framework and all the mechanisms for Albania's practical advancement in transitional justice [Constitution of the Republic of Albania, Articles 3, 21, 25, 27; Criminal Code of the Republic of Albania, Article 74, 109/c; Law No. 45/2015 "On the Right to Information on State Security Files"; Article 3 (8)] and particularly for the missing persons cases, the achievements leave much room for significant criticism.

Scholar Sokol Lleshi writes that "The initial efforts to establish a reconciliation process by considering citizens both accomplices and victims of the previous regime proved unfruitful. The process of probing into the communist dictatorship's past and introducing legal changes towards a liberal political order in the mid-1990s was politicized and discontinued after the 1997 state crisis. The initial mechanisms of dealing with the communist past did not allow the possibility of access to the secret police archives. A constant dimension of dealing with the past has been the legal recognition and acceptance of the suffering of the politically persecuted, including an ongoing process of financial reparations."²³

Even in 2019, the AIDSSH Guide states that "Despite the fact that legal and institutional steps were launched as early as 1991 to guarantee the rights of the victims of communism and their families, there is still much to be done. Finding, identifying and recovering the bodies of missing persons during the communist period has been and continues to be a great challenge, with very few bodies discovered and identified so far, only

20 Authority for Information on Former State Security Files [AIDSSH], "Guide", 2021 edition, pg. 48.

21 Authority for Information on Former State Security Files [AIDSSH], "Guide", 2021 edition, pg. 49.

22 ICMP Report, Press Release, 2 March 2021.

23 Lleshi, Sokol, European Politics and Society, ISSN: 2374-5118 (Print) 2374-5126 (Online) Journal homepage: <https://www.tandfonline.com/loi/rpep21>

through *ad hoc* efforts by the families of the missing."²⁴

The AIDSSH public documents clearly indicated in 2019 that "Rehabilitation of the victims of communist crimes, re-dimensioning of the innocent's reputation, honouring their sacrifice and restoring their human dignity is a major step that must be taken as soon as possible."²⁵

As complex and difficult as the issue of searching for and locating persons who went missing under the Albanian communist dictatorship, the lagging behind, delays and failures are the direct responsibility of the Albanian governments and the relevant transitional justice institutions.

In addition, AIDSSH's conclusion is very disturbing as it states that "the immense communist propaganda, the concealment of information, the preservation of the secret, the impossibility to know the entire reality of the state violence under the 'dictatorship of the proletariat' have created great illusions on that part of society that did not suffer in prisons or internments. The persisting silence during the years of democracy and the unclarified extent of that violence has left a huge gap that is triggering regressive processes such as renewed nostalgia for the 'bright' socialist past, honouring of the dictatorship, the dictator and the persons who served them, etc."²⁶

We find the same concern reiterated in other AIDSSH documents: "The communist crimes have remained for a very long time, about 28 years of democracy, outside the public attention and far from any reflective approach... Social disinterest and sometimes rejection of the bitter truth of communist crimes is a real concern in Albania."²⁷

The scholar Jonida Jani writes that "Despite being one of the first countries in the Balkans to launch transitional justice reforms, Albania has failed in dealing with the past. [...] Transitional justice is seen as a tool towards democratization, and political culture as a factor that accounts for the failure of transitional justice measures."²⁸

The lack of institutional will in tackling the issue of searching and finding the persons who went missing during the Albanian communist dictatorship is evident, perhaps even the neglect to do so, which is rooted in the lingering mentality of the former communist regime. Other factors, such as expertise and logistics, needed to address the issue of missing persons, may play a role, but they are all too secondary to the lack of official institutional will.

24 Authority for Information on Former State Security Files [AIDSSH], "Guide", pg. 10.

25 Authority for Information on Former State Security Files [AIDSSH], "Platform of testimonials" (oral testimonies), brochure, 2019 edition.

26 Authority for Information on Former State Security Files [AIDSSH], "Instalacioni artistik", broshurë, bot. 2019.

27 Authority for Information on Former State Security Files [AIDSSH], "Kthimi në Vendkujtesë", broshurë, bot. 2019.

28 Jani, Jonida, "Transitional Justice in Albania: Can a non-democratic community reckon with its past?", OSCE, Justice and Change in Albania, 2020 edition.

V. Reasons of delays in the search and location of missing persons

In their article about the practical experience of transitional justice in Albania, Robert C. Austin and Jonathan Ellison state that “Having experienced possibly the harshest form of communism in Europe, one would think that Albania had the most compelling reasons to undergo sustained transitional justice. One need not look much past the biographies of Albania’s transition leaders to confirm that Albania did little vis-à-vis with the past. What Albania offered is simply political vengeance... Albania’s post-communist justice is about the selective destruction of the past, not an attempt to deal with it... From 1991 to 1997, when a few attempts were made, the process was disorganized, politicized and unsuccessful... There were huge purges of the public administration in the aftermath of the victory of the anti-communist Democratic Party in March 1992 and there were again huge purges of the public sector after the Socialist Party (former communists) won the elections in 1997. This cannot be considered lustration as it is entirely consistent with Albania’s twentieth century political culture, which has always left open the door to be a hero one day and a traitor the next. This process was heavily influenced by political vengeance.”²⁹

From another perspective, Gjergj and Mirela Sinani state that “Even 30 years after Albania embraced the democratic system, our state institutions, which claim to be democratic, continue to display a serious lack of attention, consideration or support for scientific research in truth-seeking about the communist crime against the Albanian people. We note that as soon as facts about the communist crimes resurface and once an ordinary discourse is raised to understand a certain situation, a whole propaganda army is mobilized against it under the disguise of objective criticism. Indeed, this is a traditional method used during the dictatorship to discourage dignified research-driven scholars and this is one of the reasons why very few researchers stick to this field of research... We note a meagre state interest in listening to and understanding the discovered facts, let alone making them available to the public opinion.”³⁰

Before analysing the causes that have hindered the practical establishment of transitional justice in Albania, it is necessary to acknowledge that the process was made very difficult due to many reasons. Some of them are related to the problematic situation of the former State Security files, the lack of experience and expertise in the field of transitional justice, the lack of inter-institutional coordination in searching and locating the victims of communist crimes, the lack of information of the Albanian public about the need to establish transitional justice, the special self-defence interests of the perpetrators of the communist genocide and their families, the old mentality on historical events rooted in the public opinion from communism-time textbooks and official propaganda, the weak

29 Robert C. Austin and Jonathan Ellison, “Transitional Justice in Eastern Europe and the Former Soviet Union”, ed. Lavinia Stan, Routledge, 2009, pg. 176.

30 AIDSSH, “Profile të ‘Armikut të popullit’ në diktaturë, [“Profiles of the ‘enemy of the people’ under the dictatorship”], pg. 156-157.

support to scholars and people interested in searching for the communist crimes, etc. However, the main reason this process stalled cannot be pinned entirely on the difficulties it faced, but rather on the lacking political will of the post-communist leadership. This lacking political will is openly acknowledged by all Albanian and foreign scholars, and AIDSSH too.

Let us briefly mention some generally known facts.

Top former communist leaders of the late 1980s were convicted only on charges of personal economic misconduct and their sentences were ridiculous, and some ended in pardons after the left-wing took power in 1997. They faced no charges or sentences for acting against the national interests in the economy, in international relations, or in the disruption of the common social cohesion of the Albanians by sowing discord through the war of classes. The Albanian Parliament never passed a law condemning the communist crimes, despite numerous parliamentary debates and public discussions in the media. None of the communist-era investigators and judges have been tried or convicted of involvement in the torture, murder or other crimes of the communist dictatorship.

The lacking political will of the post-communist political elite may attract much analysis and reflections, and may be seen as the main factor why transitional justice lagged behind. However, there are other contributing factors. The Albanian political elite must be analysed under two points of view: the left-wing politics and the right-wing politics.

The authors Austin and Ellison make accurate and interesting reasoning on this mentality trend of the new post-communist political elite in Albania. They write: "In the first place, Albania had no dissident movement. Albania was only developing a dissident movement when collapse finally came. The anti-communist leaders and reformist-minded communists that emerged in 1990 and 1991 all had relatively solid communist credentials. Like in Romania, we see elite reproduction, not elite replacement. That said, very few were willing to dig too deeply into the past and even fewer had any reason to call for a complete opening of the police files. However, they all had to work extra hard to prove their anti-communist credentials. The result was a highly politicized quest for justice."³¹

For this reason, the Albanian post-communist left-wing parties either kept silent about the communist crimes, or tried to bypass or reduce such crimes using phrases like "that was the time and law back then", etc. In holding these views, they were probably influenced by a not-so-open pragmatism that implied that the complicated issues of the former politically persecuted were temporary and would naturally wane off together with the persecuted generation in the course of human life and forgetfulness. The left-wing stand also relied on its interest for power that made it unwilling to lose votes from traditional supporters. For this reason, once in power by late 1990, the left-wing granted several amnesties to those few old communist elite leaders who received light sentences from

31 Robert C. Austin and Jonathan Ellison, "Transitional Justice in Eastern Europe and the Former Soviet Union", ed. Lavinia Stan, Routledge, 2009, pg. 180.

transitional justice.

The post-communist right-wing displayed its lacking political will in another form. Perhaps for lack of experience and knowledge in the transitional justice area, it initially expressed its public idea that all Albanians were "jointly perpetrators and victims" of the past communist regime, which caused disappointment among the politically persecuted and their families. In later years, the right-wing government adopted the above-mentioned laws related to the transitional justice and initiated the rehabilitation and compensation for the politically persecuted, but the process moved very sluggishly and was marred by clientelist interests of the politics. There was even no attempt to condemn the politically-driven genocide of the communist dictatorship, while trials against the old communist leaders held them accountable under economic charges only, as explained above. As Imholtz underlined, "Nobody doubted that Hoxha family lived off well and enjoyed the goods that other Albanians did not have, but making these charges the sole scope of criminal proceedings seemed to attenuate the most serious abuses of the Hoxha regime". The decision to make economic crimes the center-piece of post-communist justice was based on the simple fact that it was easy and it was more or less all the new leaders had on them... one can say with certainty that the decision to move against the old elite based on economic crimes was a catastrophic blunder for two reasons: first, it alienated ordinary people who expected that communists would face justice; and second, it became nearly impossible after that to engage people when serious political charges were finally laid later."³² Albanian right-wing governments have been reluctant to address this issue by ensuring cross-agency coordination and allocating adequate funds. This reluctance was probably influenced by the fact that Albania has a small population where kinship and friendly relations are everywhere, independent of political affiliations, thus further slowing the motivating drive behind delivering transitional justice. Another factor that shrank the political will of the right-wing parties to deal with the communist crimes was their many politically-motivated dismissals from the state administration once they came into power in 1992 that was reflected in the following 1992 local elections, in which the right-wing lost many voters. Later, this had even more bearing on slowing down the right-wing efforts in favour of the transitional justice process.

It was precisely these general circumstances related to the insufficient process of establishing transitional justice in Albania that have strongly influenced as a major cause in keeping this serious issue unresolved, both in terms of justice and human redemption for the politically persecuted people who disappeared during the communist regime. It continues to be a very troubling problem even today, after thirty years of a pluralist democratic society, manifesting itself in a slowdown in the search, finding and identification of the victims of the genocide of the communist dictatorship.

Perhaps it should be added that the international pressure on the Albanian authorities should have been stronger, especially by the Council of Europe, but also by other rele-

32 Robert C. Austin and Jonathan Ellison, "Transitional Justice in Eastern Europe and the Former Soviet Union", ed. Lavinia Stan, Routledge, 2009, f. 182.

vant international institutions, so that they could engage properly in their practical efforts to achieve transitional justice.

Consequently, "Albania's incapacity to implement comprehensive transitional justice measures has maintained, if not amplified, the polarization of Albanian society over the totalitarian past."³³

VI. Major future challenges

Recently, Frédérique Hanotier, Human Rights Officer at the EU Delegation to Albania, commended the ICMP report on missing persons under the communist era in Albania saying, "The EU is strongly committed to supporting transitional justice in Albania, and in particular the Authority [AIDSSH, author's note, T. Starova] through ICMP. Raising public awareness about reconciliation and addressing the issue of persons missing from the communist era is of the utmost importance."³⁴

Based on this research and the extensive literature and documents reviewed, we believe that Albania probably needs to finally address some major challenges in the field of transitional justice:

- Condemn by law all the communist crimes and their perpetrators, through the adoption of a law by extensive cross-party consensus.
- Set up an inter-institutional co-ordination structure to follow up on the resolution of all the transitional justice issues.
- Review and improve the law on access to former State Security files to eliminate any impediments or untruths related to them.
- Promote and support scholars to engage in research on the former State Security files and shed light on the untold truths about violations committed and plotted by the communist regime.³⁵
- Launch a significant undertaking to revise the history textbooks so that younger generations comprehend and do not forget the tragic truth of the communist dictatorship.
- Provide state support to historians in shedding light on important historical events and figures in the Albanian history that have been overlooked or misjudged, or hindered by the communist dictatorship.

33 Gjeta, Altin, "Transition without justice in post-communist Albania: Its implications to collective memory building and democracy promotion", OSCE, Justice and Transformation in Albania, 2020 edition, pg. 17

34 ICMP Report, Press Release, 2 March 2021.

35 Authority for Information on Former State Security Files [AIDSSH], "Kërkimi shkencor", ["Research"], brochure, 2019 edition.

- Build an important monument dedicated to the victims of the communist dictatorship to serve as a meaningful act of historical collective memory for the Albanian people and, especially, for the younger generations.

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Merita PONI

Department of Sociology, University of Tirana.

ADDRESSING THE ENFORCED DISAPPEARANCE OF THE COMMUNIST PAST IN ALBANIA: SAYING VERSUS DOING

Albania ratified the Convention on Enforced Disappearance (CED) in 2007. Since then, the country has reported twice to the Committee of the Convention. In 2015, Albania handed over the baseline report, which was followed by a set of questions from the Committee in 2017 and by conclusions in 2018. In 2020, Albania reported back. Although party to the Convention for almost fifteen years, Albania has not addressed the issue of enforced disappearance as nothing has been done to find the places of execution and the remains of almost 6,000 persons who forcibly disappeared during communism.

CED in domestic legislation

The CED stipulates that state parties should promote universal respect for and observance of human rights and fundamental freedoms. The enforced disappearance violates the right to life. Therefore, the Convention calls upon states to be aware of the extreme seriousness of enforced disappearance, which constitutes a crime against humanity. Albania has approximated the definition of enforced disappearance with the definition provided for in the Convention. Thus, according to CED, “enforced disappearance” is considered to be the arrest, detention, abduction, or any other form of deprivation of liberty by agents of the state or by 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 places such a person outside the protection of the law. In Albanian penal legislation, “enforced disappearance” is considered to be the arrest, imprisonment, abduction, or any other form of deprivation of liberty, by public officials or by persons acting with their authorization, support, or approval, accompanied by the denial of the fact of the deprivation of liberty or the concealment of the fate of the person or the country in which the person is located, denying him the necessary assistance and protection by law (Criminal Code, Art. 109/b). In accordance with the definition provided by Article 2 of the Convention, the definition of enforced disappearance provided by the Albanian Criminal Code ascertains the following elements:

- There is a person’s arrest, detention, abduction, or any other form of deprivation of liberty;

- That conduct is carried out by public officials/agents of the state or by persons acting with the authorization, support, or acquiescence of the state;
- The conduct is followed by either a refusal to acknowledge the deprivation of liberty or a concealment of the fate of the disappeared person;
- The disappeared person is placed outside the protection of the law.¹

The denial of legal protection is the consequence of three other constituent elements of enforced disappearance. It is a crime to place a person out of the protection of the law. Enforced disappearance is punished with fifteen years of imprisonment. So far, no one has been punished for the enforced disappearance of six thousand persons during the communist regime. International law enjoys a privileged position in relation to domestic law. In the event of incompatibility between domestic law and international law, international law prevails. The Convention's superiority is a guarantee for the application of the international standards when not all provisions of the Convention are applied in the domestic legislation. Some provisions of the Convention are applied directly or indirectly in domestic legislation. Although the Convention prevails over domestic law, it is not applied, and since ratification of the Convention, no cases of enforced disappearance have been investigated or prosecuted.

Remedy for the victims

The fact of enforced disappearance is well known in the country. Enforced disappearances were identified during the communist regime, and according to official data, 5,157 persons convicted for political reasons were executed without a court decision, and 957 persons died in forced labour camp prisons during the period from 30.11.1944 until 1.10.1991 (Albania report to CED Comm. 2015). However, the country's measures to address enforced disappearance are far from locating the remains of the forcibly disappeared people. So far, the answer to the victims' families is financial compensation. The Law "On the Compensation of Former Political Prisoners of the Communist Regime" (Law on Compensation) provides compensation to anybody convicted during communism of imprisonment, capital punishment by court decision, extrajudicial killings, insulation at investigating offices, hospitalization to a medical institution, and exile. The law was made applicable through a Council of Ministers' decision (DCM) "For the determination of the administrative review procedures related to the claims and financial compensation for the families of the victims unjustly executed without trial, for political reasons, from 30.11.1944 until 1.10.1991". Although the country provides financial compensation to the heirs of the victims of enforced disappearance, the criminal law

¹ Article 109 of the Criminal Code provides specifically "by denying him the necessary assistance and protection of the law".

does not provide a definition of the victim. The right to remedy is recognised by the Convention, which calls upon states to protect any person from enforced disappearance; if it happens, the victims have access to justice and to reparation. Further, the Convention stresses the right of any victim to know the truth about the circumstances of an enforced disappearance and the fate of the disappeared person, as well as the right to freedom to seek, receive, and impart information to this end. According to the Criminal Code, any victim of an enforced disappearance has access to justice and remedy. The law stipulates that a “person aggrieved by the criminal offense, or his successors, has the right to seek prosecution of the perpetrator and compensation for the damage. The injured party has the right to file claims with the proceeding body and request the taking of evidence. When the request is not accepted by the prosecutor, s/he has the right to appeal to the court and to participate in the trial as a party to prove the charges and demand compensation”. The Civil Code provides for compensation for damage caused illegally and by fault. The Law on Compensation provides compensation for the families of the victims unjustly executed or killed for political motives by final penal decisions, by the ordinary or special courts, or by the orders of investigative bodies (during the period from 30.11.1944 until 1.10.1991), as well as financial compensation for persons formerly interned or deported. The beneficiaries of the law are former political prisoners of the communist regime who remained alive or the family members of the victims who were executed or deported to internment camps. During the three decades following communism, no forcibly disappeared persons have been found, and no justice has been served for them.

Albania’s Report on CED

Albania submitted the first report to the Committee on Enforced Disappearances in 2015. For this reason, Albania reported that the implementation of the Convention had been difficult, for which the report was delayed from 2012 to 2015. The baseline report was followed by a list of questions and responses in 2017 and 2018; in 2020, the country deposited the report on selected articles. Given the necessity of providing specific provisions in domestic legislation, in accordance to the obligations under this Convention, a special provision on “enforced disappearance” was included in the Criminal Code². Based on Article 7 of the Convention, the Criminal Code provides an aggravating circumstance when the offence of enforced disappearance is committed by causing the death of the person. The inclusion of “enforced disappearance” in the Criminal Code as a specific criminal offense constitutes an appropriate legal framework to prevent such acts and ensure non-avoidance of enforced disappearance by the state, and the compliance of international obligations arising from becoming party to the Convention (Albania Report to the CED Committee, 2018). Since the entry into force of the Convention, no case of enforced disappearance has been investigated or prosecuted

2 Law No. 144/2013, dated 2.05.2013, “On some additions and amendments to Law No. 7895, dated 27.1.1995, “Criminal Code of RA”, as amended.

yet. The country should have taken several measures to address the issue of forcibly disappeared persons during communism. Firstly, the country should have collected evidence from survivors of the communist dictatorship related to the executions with or without trial. Information should exist on people deceased in prisons and killed at investigatory offices or psychiatric hospitals. The state archives should be opened to discover the evidence of persons taken by (secrete) police forcibly from their homes, and then disappeared without a trace or killed without warning. Further, evidence about the executed persons on the border who attempted to escape during the period 1945-1991 and were then buried in collective graves or unknown locations should be made available. Secondly, the country should construct a database on disappeared persons, including data such as name and surname, sex, country, date of birth, place and date, and, where possible, the supposed year and circumstances of disappearance. Thirdly, the state must find the remains of disappeared persons and locate the places of disappearance, as well as monitor the return process and exhumation of disappeared persons, in close cooperation with central and local institutions.

Enforced Disappearance as a Crime against Humanity

According to Article 2 of the Convention, in addition to being a criminal offence, enforced disappearance is qualified as a crime against humanity. In Albanian criminal law, no definition of enforced disappearance as a crime against humanity is provided in conformity with applicable international law, that is, when enforced disappearance is committed as part of a widespread or systematic attack against a civilian population (Art. 5). The criminal law provides for crimes against humanity in times of war, in compliance with the Rome Statute (International Criminal Court). The Criminal Law stipulates that: "Acts committed by persons in times of war, such as murder, maltreatment, or expulsion for slave labour, as well as any other inhuman exploitation to the detriment of the civilian population or in occupied territory, the killing or maltreatment of war prisoners, the killing of hostages, destruction of private or public property, destruction of towns, communes, or villages, which are not ordained by military necessity, are sentenced to no less than fifteen years of imprisonment, or life imprisonment". The authorities explained in the report on the CED application that enforced disappearance is provided/qualified by the Criminal Code as a particular offence against the person and as a "crime against humanity" when committed against a group of civilian population for certain grounds/motives. To support this argument, they referred to Article 74 of the Criminal Code that stipulates that "killings, enforced disappearance, massacres, slavery, internal exile and deportation, as well as any act of torture or other inhuman treatment committed under a concrete plan premeditated or systematically against a group of civilians, for political, ideological, racial, ethnic or religious grounds, are punished by no less than 15 years or life imprisonment". Although domestic legislation does not classify enforced disappearance as a crime against humanity, the country is bound by the classification of the Convention on "Enforced disappearance as a crime against humanity", as required by the international standard. The country shall bring domestic legislation in line with

Article 5 of the Convention, which states that “widespread or systematic practice of enforced disappearance constitutes a crime against humanity, as defined in applicable international law and shall attract the consequences provided for by it”. As per the Albanian report, the offenses contained in Articles 74 and 75 of the Criminal Code are in accordance with Article 9 of the Albanian Constitution, which stipulates that “no one can be accused or found guilty of a criminal offense which is not considered as such by the law at the time it is committed, with the exception of cases which at the time of their commission are constituted as war crimes or crimes against humanity under international law.” The Criminal Code defines “the widespread and systematic practice of enforced disappearances as a crime against humanity”, thus making “enforced disappearance” a crime against humanity in compliance with the applicable international law. Regardless of whether the enforced disappearance is correctly classified as a crime against humanity, the country is bound by the Convention application and should consider it a crime against humanity. Furthermore, if the authorities declare that the Criminal Code classifies enforced disappearance as a crime against humanity, then the country should have taken measures to address the unsolved issue of the enforced disappearance of six thousand persons during communism. To date, no measures have been taken, and the country has avoided the responsibility of making justice for the victims.

Criminal responsibility for enforced disappearance

As per Article 6 of the Convention, the Criminal Code provides that the criminal responsibility for the enforced disappearance rests with the superior who knew that subordinates under his effective authority and control were committing or about to commit a crime of disappearance. For the crime of enforced disappearance in communism, no superiors of the time are held responsible, although they knew, ordered, and controlled the process of disappearance. Nor are any of them remorseful for the crimes of the past. The perpetrators of enforced disappearances, in the hierarchical position of the order chain, justify the crimes as lawful acts of the communist time, prescribed as legal by the laws of the communist regime. They exercised effective responsibility for and control over activities that were concerned with the crime of enforced disappearance. They did not take any reasonable measures within their power to repress or punish the authorization, to repress the support and approval of the commission of an enforced disappearance. For superiors of lower ranks, it was impossible to do so, as they could be punished for disobedience to orders. They could not even submit the matter to the competent authorities for investigation and prosecution because the authorities ordered the enforced disappearance. Domestic law in communist times was in contradiction with international law. Only after the regime change, in 1991, did domestic law come into compliance with international law, as the country ratified several conventions respecting human rights and fundamental freedoms. Nowadays, domestic legislation defines the principles of criminal responsibility in accordance with international law. The perpetrators of the past should be held responsible for the crimes they committed under international law. Because the crime of enforced disappearance is a crime against humanity,

according to the Convention, this crime is not subjected to the statute of limitation, meaning that the punishment for this kind of crime has no time limit. Article 67 of the Criminal Code states that “there is no statute of limitation operative/applicable for the criminal prosecution of war crimes and crimes against humanity”. Moreover, according to the authorities, enforced disappearance is defined as a crime against humanity (Article 74 of the Criminal Code). But this article is in contradiction with Article 66 and 109/c of the Criminal Code, which apply the statute of limitation for enforced disappearance from ten years (the minimum limit) to twenty years (the maximum limit)³. The statute of limitation for enforced disappearance is in contradiction with the Convention as well, which rules out the statute of limitation.

Prosecution of enforced disappearance

The Criminal Procedural Code and Law on Prosecution Office stipulate that the prosecutor carries out the investigation and conducts any investigative action deemed necessary / *ex – officio* or by report. The Criminal Procedural Code envisages a “criminal report from the citizens”. The criminal report is submitted orally or in writing to a prosecutor or to a judicial police officer. The deadline for completing the investigation of criminal offenses (CCP Article 323-325) is three months from the date the name of the person to whom the criminal offence is attributed is recorded in the register of notifications of criminal offences. The prosecutor brings the case before the court or decides to dismiss it. The relatives of the victim can access the files of former secret police at the archive of the state institution to find information about their relative who forcibly disappeared during communism⁴.

Efforts to find the disappeared persons

Following ratification of CED in 2007, and legal amendments to the Criminal Law, the country signed an agreement with ICMP⁵ in 2018 to search for disappeared persons during the communist dictatorship⁶. The European Commission provided a fund of

3 Related to the non-prescription (non-operation of the statute of limitations on criminal prosecution), according to Article 67 of the Criminal Code, “there is no statute of limitation operative/applicable for the criminal prosecution of war crimes and crimes against humanity”. Given the fact that enforced disappearance is defined as a crime against humanity (Article 74 of the Criminal Code), and there is no statute of limitation for crimes against humanity (pursuant to Article 67 of this Code), there is no statute of limitation applicable for enforced disappearance qualified as a crime against humanity. Pursuant to Article 66 and 109/c of the Criminal Code, it can be concluded that the statute of limitation for enforced disappearance as an offence with relevant penalties provided under Article 109/C is ten years (the minimum limit) and twenty years (the maximum limit) as stipulated in criminal law.

4 Law No. 457/2015 “On the right to information on the documents of the former State Security of the People’s Socialist Republic of Albania”.

5 <https://balkaninsight.com/2018/07/18/albania-signs-agreement-to-search-victims-of-communism-amidst-skepticism-of-survivors-07-18-2018/>

6 <https://balkaninsight.com/2018/11/16/fillon-mbledhja-e-kampion%C3%ABve-t%C3%AB-adn-s%C3%AB-p%C3%ABr-identifikimin-e-viktimave-t%C3%AB-komunizmit-11-16-2018/?lang=sq>

600,000 Euros in 2018 to support the exhumation. No significant action has been carried out to date. The whereabouts of the disappeared persons are not known. The Inquiry into 5,501 killed and 987 died in labour camps and prisons has not commenced. In 2010, 2 out of 13 victims were identified at a massive grave (no. 313) in Dajt, Tirana⁷. In 2018, there was a demand addressed to the prosecution offices for the excavation of 2 massive graves from communist times in Dajt and Ballsh, Fier. In 2021, no orders were released by the prosecution with the argument that the process is administrative and not subject to criminal justice⁸.

The inactivity of Albania to address the pressing issue of disappeared persons was reproached by the OHCHR, which called on the Albanian authorities to make efforts to protect the rights of victims of forced disappearances and to consider the overhaul of existing institutional frameworks in order to create an “independent, broadly mandated, and multidisciplinary mechanism tasked with advancing the rights of victims and achieving national reconciliation.”⁹. In synchrony, the CED committee urged Albania to classify the crime of enforced disappearance as a crime against humanity and to make sure that it is not subject to a statute of limitations under Article 67 of the Criminal Code and that the statute of limitations commences only when the crime ceases. The committee draws attention on the lack of examples of case law as well as any measures taken to investigate acts of enforced disappearance, including prosecutions carried out, sentences handed down, and any reparation measures provided to victims (the disappeared and any individual who has suffered harm as a direct result of the enforced disappearance).

Conclusions

Because of the lack of willingness to deal with the past, the enforced disappearance has not yet been addressed in Albania. The reproduced elite had no interest in condemning the crimes of the dictatorship, part of which they were during communism¹⁰. Victims of forced disappearance and their relatives are still asking for justice¹¹. The victims remain unaccounted for as long as the authorities do not provide them with the necessary means to complain about the perpetrators. The victims disappeared twice, from the past regime and from the present regime, which is indifferent to their suffering. Victims and their families have no access to full remedy, as the answer to them has been only financial compensation. Other forms of remedy, such as restitution, rehabilitation, satisfac-

7 <https://balkaninsight.com/2019/10/31/prokuroria-blokon-punen-per-gjetjen-dhe-identifikimin-e-viktimave-te-komunizmit/?lang=sq>

8 <https://balkaninsight.com/2021/10/22/prokuroria-shqiptare-thote-se-nuk-ka-rol-ne-hetimin-e-krimeve-te-komunizmit/?lang=sq>

9 <https://exit.al/en/2021/09/22/un-albania-must-improve-rights-of-victims-of-enforced-disappearance/>

10 Austin Robert C. & Jonathan Ellison, In Lavinia Stan (eds.) *Transitional Justice in Eastern Europe and the former Soviet Union, Reckoning with the communist past*, Routledge, 2009.

11 Nils Muiznieks *Persisting obstacles in addressing cases of missing persons and enforced disappearance*, 2018, statement of the Commissioner for Human Rights, Council of Europe.

tion, and guarantees of non-repetition, in accordance with Article 24 of the Convention, are not in place. The violations of human rights of the communist past are not properly acknowledged by the state. Impunity for serious human rights violations has disastrous effects on the lack of trust of the public towards authorities. The state has not provided guarantees of non-recurrence by letting the perpetrators of the enforced disappearances free. To date, the investigations have not been effective because the crimes have not been qualified in an adequate way. The investigation and prosecution are hampered by the statute of limitations, which shows the reluctance of the current elite to punish members of the former state executive. The perpetrators are not held to account, and some of them do still serve in law enforcement, security, and military structures.

Jovan PLAKU

Relative of a person victim of the communist regime

Thank you so much for this opportunity!

Telling stories of persecution is sad and this audience does not deserve to be induced into sadness. Therefore, I will try to make this intervention in two aspects, at two different times. As a piece of information that I will give you about the past, about the period when my father lived, and also as a rationale on current events. Maybe I can soften the story a bit.

The history of my father

Firstly, I want to tell you who my father was. I want to tell you that my father was a geological engineer with a profile in the oil industry. He studied in the Soviet Union in the '50s. He was one of the best students of the time. He graduated with excellent results. He came to Albania and worked in the research sector. He was not a man working in an office, but a man of science working on the ground.

My father, along with a group of engineers, was convicted of sabotage and treason against his homeland in 1976. The sabotage charge was not sufficient for the persecutors. They had to make up "sabotage on behalf of the Soviet Security Agency". He was a man with strong professional contributions, known worldwide; therefore they could not charge him for sabotage. Nevertheless, the agency's activity is something mysterious and secretive. Anyone could be charged. The oil sabotage group, as a member of which my father was convicted, consisted of eight people, two of whom were executed and the others sentenced to imprisonment...

My childhood

I was impressed as a child, but even later, that the connection with the Soviet Agency was made because of an episode related to fishing hooks. My father was told that, "we have proved that you have been an agent and a saboteur, because in 1966, your acquaintance Elvira Babiçenko, who was from Dhërmi, and married to a Russian citizen, brought fishing hooks to you from the Soviet Union. Along with the fishing hooks, you also received orders to sabotage". In fact, my father was passionate about fishing.

The episode of the fishing hooks stuck in my mind, because in the way that a child absorbs events, especially those that impress him much, I made a connection between the fishing hooks at that time and the word "sabotage", and I considered both to be a very serious things. Both of these words made me feel so strongly connected to this moment after such an episode, so that in order to understand what my father had done, I felt the

need to get into fishing. I started to study fishing and to make fishing hooks. I made the first hooks with head needles and a kind of thread my mom used to embroider. They called it “Muliné” (“Mouline”) and they said it was quite strong. At the time, I saw myself as a saboteur too. I had sabotaged my mother’s embroidery. But my mother did not punish me. This childish sabotage activity left me with the passion of fishing.

My family

My father was a member of a persecuted family. There is nothing unusual or special here for all those who know the history of communist persecution and the communist dictatorship. Persecuted people were usually persecuted as a family. What is unusual perhaps is the degree of persecution imposed on my family and the reasons of such persecution. My family is a patriotic family, as documented and appraised as such by my parents grandparents and great-grandparents. The communist persecution of my family began before the regime came to power. It started in 1944, with the older brother, Jorgo Plaku, who was one of the first partisans in Albania, close to Enver Hoxha and a translator at the Anglo-American missions. He was killed on 7 January 1944 in mysterious circumstances, during a march and, after the war he was proclaimed a “Martyr of the Fatherland”. Later, there were indications that such a murder was committed directly on Enver Hoxha’s orders. Then, the persecution affected all the brothers, one by one, and according to the history we have witnessed, this happened because they had begun to discover the mysteries.

Kalo Plaku, a former director of the Sukth agricultural farm, the largest in Albania at the time, was also a member of this family who died in May 1957 by poisoning. It was confirmed that he had been poisoned by the State Security. The other brother, Panajot Plaku, who was a minister in Enver Hoxha’s government, escaped because he felt it was his turn to be eliminated, despite the fact that he did not manage to avoid the State Security even in emigration. Then, it was my father’s turn. The rest of the family was certainly not saved, suffering the ordeal of internment, eviction, etc. Nevertheless, they were able to survive.

The stories of families persecuted during the communist regime in Albania are not widely known by society today. They are stories that are told to each other, in close family circles. Where there is an interest, special programs are created, but the process is sporadic, not structured, organized or inclusive. It has not yet evolved into a proper policy of recognition, appreciation and education. Stories of communist persecution, as far as they are told, satisfy social curiosity, but they have become neither educational models, nor pillars of social morality.

My father’s professional aspect

My father was a student with excellent results. In the Soviet Union he was recognised as a student of excellence. He came back to Albania and for the sake of truth, he was

appreciated as a specialist and was given the opportunity to work in his profession, even though that was not a luxury, but it was quite difficult, as it was a field profession. My father was a member of the group and probably the protagonist of the new oil exploration school in Albania, which shattered the taboos of the time. If it was previously said that oil was only found in sandy areas in Albania, my father insisted in front of all scientific groups of the time, and managed to convince not only them, but also political decision makers, that oil in Albania is deposited in limestone, whereas it has migrated from limestone to sandstones.

Something must be understood. I am not a specialist in that field, and perhaps none of us here are, but I believe that you all perceive that in the conditions of a dictatorial regime, breaking the taboos of scientific opinion, but also risking so much by using funds to substantiate your theses, was a very bold step, which could lead to persecution if you failed. There was no gambling there. It was gambling with life. And my father had so much patriotism, devotion, certainty, and passion for his work, and so much scientific assurance, that he was determined to play with life, to prove the accuracy of his theses. He achieved this by discovering the Gorisht oil field, the first important source of oil in limestone. My father was convicted of sabotage. This was the charge against the man who had given Albania an incalculable, unimaginable wealth, which either foreign assistance had been able to provide. To put it with the words of the honourable deputy, Mr. Baftjar Zeqaj, who is also a geological engineer profiled in oil exploration, and who despite being from a younger generation, has studied my father's works and knew his professional and theoretical aspects, although not personally. He stated that, "... *in Albania there is no one else who has contributed to the state budget more than Koço Plaku ...*". My father did not give Albania any of his assets (he had none). He had the knowledge and he turned it into wealth. The field of Gorisht has been exploited for 60 years and it continues to be exploited to this day.. Foreign companies that are present in Albania nowadays in the sector of hydrocarbons continue to use Koço Plaku's knowledge and contribution in oil exploration, such as drillings on Shpirag Mountain from Shell Company or other oil areas that are yet unexplored.

This biography would be admirable for everyone, not for the fact that he was my father. People come to life to give something to society. This is the sublime role and motive we have in society. All of us. But not everyone has such an opportunity. Not everyone has the same opportunities. Not everyone succeeds. But the people who succeed, and in such dimensions, deserve respect and gratitude from society and the state, they deserve to be celebrated.

What is the current state of public gratitude for persecuted people's contributions? People like my father are honored and respected among those who have known them (not just family members) or those who have worked with them, but not beyond that. Gratitude does not extend to public authorities. It is rare for them to have this category of persecuted on their minds or "on the list". Gratitude does not extend to uninformed groups in society, or to those who do not have specific information about the area but should normally have information about individual contributions to society. Just as they

have information about the names of partisans, patriots, prominent footballers, singers, composers and especially politicians. This does not happen, and it has never happened. I think it should have been part of state policies. It should have been this way not only for my father, but for a long list of people who have shared his fate.

Investigation

My father suffered for about a year and a half a severe investigation. As I have read from the file, I was able to understand a lot about the entire sequence of events. For a year and a half he faced with stoicism charges of sabotage, cooperation with foreign security agencies, treason against the homeland, and all kinds and types of pressure. They tried to break him by putting pressure on him such as “*we will destroy your family*”, even using his child, myself. I was 1 year old, and I had just started to speak when I said the first word “father” in the prison yard, where they had forced my mother and me to go and, he would see us from the cell window and be devastated by our appearance and presence there. As I read in the investigation file, he stood firm, determined to deny the allegations because he was well aware of the trap. The charges had nothing to do with his activity, because his activity was enlightening. The charges were linked to the regime’s need to purge a family member who had been placed in the circle of persecution. Apparently, he had understood this, he knew that there was no other solution and therefore he strongly resisted all the offers, both good and bad, of Albanian investigators, of the Albanian State Security. His file was voluminous, about 5 thousand pages. All the data in the file are fabricated; it is even easy to understand the fabrication of the file and the technique that was used, from wiretapping to introduction of spies and provocateurs into the cell, breaking the co-accused and using their statements to charge my father with guilt, in the sense of accusation. All of these are clear. It is a huge file, one that is worth studying and from which scholars can draw excellent conclusions to do the radiography of communist persecution. This folder, however, is not a specific folder. It was not only my father to have a file under that regime. Out of the desire and need to understand my plight and reveal my father’s truth, I needed to go through the archives. I have seen many such files. Today, I can say that all these files have a real study value. But, today, with the exception of a few individuals with strong will, they are out of the attention of Albanian historiography, despite the fact that very good generalizations can be drawn from them and a very good radiography of the communist dictatorship and communist persecution can be made, as well as of methods of communist persecution. That would be very valuable to society today in order to understand and to process the dictatorial past. Starting from today’s point of view, we can look at the experiences of other countries, and they are amazing. For example, it is amazing how Germany has operated on the processing of Hitler’s past and the the communist past, in its communist region. It is a model in both cases. They did not let the files get dusty. They did not argue with the reasoning that it is better to keep them closed, because social conflicts may be created. They nourished their people with the amble awareness that without understanding the mistakes of the past, the guilt of the past, we can have no security for

the future. And the past's guilts are understood not by saying "you're all accomplices", or "it is better to close them because social conflicts may be created in Albania", but by saying "we need to understand, we need transparency, we need to be enlightened, and we need to learn".

My story....

I started to conduct research. Not because of any particular passion for history. I have another profession and I am successful in it. Thanks to my dad's story, I'm a passionate fisherman and I prefer to spend most of my free time fishing. But I chose not to do so. I chose not to pursue my passions. I chose to follow my destiny. And my destiny is to reveal the past, in order to see my future clearly. Above all, I needed to know my father, whom the regime never allowed me to know. I needed to understand why that tragedy happened, why the regime took my father's life. After that, I needed to respect, honor, and celebrate his name. It all started with trying to find his remains, which in any other country would seem like a pretty simple thing, a routine process. All countries, whether dictatorial or democratic, are bureaucratic states; this is something they have in common. For everything they do, they leave a mark. The issue has become difficult in Albania, not because Albania was not a bureaucratic country, but because the traces were hidden. And I have fought a long-term battle to discover and rediscover the erased traces. I searched the archives, I found the execution documents, I identified the members of the execution team and the other attendees, and I tried to find, identify and approach these people today. This has not been an easy process at all. I had to do extraordinary manoeuvres to get to this point. I had to find people, I had to contact them in different ways, I had to make friends, I had to sit, eat, drink and get drunk with them, dozens of times, so that they could have the assurance that I was not approaching them to take revenge, but I was approaching them for my need, for the sole purpose of finding the remains of my late father.

The state should have removed such a process from the backs of the families of the executed persons, this was the least it could do. Regardless of the regime, dictatorial or democratic, the state is one and it has an obligation to return the remains of their loved ones to the family members, an obligation that should have been fulfilled. This should have happened because a state that does not respond to this obligation is a state that does not have the will to show remorse. Repentance also belongs to the state, not to the regime.

I have privately taken the initiative to dig. I rode an excavator to do it, though I am not an excavator operator and I am not an exhumation expert. I do not know this field. But I, along with many other people in similar conditions, had to help ourselves, otherwise, no one else would. We did this work and to some extent we managed to discover some sites where the convicts were buried, following shooting. As shown by the chronicles, we managed to discover some of the remains and took them to forensic medicine for identification. Many people, who have dug in order to find their relatives, have found

their remains and reburied them without any examination. There were others who have done DNA testing and upon finding that the remains did not belong to their relatives, threw them away. And others have accidentally found remains at various execution sites, destroying every trace.

My current situation is that I still don't know where my father's remains are. I am still unable to rebury them properly. I am still unable to give my father the proper burial he deserves. I am still unable to pay him a visit on the anniversary of his birth or murder, to commemorate him as he deserves. This because I lack help from the state in identifying which remains belong to my father and which belong to his co-executed among the multitude of remains we have found. The state is still failing to address this need.

When we found the remains at the foot of Dajti Mountain and the story became public, Serbia made a fuss and claimed that the remains belonged to the victims of the 1999 Kosovo¹ war, Serbs whose organs were taken for trafficking. I know that this propaganda was so strong that representatives of the UN arrived to Albania to conduct investigations. The Albanian authorities remained indifferent, despite the fact that the charges could be dropped immediately if they fulfilled our request for a DNA analysis of the exhumed bones. Nowadays the internationals are perhaps convinced that this issue has no relation with Serbia's nonsense, but Serbs can still claim it, although we know for sure that they are the remains of our relatives. We just do not know which ones belong to my father and which ones belong to his co-executed.

Rehabilitation

In the case of my father, his rehabilitation was an example of how society rehabilitated a member of its own, whom it felt was a victim of communist terror. Today, a statue of my father was placed in Patos. This statue is a contribution of the people who have known and respected his achievements, not a state contribution. The monument is a product of private initiative, which has definitely been approved by the local authority, but the initiative and the celebration was entirely private. I am very grateful for all this, especially to the deputy Baftjar Zeqaj, who has known, appreciated and truly respected Koço Plaku, in the same way as we, his family, have.

Rehabilitation is a big topic that needs to be taken very seriously. Rehabilitation will not bring people back to life physically, this is not possible. Nature does not allow it. But rehabilitation brings the memory of these people back to life. Rehabilitation is not mythification. Rehabilitation is recognition and appreciation, with all the good and the bad that people have. I can easily say this, because my father's life story has included both the good and the bad. There have been contributions but not damages, whereas others who have caused more damages than contributions find it more difficult to seek rehabilitation, because rehabilitation means that society recognizes the damages as well.

1 All references to Kosovo, whether to the territory, institutions or population, should be understood in full compliance with United Nations Security Council Resolution 1244

The important thing is that we, as a society, should not go towards mythization of the characters in order to suppress superficial curiosity. This is not rehabilitation. Superficial curiosity does not bring people back, it does not rehabilitate them.

Reintegration

Reintegration has been widely welcomed by the persecuted. But it has been considered as a deeply materialistic, sometimes cynical process. The state failed to create a complete database, and these people have to submit mountains of documents to the Ministry of Finance for each compensation instalment, otherwise “the funds are burned”. Meanwhile, the state has failed to recognise that reintegration is both spiritual and material. In a certain way, reintegration has been seen as a set of measures aimed at “sealing” the mouth, but not healing the wounds. The wounds of the relatives of those executed by the regime will remain open, as long as the ordeal of our executed loved ones is not over; their remains will not rest in peace and we will be unable to remember and honour them like any man would remember and honour their loved ones who have passed away.

I wandered so much around the hills of Tirana and dug so much that from time to time, I got a dilemma, saying to myself: “Is perhaps exhumation becoming my passion?! My passion is fishing, not exhumation and sometimes, I felt the anxious need to go to the sea, to catch the hooks and start fishing, because I had to compete and choose between hobbies... ”

But, I’m not tired yet ...

Thank you!

María Martínez, UNED

OSCE (Organization for Security and Co-operation in Europe)

DISAPPEARANCES IN POST-DICTATORIAL SOCIETIES

First of all, I would like to sincerely thank the OSCE and the donors for inviting me to the “International Conference on Enforced and Involuntary Disappearances in Dictatorship and Authoritarian Past and Contemporary Settings: a Social, Legal, and Historical Appraisal of Transitional and Transformation Policies and Mechanisms.” I would like to especially thank Claudio Pala for his attention and dedication in organizing the conference.

The aim of this presentation is to reflect on, how in order to understand forms of enforced disappearances in dictatorial societies, we cannot avoid thinking about contemporary disappearances in post-dictatorial contexts. At the same time, it is only due to that practice developed in dictatorial regimes that we can identify nowadays contemporary forms of disappearances, either enforced or not. This transforms the category of disappearances into a very powerful analytical tool. As Gabriel Gatti states (2017), disappearances are not only what we have to explain, but what helps us explain contemporary situations of extreme precarity and vulnerability for which we have no name.

Before starting, I need to put forward that the ideas that I will be presenting here are not of my own, but have been generated in the context of a collective research project developed between 2016 and 2020 entitled “Desapariciones. A transnational study of a category for managing, inhabiting, and analyzing social catastrophe and loss” (CSO 2015-66318-P). The project was funded by the Spanish Ministry of the Economy, Industry and Competitiveness with an international and interdisciplinary research team, and its Principal Investigator was Gabriel Gatti. The project’s aim was to understand the logic of the category’s transnational circulation and its current widespread use for both managing and inhabiting situations of suffering, including some that are very different from those described under the legal category of “enforced disappearance of persons” after the adoption of the UN Convention in 2006. Desapariciones also aimed to implement strategies for analyzing social life when it is pierced by catastrophe and loss and when the explanatory capacity of the tools inherited for comprehending and managing identity, agency, and meaning is exhausted. During the presentation, I will be using empirical data produced in the context of that research project, either by me or by other members of the research team.

In order to build an argument that proposes that in order to understand disappearances —present and past— we need to go back and forth from the original forms of disappearances —those that happened in dictatorial settings— and contemporary ones —happening in so-called democratic contexts—I will introduce three issues. First, I will look at the debate opened up by the French sociologist, Etienne Tassin that questions that division between dictatorial and democratic regimes and affirms the continuities between them, especially when looking at new forms of disappearances. In a second moment, I will argue that present and past forms of disappearances, those developed in dictatorial and democratic regimes cannot be thought of independently and that we have to look at how the category travels and lands in different settings. Finally, I will argue that disappearances in post-dictatorial regimes do not only take the name disappearance, but also their aesthetics, their forms of mobilization, the centrality of family ties, etc., but, of course, transforming those elements.

Are forms of disappearances proper to dictatorial regimes? Can we think of disappearances in post-dictatorial regimes? What about liberal or democratic regimes? What are the continuities between past and contemporary forms? The recently passed away French sociologist Etienne Tassin argued that, although we need to analyze forms of disappearances “in the framework of the regimes that produce them” (2017: 100), “the question of disappearances (...) in liberal regimes raises the question of contamination, accidental or structural, of democratic societies by the organizational schemas of the concentration camps societies” (ibidem: 105). This does not mean, of course, assuming that disappearances in democratic and dictatorial settings are alike, but aiming for a category of disappearance that takes into account that complex relationship.

Working mainly with migrants in European societies, Tassin argues that Europe is producing disappearances of those populations, which shows more continuities than discontinuities between dictatorial and liberal regimes. Using Hannah Arendt’s notion of public space as the political space of appearance, Tassin affirms that contemporary politics regarding migrants, in his case, is anti-politics because it negates, implicitly or explicitly, the presence of those populations in public spaces, in the public and political arena. That mechanism of exclusion and invisibilization that was proper of dictatorial regimes continues in our liberal societies. Tassin reasons that disappearances in dictatorial settings “was not *only*² being killed, but being deprived of visibility even in death itself, becoming even impossible to prove if an individual with a certain name even existed” (ibidem: 102). This idea is key: the specificity of disappearances is the invisibilization of a population —political activists before, now probably excluded populations — and, because of that, the negation of their existence.

When looking at contemporary forms of disappearance, the invisibilization and even the negation of existence would remain in post-dictatorial and liberal societies with the particularity, I would add after our research, that the main issue is not invisibility of death

2 Italics added by myself.

—some, if not many, of contemporary disappeared are alive—but the invisibilization, or better negation, of existence in itself of alive persons and groups. This negation takes form in different ways: the under-registration or no registration of masses of people (the World Bank estimated in 2017 that over one billion people had no identity cards), the expulsion of social groups from the “space of appearance” that is our space of existence (sex workers would be an excellent example (Martínez y Aedo, in press), etc.

Tassin’s provocative texts help us understand the continuities of disappearances in dictatorial and post-dictatorial regimes. His proposal is only one of the ways to make us aware of the necessity to see the complex relationship between past and present forms of disappearances. If we let aside the political regime —dictatorial or not— where disappearances have a place and focus on the circulation of the category “disappearance” between different temporal frameworks, the complexity explodes. In the research I indicated above, we defended that the category “disappearance” emerged from within the Latin American dictatorial regimes (mainly in Argentina). Although the practice of disappearance had existed long before, the name, we argued, became available worldwide due to that practice in Latin America.

The availability of that name does not only imply that disappearance can now be used to name contemporary situations of human rights violations, but that it can be proposed to call (or recall) past situations. Letting aside past situations that are sometimes identified as founding forms of disappearance practices (ex. Hitler’s *Nacht und Nebel* directive or the disappearance of populations during the Algerian liberation war), there are others where the suitability of the category has been discussed. It is the case in Spain, where the category “disappearance” arrived in the early 2000s. Until then, people affected by Franco’s regime were not named at all or used to be called by local categories such as “caídos” (fallen down). Although there could be doubts of the suitability of that category for what happened during the Spanish dictatorship (Ferrániz, 2011; Gatti, 2011), the name has been widely accepted in a very short period of time.

This is not always the case in situations that we could easily qualify as disappearances if we follow the recommendations of the UN working group on enforced disappearances. I am talking now about the present, specifically the situation in the US-Mexico Border. In the context of the disappearance project, I went with a colleague to do some fieldwork to Tucson (Arizona). We arrived there with the certainty that the term “disappearance” had spread and was commonly used to refer to migrations, especially along that border; academic literature pointed out clearly in that direction. Nevertheless, what we found there, interviewing NGOs, forensic teams, academics and consulate servants, is that Tucson is a place where they are still looking for the correct term to name a situation that overflows them. Disappeared and disappearance is just one of the options, and not always the most salient one. Several reasons could be argued, but I wanted to point out two that are presented more clearly. First, the doubts of the agents involved in using the category of disappearance for a situation —migration— where the state is not always directly involved, something that does not happen in other situations that differ

even more from the legal definition of disappearance. Second, because in that place, disappearance is still conflated with death—in Tucson, for the agents interviewed, disappearance equates death, and that closes the possibility to find the loved ones alive.

Disappearance is thus a category that travels through places (countries) and time (from the past to the present, but also from the present to the past to qualify situations that were not named before or the name did not reflect the human violation that today we understand clearly when saying “disappearance”). But it is not only the category that travels. With it, we can see the movement and expansion of some esthetics, mottos and forms of mobilization. I will finish by illustrating that movement, focusing specifically on the disappearance of women in contemporary societies. These are not simple cases as they intersect with gender violence, trafficking and so on. It is not the place here to indicate if the use of that category—disappearance—is correct or not. What interests me is that, even if the term “disappearance” is not used, we find in some of those situations a very similar (if not completely equal) esthetics, mottos and forms of mobilization.

“Vivos se los llevaron, vivos los queremos” (“Alive they were taken away, alive we want them”) is probably, along with “justice, truth and reparation”, one of the most salient mottos in the context of disappearances. It has been used for different forms of disappearances in the last 50 years (Arias, s/f). In the last decade, the motto “Vivos nos queremos” (“We want us alive”) has spread as a cry against gender violence worldwide. Originated, if I am not wrong, in Latin America, it recovers the same idea of the disappearance slogan. Claiming against the direct or indirect complicity of the states and demanding them to act to ensure that those individuals either come back alive or are assured that they stay alive.

Image 1. Disappearance’s motto: “Vivos se los llevaron, vivos los queremos”



Image 2. Motto against gender violence: “Vivas nos queremos”



It is not only mottos that have been transferring, but also esthetics and forms of mobilization. Argentinian sociologist, Cecilia Varela, has worked on the construction of the anti-trafficking campaign in that country arguing that it used “political rhetoric and symbols of the human rights organisms in their historical demands of ‘memory, truth and justice’ because of the crimes committed in the frame of state terrorism. And so, the prostitute as “disappeared in democracy” and trafficking as “disappearance” are the cornerstones of the translation in the vernacular language of human rights” (2020: 158-159). This is reflected in the use of the same esthetics and forms of mobilization proper to the human rights movement in that country. Varela explains that the mobilization by the anti-trafficking movement in Argentina “uses the same repertoires of protest, rituals and languages generated in the human rights movement in Argentina. Demonstrators carried banners with pictures and names of the “disappeared” as they walked in a circle around the National Congress. In this way, they emulated the mobilizations of the Mothers of Plaza de Mayo who, carrying the images of their sons and daughters, positively affirmed their existence denied by the repressors.” (ibidem: 164).

**Images 3 & 4.
Mobilizations against
the “disappearance” of
women for trafficking in
Argentina**





Although Argentina is a place where the collusion of disappearance and other human rights violations is almost inevitable, it is not the only place where those influences of mottos, esthetics and forms of mobilization happen. And we find those similarities in Mexico, of course, but also in Peru, Colombia, etc. The category of disappearance has become universal and, along with it has colonized even the modes of mobilization and protest.

Image 5. Mobilizations against the disappearances of women in Mexico and Peru



The category “disappearance” travels then, from place to place, from the past to the present, sometimes also from the present to the past, and mostly it is used to make visible situations that were named with another name or had no name at all. And it does not only as a category or a name; it carries out modes of mobilization and an esthetics of its own.

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Elisenda Calvet MARTÍNEZ

Assistant Professor of International Law, University of Barcelona

SEARCHING FOR THE DISAPPEARED CHILDREN: ANALYSIS OF THE TRUTH-SEEKING INITIATIVES DEVELOPED IN LATIN AMERICA

Abstract: While the study of the enforced disappearance phenomenon is widespread in academic literature, the focus on enforced disappearance of children remains incomplete. This paper will analyze the variety of steps that can be taken by states to deal with cases of child disappearances. Practice shows that states have been adopting mainly three types of measures to know the truth about the disappeared children: truth commissions, specialized searching units, and DNA databases to determine the true identity of the “kidnapped” children. This paper will analyze the different initiatives taken in Latin America, such as Argentina, Colombia, Peru, Guatemala, and El Salvador, with the aim of determining to what extent these truth-seeking initiatives contribute to effectively finding the disappeared children. Preliminary conclusions indicate that state policies to search the disappeared children are scarce, and the affected families and human rights organizations are usually the ones doing the hard work and becoming experts on psychological treatment for families who search for their relatives or succeed in finding and reuniting with their disappeared children, DNA tests, and exhumations of the corpses of the disappeared.

Key words: enforced disappearances of children – right to truth – Latin America

1. Enforced disappearance of children in Latin America

In Latin America, the enforced disappearance of children was a transnational practice that occurred during the Operation Condor in the 1970s¹, and in many cases consisted of child abduction, suppression or substitution of identity, and illicit appropriation, for which pregnant women were detained and kept alive in the context of the aforementioned operations.

Approximately 30.000 persons of all ages and social status disappeared during the military dictatorship in Argentina, from 1976 to 1983 . It is estimated that around 500 children are thought to have been taken as “war booty” by the agents of the state. Some children were sent to military families, others abandoned in institutions like *NN*, and

1 Lessa, Francesca. “Justice beyond borders: the Operation Condor trial and accountability for transnational crimes in South America.” *International Journal of Transitional Justice* 9, no. 3 (2015): 494-506.

still others were sold. In all cases their identity was annulled, and they were deprived of their family rights.² The testimonies of pregnant women in Argentina who gave birth during their captivity, and whose babies were subsequently given for irregular adoption are shocking and show the seriousness and magnitude of the phenomenon of forced disappearance of minors.³

During the internal armed conflict in Guatemala, children were exposed to a multiplicity of human rights violations and were subjected to enforced disappearances, especially between 1979 and 1986.⁴ Threats and torture of an exemplary level of terror were used against them as a means of torturing their families. . The enforced disappearance of children in Guatemala occurred in different ways and was mostly committed by the army, although there were also cases carried out by the guerrillas: sometimes children were captured by the armed forces together with their parents within their communities, in others they were captured by the army at their homes in the absence of their parents, or captured and disappeared after a massacre in their community or during their flight. The Guatemalan League of Mental Hygiene has documented more than 1,300 cases and recovered 517 missing children.⁵

During El Salvador's internal armed conflict (1980-1991), the enforced disappearances of children were part of a systematic pattern in which children were illegally abducted and detained by members of the armed forces in the context of counterinsurgency operations, a practice that involved, in many cases, the appropriation of children and registration under a different name or false information.⁶ Despite this, the Truth Commission of El Salvador did not make express reference to children who disappeared during the Salvadoran conflict in its final report, making only recommendations on structural reforms of the security and judicial system.⁷ The search for the disappeared children was once again led by family associations, with the Pro-Search Association standing out, having received more than 800 complaints from relatives of disappeared children, as well as 200 cases presented by young people who had been adopted

2 The Grandmothers of *Plaza de Mayo* is a non-governmental organization created in 1977, whose objective is to locate and reunite all children disappeared during Argentina's last dictatorship with their legitimate families. So far, 130 children (now adults have been "recovered". <https://www.abuelas.org.ar>

3 National Commission on the Disappeared Persons (CONADEP), Report *Nunca Más*, Buenos Aires, September 1984.

4 *Memoria del silencio: informe de la Comisión para el Esclarecimiento Histórico*, Oficina de Servicios para Proyectos de las Naciones Unidas, Guatemala, June 1999, para. 2505-2507.

5 Véase, Programa "Todos por el Reencuentro" de la Liga Guatemalteca de Higiene Mental. Datos extraídos de la entrevista a Marco Antonio Garavito, director de la Liga Guatemalteca de Higiene Mental, "Niñez desaparecida en la guerra: una afrenta a la Salud Mental", de 11 de octubre de 2016, disponible en <http://www.rebellion.org/noticia.php?id=217777> <https://www.ligadehigienemental.org/en-casa>

6 CORTE IDH, *Contreras y otros c. El Salvador*, Fondo, Reparaciones y Costas, Sentencia de 31 de agosto de 2011, párr. 41 y ss. Véase, también, OCAMPO SARAVIA, T. "Guerra y desaparición forzada de infantes en El Salvador (1980-1984)", *Cultura y representaciones sociales*, 2013, vol. 8, núm. 15, pp. 186-216.

7 *De la locura a la esperanza. La guerra de 12 años en el Salvador*, Informe de la Comisión de la Verdad para El Salvador, S/25500, Anexo, 1 de abril de 1993.

abroad and wanted to know whether they had been abducted and misappropriated.⁸

2. International legal framework on enforced disappearance of children

The enforced disappearance of children consists of the wrongful removal of children who are subjected to enforced disappearance, or whose parents have been objects of enforced disappearance, or who were born during their mothers' captivity. The practice of enforced disappearance involves a multiple and continuous violation of a number of human rights⁹, such as the right to be recognised as a person before the law, the right to life, the right to personal integrity and the right to personal liberty¹⁰. Today, enforced disappearances are recognized as international crimes by the international customary law, treaties and jurisprudence and their prohibition can be considered a *jus cogens* prohibition.¹¹ Nevertheless, when it comes to the enforced disappearance of children, other fundamental rights, such as the right to protection of the family, the right to a name, and the right to identity, are also violated. Beyond kidnapping, enforced disappearance of children implies the falsification, concealment and destruction of documents attesting the "true" identity of these children, often registered directly with the "new" family name, which prevents them from knowing the truth about their "adoption", finding their biological parents, and accessing to justice.¹²

The 2006 International Convention for the Protection of All Persons from Enforced Disappearances (ICPPED)¹³ is the first international human rights treaty to address the practice of enforced disappearance of children and constitutes a major step forward in protecting children from this practice.¹⁴ Based largely on Article 20 of the 1992 UN Declaration on the Protection of all Persons from Enforced Disappearances (DPPED)¹⁵, the ICPPED's main ground-breaking aspect is the express recognition of the right to preserve or re-establish the identity of children, including their nationality,

8 The Association for the Search for Disappeared Children has resolved 435 cases and brought several cases before the Inter-American Human Rights System. See further <http://www.probusqueda.org.sv>

9 See, among others, IACtHR, *Velásquez Rodríguez v. Honduras*. Merits. Judgment of 29 July, 1988, para. 155.

10 Declaration on the Protection of All Persons from Enforced Disappearances, adopted by General Assembly, Resolution 47/133 of 18 December 1992, art. 1.2.

11 Sarkin, Jeremy. "Why the prohibition of enforced disappearance has attained jus cogens status in international law." *Nordic Journal of International Law* 81.4 (2012): 537-584, p. 582.

12 Frouville, Olivier. "La Convention des Nations Unies pour la protection de toutes les personnes contre les disparitions forcées: les enjeux juridiques d'une négociation exemplaire. Première partie: les dispositions substantielles." *Droits Fondamentaux* 6 (janvier 2006-décembre 2007), pp. 90-92.

13 Adopted by the UN General Assembly, Resolution 61/177 of 20 December 2006, entered in force 23 December 2010.

14 Calvet Martínez, Elisenda. "The International Convention for the Protection of All Persons from Enforced Disappearance." In *International Human Rights Law in a Global Context*, edited by Felipe Gómez Isa and Koen de Feyler, 515-553, Bilbao: Universidad de Deusto, 2009, p. 518.

15 BRODY, Reed. Commentary on the Draft UN "Declaration on the Protection of All Persons from Enforced or Involuntary Disappearances". *Netherlands Quarterly of Human Rights*, 1990, 8.4: 381-394, p. 394.

name, and family relations. In this respect, Article 25, paragraph 1(a) of the ICPPED comprises three types of situations leading to enforced disappearance of children: “the wrongful removal of children who are subjected to enforced disappearance; children whose father, mother, or legal guardian is subjected to enforced disappearance; or children born during the captivity of a mother subjected to enforced disappearance”.¹⁶ According to paragraph 2 of Article 25 of the ICPPED, enforced disappearance of children includes two types of conduct: (a) the “wrongful removal” of children and (b) “the falsification, concealment, and destruction of documents that prove the true identity of these children”.

The ICPPED foresees three major obligations for states: the duty to prevent and sanction enforced disappearances of children; the duty to search, identify, and return the “kidnapped” children to their family of origin; and the duty to establish a system to review or annul the process of adoption when it has its origin in an enforced disappearance. As a general obligation, the ICPPED provides, in Article 25, paragraph 3, that states should cooperate and assist one another in searching, identifying and locating the “kidnapped” children.

At a regional level, the 1994 Inter-American Convention on Forced Disappearance of Persons (IACFD)¹⁷, refers to international cooperation between state parties on the search, identification, location, and restitution of children “removed from another state or detained therein as a result of the enforced disappearance of parents or guardians”. The drafters of the convention probably had in mind the transnational Condor Operation, but surprisingly omitted any reference to the “national” enforced disappearance of children.¹⁸

With the main objective being the return of the “stolen” children to their families of origin and the re-establishment of their true identity, both UN instruments include the best interests of the child as a general principle to be taken into account, in accordance with the Convention on the Rights of the Child (CRC), which provides that “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”¹⁹. However, in the case of enforced disappearance of children, the “best interest of the child” has been the object of a strong debate, the main concern being the balance between the right to know the truth about the circumstances

16 The DPPED, only included two cases of enforced disappearance of children in Article 20: “The abduction of children of parents subjected to enforced disappearance and of children born during their mother’s enforced disappearance” but not the children subjected to enforced disappearances themselves.

17 Adopted by the OAS General Assembly in Belém do Pará, 9 June 1994, entered in force 28 March 1996, article XII.

18 For the *travaux préparatoires* see Inter-American Commission on Human Rights. “Draft Inter-American Convention on the Forced Disappearance of Persons”, *Annual Report 1987-88*, Chapter. V, OEA/Ser.L/V/II.74, Doc. 10 rev.1, 16 September 1988.

19 Adopted by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990, Article 3.1.

of the wrongful removal and the right to privacy of the children/adults “recovered”.²⁰

3. Enforced disappearance of children as a violation of family rights

The enforced disappearance of children entails a violation of various family rights, namely, the right to protection of the family, the right to identity, and the right to a name. The enforced disappearance of children necessarily entails a separation of minors from their parents and constitutes an arbitrary interference with family life. Perpetrators of this terrible crime often defend their actions by stating that their aim was “to do good”, to act in the child’s best interests, and ultimately “protect” the family.²¹

The Convention on the Rights of the Child (CRC) of 1989 recognizes the right to family life and provides in Article 9 (1) that states “will ensure that the child is not separated from his or her parents against their will.” Similarly, the American Convention on Human Rights (ACHR) foresees that every child has the right to measures of protection without being subject to arbitrary or abusive interference²² and protects the right to the family by requiring the state not only to directly implement measures for the protection of children, but also to promote the development and strength of the family.²³ This protection is also provided in the European²⁴ and African²⁵ human rights systems. Hence, by making it impossible to remain in the biological family, the state is violating the right to protection of the family in cases of enforced disappearance of children, by not allowing any type of link with the family of origin and breaking all kinds of ties with the biological family by changing the name and identity of the “stolen” child.²⁶ It is important to note that the state must not only refrain from interfering in family relationships but must also

20 See, among others, Gandsman, Ari. “A Prick of a Needle Can Do No Harm”: Compulsory Extraction of Blood in the Search for the Children of Argentina’s Disappeared. *“The Journal of Latin American and Caribbean Anthropology”* 14.1 (2009): 162-184; King, Elizabeth B. Ludwin. “A Conflict of Interests: Privacy, Truth, and Compulsory DNA Testing for Argentina’s Children of the Disappeared.” *Cornell Int’l LJ* 44 (2011): 535; Rae, M., 2017, “Truth at Any Cost? Law’s Power to Name Argentina’s Disappeared Grandchildren”, *Oñati Socio-legal Series* [online], 7 (2), 324-336. Available from: <https://ssrn.com/abstract=2975420>

21 Villalta, Carla. “La apropiación de menores”: entre hechos excepcionales y normalidades admitidas.” *Quinta Reunión de Antropología del Mercosur/V RAM*. Universidad Federal de Santa Catarina, 2003.

22 ACHR, Art. 19. See also, arts. 11.2 and 17.1.

23 IACtHR, *Gelman v. Uruguay*. Merits and Reparations. Judgment of 24 February 2011, para. 125.

24 See article 8 of the European Convention of Human Rights. In the case of *Zorica Jovanovic v. Serbia*, the ECtHR considered that the abduction of children constitutes a continuous violation of the right to respect for private and family life insofar as the state persists in not giving information to the next of kin about the fate of the applicant’s child. *Zorica Jovanović v. Serbia*, no. 21794/08, § 68, ECHR 2013.

25 See the African Charter on Human and Peoples’ Rights which establishes in Article 18 that the family “shall be the natural unit and basis of society” and that it will be protected by the state which will take care of its physical and moral health”. The African Charter on the Rights and Welfare of the Child of 1990 establishes in Article 19 the right of children to live with their parents.

26 Calvet Martínez, Elisenda. “La desaparición forzada de menores en la jurisprudencia de la Corte Interamericana de Derechos Humanos”, en Casado, María. y López Ortega, J. J., *Desapariciones forzadas de niños en Europa y Latinoamérica. Del convenio de la ONU a las búsquedas a través del ADN*, Publicacions i Edicions de la Universitat de Barcelona, 2014, p. 245.

adopt positive measures to preserve private or family life²⁷, because the separation of children from their families has long and lasting effects on their personal integrity and causes great mental and physical harm.²⁸ In this respect, the enforced disappearance of children results in a transgenerational trauma that not only affects the family members but also the community and society as a whole.²⁹

The enforced disappearance of children also entails the violation of the right to identity.³⁰ This right is inherent to every person and is not an exclusive right of children but “is in constant construction and the interest of people in preserving their identity does not diminish over the years”.³¹ The violation of the right to identity in the case of enforced disappearance of children constitutes a complex legal phenomenon that encompasses “a succession of illegal actions and violations of rights to cover it up and prevents the reestablishment of the link between the abducted minors and their relatives, which translates into acts of interference in private life, as well as affects the right to name and family relationships”.³² Moreover, the suppression of identity directly affects the right to recognition as a person before the law and has two types of effects: on the one side, for the “stolen” children, it becomes impossible to find their biological parents and know their true identity, because they were registered with falsified information or their name and date of birth have been altered; on the other side, the family of origin has no access to remedies to re-establish the biological identity of the child and their family links because they are not “legally” their parents.³³ In this respect, the enforced disappearance of children only ceases when “the truth about his or her identity is revealed by any means and the victim is guaranteed the legal and factual possibilities of recovering his or her true identity and, where appropriate, the family link, with the pertinent legal consequences”.³⁴

The right from birth to a name, to know his or her parents, and to be cared for by them is recognized in Article 7 of the Convention on the Rights of the Child, as well as in other international human rights instruments.³⁵ In this sense, the CRC Committee has

27 See, among others, *Mikulić v. Croatia*, no. 53176/99, § 57, ECHR 2002-I.

28 WGEID, *General comment about children and enforced disappearance*, UN Doc. A/HRC/WGEID/98/1, 14 February 2013, para. 6.

29 IACtHR, *Rochac Hernández and Others v. El Salvador*, Merits, Reparations and Costs, Judgment of 14 October 2014, para. 113-114.

30 The CRC was groundbreaking in recognizing the right to preservation of identity enshrined in article 8, based on the Grandmothers of Plaza de Mayo experience on the search of the kidnapped children during the military dictatorship and commonly known as the “Argentinian Article”.

31 IACtHR, *Contreras and others v. El Salvador*. Merits, Reparations and Costs. Judgment of 31 August 2011, para.113.

32 *Ibid*, para. 114.

33 WGEID, *General Comment about children and enforced disappearance*, UN Doc. A/HRC/WGEID/98/1, 14 February 2013., para, 16.

34 IACtHR, *Gelman v. Uruguay*, *op.cit*, para. 131.

35 See among others, art. 24.2 of the ICCPR art. 24.2; art. 6.1 of the ACRWC; art 18 of the ACHR and art. 29 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

considered that the term “parents” includes biological parents and that children have the right to know, as far as possible, who they are.³⁶ The African Committee of Experts on the Rights and Welfare of the Child has held that the right to a name, to birth registration and to acquire a nationality, all together constitute “the pillars of a person’s identity”.³⁷ Although the name is probably the best way to identify a person, in some societies “a name can even indicate the social, cultural, or religious group (ethnicity, tribe, or religion) an individual belongs to”³⁸ In this regard, the right to a name constitutes “a basic and indispensable element of the identity of each person, without which it cannot be recognized by society or registered before the state.”³⁹ Consequently, states must ensure that the person is registered with the name chosen by his or her parents without any interference or restriction on the choice of the name and that it cannot be modified or changed without their prior consent.

4. Truth-seeking initiatives to search disappeared children

According to the international law, states have the duty to investigate and search for the victims of enforced disappearances. The establishment of truth commissions is a common practice in these types of contexts that help find the truth and seek justice, specifically, helping families to deal with the ordeal of losing a family member, while also identifying victims and serving as a vehicle of dialogue between the state’s institutions and the population. Practice shows that states have primarily used three types of measures to learn the truth about the disappeared children: truth commissions, searching units, and DNA databases to determine the true identity of the “kidnapped” children. However, state policies to search for the disappeared children are scarce, and it is usually the affected families and human rights organizations that undertake the hard work, becoming experts on psychological treatment for families who search for their relatives or succeed in finding and reuniting with their disappeared children, as well as on DNA tests and exhumations of the corpses of the disappeared.

4.1. The need for truth commissions focused on disappeared children

Most of the truth commissions established in the last four decades within transitional justice processes have dealt with human rights violations occurred during a dictatorship, armed conflict, or in colonial times, but have not necessarily included children as a targeted group. Most of them include an estimated number of children as victims but do not specifically analyze the human rights violations that they have directly suffered.

36 Ziemele, Ineta. *Article 7: The right to birth registration, name and nationality and the right to know and be cared for by parents*. Vol. 7. Martinus Nijhoff Publishers, 2007, p. 26.

37 ACERWC, *General comment on Article 6 of the African Charter on the rights and welfare of the child*, Doc. ACERWC/GC/02 (2014), para. 23.

38 ACERWC, *General comment on Article 6...op.cit*, para. 39.

39 IACtHR, *Gelman v. Uruguay*, *op.cit*, para. 127; *Contreras and others v. El Salvador*, *op.cit*, para. 110.

⁴⁰ On the other hand, we do find specific truth commissions that have exclusively dealt with enforced disappearances, such as the CONADEP in Argentina⁴¹, or the Valeh Commission in Chile, but they do not have a specific mandate to deal with the cases of enforced disappearances of children. While these truth-seeking mechanisms are important to draw attention to enforced disappearances, establishing specific truth commissions to deal with enforced disappearances of children is key, considering the particularities of the crime of forced disappearance in the case of minors, instead of indicating the children's victims in such reports of commissions only with a percentage or estimated number. This section analyses the truth commissions established with the sole purpose of analyzing human rights violations committed against children, such as enforced disappearance. This is the case in Guatemala, Chile, and Canada. Although its mandate includes all human rights violations occurred during Colombia's 50-year long armed conflict with the FARC, the truth commission established recently, , has placed a strong focus on children.

Between 1960 and 1996, the internal armed conflict in Guatemala, resulted in serious human rights violations and acts of genocide against the Mayan population. The report of the Commission of Historical Clarification (CEH) established that one in five victims during the armed conflict was a minor. Of the total estimated number of victims, 6.159 were object of enforced disappearance, and 11 per cent of them were disappeared children⁴². Besides, the Commission's report findings determined that 60 per cent of the deaths from forced displacement were children.⁴³ Despite these terrible statistics, the enforced disappearance of children has been a forgotten phenomenon in Guatemala. The fact that these children were often Mayan indigenous people from rural areas and that these disappearances occurred far from the capital of the country contributed to this oblivion. Also, the high levels of violence in Guatemala, especially after the end of the armed conflict⁴⁴, and the persistence of insecurity and fear in affected communities contributed to the silence of this practice that became politically and socially invisible.

In 2000, the Human Rights Office of the Archbishopric of Guatemala (ODAHG) published a specific report on disappeared children, called *Hasta Encontrarte: niñez desaparecida por el Conflicto Armado Interno en Guatemala* ("Until I find you: children disappeared during the internal armed conflict in Guatemala") with the aim of making more visible the phenomenon of enforced disappearance of children.⁴⁵ The results of the Office's investigation showed that children were targeted as such and were not

40 That is the case of the Truth and Reconciliation Commission of Peru, which determined that 2.57% of the victims of enforced disappearance were under 16 years old. The Retting Report of the Truth Commission of Chile in 1991 made a reference to the victims of human rights violations in general, stating that 2.2% were under 16 years old, but had no specific reference to enforced disappearances of children.

41 The National Commission on the Disappearance of Persons (Comisión Nacional sobre la Desaparición de Personas) of Argentina.

42 Posar referencia informe CEH, Guatemala, Memoria del silencio.

43 Informe CED, tomo V, conclusión 28.

44 Posar dades meves de violència post conflicte

45 Posar referencia del llibre Hasta encontrarte.

just “collateral” victims of the violence of the parties to the conflict. In addition to the massacre of hundreds of children belonging to Mayan ethnic groups, there were arrests, transfers of these minors from their communities to military detachments, temporary homes, or clandestine centers from where they were illegally given up for adoption.⁴⁶

In Chile, the dictatorship of Pinochet (1973-1990) was responsible for thousands of enforced disappearances and torture. From a total of 2,298 victims, the Rettig Truth Commission estimated that 2.2% of the victims were under the age of 16, and 12% were between the ages of 16 to 20., The Valeh Commission I estimated that 9.76% of the 9,795 victims of political imprisonment and torture were minors. More recently, it is estimated that more than 20,000 babies and children were adopted by foreign families during the military dictatorship of Pinochet and, according to the Chilean Court of Appeals, at least 8,000 of those adoptions could be illegal.⁴⁷ The Chilean Chamber of Deputies ordered the establishment of a specific truth commission to investigate these irregular international adoptions in 2018, after these cases were made public,. In 2019, the report of this Commission determined that to the extent that these adoptions had the involvement of Chilean State officials and their whereabouts are unknown, they can be considered enforced disappearances.⁴⁸ In addition, it established that most victims were single women with many children and poor women without any support network, who often came from rural areas and from the Mapuche indigenous community.

In Colombia, the authorities established in 2017 the Commission for the Clarification of Truth, Coexistence and Non-Repetition. Its mandate is to uncover the truth of the human rights violations committed in the context of the internal armed conflict that lasted 50 years and provide a broad explanation of its complexity to the entire society. This Truth Commission can be considered very innovative because its mandate includes different perspectives such as ethnicity, gender, elderly, disabled and youth. Furthermore, the Truth Commission has a specific focus on children and considers them not only as victims of human rights violations but as subject of rights. The Truth Commission does not only search the truth about children as victims or perpetrators during the internal armed conflict, but also aims to find out how they have been affected by violence in their everyday life.⁴⁹ The final report has not yet been made public.

Finally, one of the few examples to highlight inside truth-seeking initiatives in a context of democracy and therefore out of “typical” transitional justice is the Canadian Truth and Reconciliation Commission (TRC). This mechanism was established to document what happened to the 150,000 Aboriginal children who were “educated” for more

46 Hasta encontrarte, p. 126.

47 Freixas, M., La dictadura de Pinochet disfrazó de adopciones con familias europeas miles de casos de bebés robados en Chile, El Diario, 10 September 2021, available at:

48 Cámara de Diputados de Chile, *Informe de la comisión especial investigadora de los actos de organismos del estado, en relación con eventuales irregularidades en procesos de adopción e inscripción de menores, y control de su salida del país*, 24 de julio de 2019, p. 55, available at: https://www.camara.cl/verDoc.aspx?prmlD=49545&prmtipo=INFORME_COMISION

49 <https://comisiondelaverdad.co/en-los-territorios/enfoques/ninas-y-ninos>

than a hundred years in Indian Residential Schools across the country. The TRC's specific mandate included "Missing Children and Unmarked Burials", which resulted in a voluminous the final report that comprised not only a statistical study of children's deaths in residential schools, but also a study of what happened to all the Aboriginal students who entered the Indian Residential Schools system but never returned home.⁵⁰ The establishment of a truth commission to specifically deal with the disappearance of children is important to shed light on the extent to which the institutions (educational, religious, maternal, governmental, etc.) were responsible for the abduction, kidnapping or forcible transfer of children, which in most cases lasted for decades. These truth commissions make recommendations to states to ensure these violations do not occur again in the future.

4.2. Searching Units for Disappeared Children

In recent years, states have started to take the lead in searching for the disappeared by establishing special units with a very broad mandate (searching not only enforced disappearances but any missing person in the context of armed conflict or authoritarian regime) and a humanitarian purpose, that is, to alleviate the suffering of the families and to identify and return the human remains in the event of death. These searching units usually don't focus on children in particular, but rather on all disappeared persons.

Colombia, for example, has established a Searching Unit for Missing Persons as part of the Comprehensive System of Truth, Justice, Reparation, and Non-Repetition following the adoption of the Peace Agreement between the government and the FARC in 2016. This special unit aims to search for persons unaccounted for in the context and because of the internal armed conflict in order to alleviate the suffering of family members or ethnic groups to which they belong, as well as to contribute to the satisfaction of the rights to truth and reparation. The Searching Unit coordinates its work with the Special Jurisdiction for Peace and the Truth Commission for the Clarification of Truth, Coexistence and Non-Repetition of Colombia. The main functions of the Special Unit include gathering, organizing and analyzing information on disappeared people in general (including enforced disappearances as well as missing persons); designing and implementing national and regional searching plans while ensuring the participation of family members and society throughout the searching process; and preparing reports on what happened to the missing persons to be delivered to the Commission

⁵⁰ The Truth and Reconciliation Commission of Canada, *Canada's Residential Schools: Missing Children and Unmarked Burials*. The Final Report of the Truth and Reconciliation Commission of Canada, vol. 4, 2015. The term "missing children" in this context included "both those who died at school and those whose fate after enrolment was unknown, at least to their parents. This could include, for example, students who might have run away to urban centres and never contacted their home community again, students who never returned to their home communities after leaving school, students who became ill at school and were transferred to a hospital or sanatorium and died there (possibly several years later) without parents being informed, or students who were transferred to other institutions such as reformatories or foster homes and never returned home", p. 5.

for the Clarification of Truth, Coexistence and Non-Repetition.⁵¹ It is important to highlight, though, that the Unit has only a humanitarian purpose, and as a result of its mandate, it does not focus on children, despite having a gender lens and territorial perspective. It is estimated that in Colombia there were more than 80,000 victims of enforced disappearances between 1970 and 2018.⁵² The estimated number of enforced disappearances of children between 0 and 17 years old is 3,217, out of 20,210 victims whose age is known.⁵³

Peru adopted specific legislation in 2016 to search for people who disappeared between 1980 and 2000, and a year later established the General Directorate of Search for Missing Persons (*Dirección General de Búsqueda de Personas Desaparecidas*) to coordinate the search, recovery, analysis, identification and restitution of disappeared people's human remains.⁵⁴ This General Directorate has undertaken an important task of compiling information and has established a centralized registry of disappeared persons, which today numbers 20,511 people.⁵⁵ Until June 2019, 1,199 human remains of disappeared people had been restituted, and some persons have been found alive, such as a boy who had disappeared at the age of 11 and was found outside of Peru.⁵⁶ The Peruvian Law, like the Special Unit of Colombia, has a humanitarian approach which aims at alleviating the suffering, the uncertainty and the need for answers of the relatives of the disappeared persons. Therefore, the government has prioritized the recovery, identification, restitution, and dignified burial of the human remains of the disappeared, understood as a form of reparation.

In Guatemala, the CEH recommended the establishment of a National Commission for the Search of Missing Children,⁵⁷ aimed at looking for missing children who had been illegally adopted or illegally separated from their families and documenting their disappearance. The Commission further suggested that the mechanism could be composed of the ombudsman (*Procuraduría de Derechos Humanos*), and NGOs for human rights and children, with the technical advice and financial support, when possible, from international organizations specialized in children, such as UNICEF and

51 Unidad de Búsqueda de Personas Dadas por Desaparecidas. For more information, see: <https://www.ubpdbusquedadesaparecidos.co/>

52 Observatorio de Memoria y Conflicto del CNMH continuó con la labor de investigación y recopilación, y hasta agosto del 2018 reportó 80.000 víctimas de este flagelo. <http://micrositios.centrodehistoriahistorica.gov.co/observatorio/infografias/desaparicion-forzada/>

53 Centro Nacional de Memoria Histórica, *Desaparición forzada Balance de la contribución del CNMH al esclarecimiento histórico*, Bogotá, July 2018. Available at: <https://www.centrodehistoriahistorica.gov.co/micrositios/balances-jep/desaparicion.html>

54 Ley N° 30470, Ley de Búsqueda de Personas Desaparecidas durante el período de violencia 1980-2000, 26 May 2016.

55 Moreno Luna, Harold, *Ley de Búsqueda de Personas Desaparecidas: avances y retos pendientes*, 8 July 2020. Available at: <https://andina.pe/agencia/noticia-ley-busqueda-personas-desaparecidas-avances-y-retos-pendientes-757994.aspx>

56 Ibid.

57 The "Comisión Nacional de Búsqueda de la Niñez" was created in 2001.

the ICRC.⁵⁸ This National Commission has not been created yet⁵⁹ and the search for disappeared children has relied on NGOs, which have done an extraordinary work, reuniting more than 922 families in the last two decades.⁶⁰

In El Salvador, the government established in 2010 the National Search Commission for Children Disappeared during the Internal Armed Conflict (CNB), following the request of the Inter-American Court of Human Rights in the *Case of Serrano Cruz Sisters*. The CNB has 319 registered cases and 92 solved cases.⁶¹ The CNB has been operating successfully and has developed innovative strategies for life searches, psychosocial care for family members and reunions with biological families.⁶² In 2017, the Salvadorian Government established a new commission for the search of disappeared adults (CONABUSQUEDA), however, the UN Human Rights Committee has expressed its concern about the insufficient institutional and financial resources and the limited forensic capacity of the Commission, as well as the slowness in locating the disappeared persons and granting victims full compensation.⁶³

Consequently, in order to be effective, the special unit searching for disappeared children must have the necessary human, financial, and technical resources to carry out investigations to search for, identify and return the “kidnapped” children to their families of origin, and guarantee access to all information related to such violations, including the archives of the institutions involved in enforced disappearance of children, such as the Armed Forces, religious entities, maternity and educational centers.

4.3. DNA Database to recover the true identity of the disappeared children

The use of forensic methods has become a fundamental tool in recent years to identify victims of serious violations of human rights and international humanitarian law. In the case of enforced disappearances, forensic science allows people to be identified through

58 CEH, *Op. Cit.*, Chapter V: recommendations, para. 24.

59 In 2007, there was a law initiative (*Iniciativa de ley 3590*) to establish a National Commission for Missing Persons; however, despite having been discussed in the Guatemalan Parliament, it has not been adopted up to date.

60 The Working Group against Enforced Disappearance in Guatemala (composed of 4 NGOs) has reunited 922 families and proceeded to 7,975 exhumations, from 1996 to 2018. See: <https://www.eltiempo.com/datos/por-que-la-desaparicion-forzada-en-guatemala-tambien-es-un-crimen-contra-las-mujeres-259826>. For instance, la Liga de Higiene Mental Guatemalteca has reunited 487 families from 1999-2019 and documented more than 1000 cases belonging to 12 different Mayan ethnic groups. <https://www.ligadehigienemental.org/todos-por-el-reencuentro>.

61 Preliminary Observations from the Official Visit to El Salvador by the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, Mr. Fabián Salvioli 23 April to 3 May 2019. Available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24557&LangID=E>

62 Due Process of Law Fundation, *La Comisión de Búsqueda y la tarea de reconstruir la verdad sobre las personas desaparecidas en El Salvador*, 2018. Available at: http://www.dplf.org/sites/default/files/la_comision_de_búsqueda_y_la_tarea_de_reconstruir_la_verdad.pdf

63 UN Human Rights Committee, *Concluding observations on the seventh periodic report of El Salvador*, UN Doc. CCPR/C/SLV/CO/7, 9 May 2018, para. 17.

DNA samples, and in the case of exhumations, to explain the circumstances of the death of those people. The UN Working Group on Enforced or Involuntary Disappearances recommends the use of DNA analysis to identify with “clarity and without margin of error.”⁶⁴ Therefore, it is important to create a DNA database so that children (now adults) can find their biological parents and vice versa. The UN Special Rapporteur on the Promotion of Truth, Justice, Reparation, and Guarantees of Non-Recurrence has stated that the absence of a national genetic database and a forensic anthropology and genetics team constitute an obstacle to the search for the disappeared and criminal investigation of this crime.⁶⁵

The most paradigmatic example of the search for disappeared children through DNA is Argentina. The *Grandmothers of Plaza de Mayo* who were looking for their grandchildren who disappeared during the Argentinian military dictatorship (1976-1983), have been the pioneer in DNA testing for disappeared children. The Grandmothers wondered “How to identify a child I have never seen?”⁶⁶ They travelled around the world in search of a formula to establish “the index of grandparentage” (*índice de abuelidad*), that is, to identify their grandchildren based on their DNA. Through the American Association for the Advancement of Science (AAAS) they finally managed to find a doctor who told them this was possible and that’s where the search for disappeared children and grandchildren began in Argentina⁶⁷. In 1987, the Argentinian Government established the National Genetic Data Bank (BNDG)⁶⁸, to allow the search and identification through DNA testing of sons and daughters of disappeared persons who were kidnapped together with their parents or were born during the captivity of their mothers for state terrorism until 1983.

However, in the case of the appropriation of children, the return to their biological families is not without problems. In some cases, boys and girls (now adults over 30 years old) who have discovered that they were illegally adopted refuse to take the DNA tests because it implies having to report their “adoptive” parents, who would probably go to prison. In addition, it also happens that sometimes they do not want to contact the biological family because they have grown up in another environment and love their “adoptive” family. These situations pose a dilemma about to what extent a state can force a person to undergo a DNA test to reveal his or her true identity and to what extent the collective right to the truth stands above the individual’s right to privacy⁶⁹.

64 The OHCHR report on the right to the truth and forensic genetics and human rights, UN Doc. A/HRC/15/26, 24 August 2010, para. 2.

65 Preliminary Observations from the Official Visit to El Salvador by the Special Rapporteur on the Promotion of Truth, Justice, Reparation, and Guarantees of Non-Recurrence, Mr. Fabián Salvioli 23 April to 3 May 2019, San Salvador, 3 May 2019, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24557&LangID=E>

66 CICR, *Personas desaparecidas. Una tragedia olvidada*, Ginebra, agosto de 2007, p.14.

67 ABUELAS DE PLAZA DE MAYO, *La historia de Abuelas. 30 años de búsqueda*, 2007, p.47.

68 Ley Nacional Argentina 23.511/87, 13 May 1987.

69 LORENZETTI, R.L. y KRAUT, A.J., *Derechos humanos: justicia y reparación. La experiencia de los juicios en la Argentina. Crímenes de lesa humanidad*, Ed. Sudamericana, Buenos Aires, 2011.

On the one hand, there is the right to privacy, physical integrity, and the right not to testify against their parents; on the other hand, the best interest of society is to know the truth and to prosecute the crime of enforced disappearance of children⁷⁰. Besides, the defense of the “adoptive” parents has often claimed to be against returning the abducted children to their biological families, to avoid a second trauma for the victims⁷¹. For the Grandmothers of *Plaza de Mayo*, the recovery of the right to identity is *non-negotiable* and therefore they are in favor of returning the abducted children to their families of origin⁷².

5. Conclusions

The enforced disappearance of children is a phenomenon that needs more attention on both national and international level, as it involves multiple violations of human rights, such as the family rights. The wrongful removal of children is a complex crime that implies the falsification, concealment and destruction of documents that prove a child's identity, making it more difficult to “recover” and re-establish their true identity. Civil society has been at the forefront of these truth-seeking initiatives, while the states have often been in the background. The majority of the truth commissions have a broad mandate to investigate serious human rights violations occurred in the past and they refer to enforced disappearances, but have no specific focus on children. In the case of Guatemala, it was a private initiative of the Human Rights Office of the Archbishopric of Guatemala to make a report on the enforced disappearance of children during the internal armed conflict. In the case of Canada, while it was a state-sponsored commission, it was not established in a context of transitional justice and was instead part of the examination of the colonialist past. Finally, while the recent Colombian truth commission does not have a specific mandate on enforced disappearances of children, it does have a particular focus on children as subjects of rights, but the results have yet to be published.

While states such as Colombia and Peru have started to establish specific research units for searching the disappeared, they do not focus on children. In the case of Guatemala, the Truth Commission recommended the establishment of a National Commission for the Search of Missing Children, but it has yet to be established. El Salvador is the only country that has established a National Search Commission for Children Disappeared

70 Véase, entre otros, Argentina, Corte Suprema de Justicia de la Nación, “Guarino, Mirta s/ querrela”, sentencia del 27 de diciembre de 1996 (Fallos: 319: 3370); “Vázquez Ferrá, Evelin Karina s/ incidente de apelación”, sentencia de 30 de septiembre de 2003 (Fallos: 326: 3758); causa G.291.XXXVIII. “Gualtieri Rugnone de Prieto, Emma Elidia y otros s/ sustracción de menores de 10 años, sentencia de 11 de agosto de 2009, considerando 15.

71 GANDMAN, A.E., “Retributive Justice, Public Intimacies and the Micropolitics of the Restitution of Kidnapped Children of the Disappeared in Argentina”, *The International Journal of Transitional Justice*, Vol. 6, 2012, p. 425. Véase, también, HERRERA, M. y TENEMBAUM, E., *Identidad, despojo y restitución*, Abuelas de Plaza de Mayo, Buenos Aires, 2007.

72 GANDMAN, A.E., “Retributive Justice...*op.cit.*, p.3.

during the Internal Armed Conflict. This was demanded by the Inter-American Court of Human Rights in the seminal case of Serrano Cruz Sisters, although it seems to have limited resources and progress is slow.

Furthermore, the establishment of a DNA database is also an important tool to determine the true identity of the disappeared children. Argentina has been a pioneer on this issue, with the Grandmothers of *Plaza de Mayo* being the first to find their grandchildren thorough DNA testing. Now the DNA bank in Argentina is public and open to everyone. The problem with DNA banks established by state authorities is that most of the time families do not trust them because they are considered responsible for children's enforced disappearance. Besides, there are also debates on what is the best interest of the child, considering that these kidnapped children are now adults, and the recovery of their true identity and family of origin might have a very strong impact on their lives.

Finally, it is also very important to grant access to records in civil registries, hospital birth registers as well as parishes and religious congregations. One of the main problems is that families searching for their disappeared children do not have access to documental certificates, because they have been "destroyed" or because the institutions prevent access to fake documentation. Therefore, access to maternity centers, military and religious archives is essential to find disappeared children and help families reunite.⁷³

73 Belgrade Group of Parents of Missing Babies, "*Missing babies*" in Serbia: *Still without Redress*, comments on the Third Periodic Report of Serbia before the Human Rights Committee, 119th Session, 6 February 2017.

Mina RAUSCHENBACH

Research Associate, Leuven Institute of Criminology (KU Leuven).

Alejandro JIMENEZ

Dejusticia, Colombia.

Bronwen WEBSTER

Department of Politics and International Studies, University of Warwick.

EXPLORING THE VALUE OF SOCIAL RECOGNITION OF ENFORCED DISAPPEARANCE FOR THE RELATIVES OF THE DISAPPEARED: A MULTI-DISCIPLINARY ANALYSIS OF EXPERIENCES AND PERCEPTIONS IN COLOMBIA AND EL SALVADOR.

I. Theoretical framework

The importance for victims to have their victimhood and victimization experience recognized is widely acknowledged (Balde & Wemmers 2021). Insofar that they suffer a violation of their rights, they have the right to recognition and incorporation as subjects into the regime of rights endowed to victims as citizens with equal rights (De Greiff, 2006).

Yet, the path to attaining this legal recognition is often paved with obstacles in settings of gross human rights violations, such as those where enforced disappearance (ED) is practiced. In such settings, state-led forms of recognition are often lacking, particularly when impunity prevails and political will on the part of official institutions is absent (Rauschenbach et al., 2012). Impunity is often underpinned by the denial of truth, through omissions, concealment of evidence, silence, and the absence - partial or total - of justice. This lack of recognition has been prevailing from the onset in the case of the ED, because the state is most often involved, and state violence is legitimized as a lawful response to the unlawful actions of “subversives” or “terrorists” (Cohen, 1996).

Families and friends of those who have disappeared are often left alone in their struggle to find out what happened to their relatives, with little or no opportunities to effectively pursue their rights within the legal domain (Rauschenbach et al., 2021). This absence of effective justice affects victims, their relatives and friends, as well as the wider circles of their communities (Kovras, 2017; McCrory, 2007). Moreover, it leaves those affected by ED with little faith in government institutions and in their communities (Rauschenbach et al., 2021; Wemmers & Maribona, 2014), particularly due to state (and sometimes community) involvement in ED.

The importance of social recognition for victims

When victims are subjected to injustice and violence, the recognition of their suffering and of the undeserved victimization they have experienced is a key justice need (Balde & Wemmers, 2021; Holder & Robinson, 2021). Recognition, as a need expressed by victims in their social interactions with others (Honneth, 1995), arises from an experience of “symbolic devaluation”, whereby victimization causes not only suffering but also humiliation and an affront to the victims’ human dignity (Haldemann, 2008). Victimization conveys “a message of moral insignificance” (Haldemann, 2008, p. 693) to victims, affecting their sense of self-respect and disempowering them. The recognition of their suffering and of their victimisation can allow an individual to establish a sense of self and serves as a metric for social value and standing (Honneth, 1995). Symbolically, it can “reverse the imposition of victimhood” (Haldemann, 2008, p.710).

Victims of ED are likely to suffer additional injustice when they face denial, silence, repression, or stigmatization from official institutions and their communities. This lack of recognition constitutes “wounds of silence” (Govier, 2000) for victims and creates a “symbolic injury of being ignored” (Haldemann, 2008 p. 694). ED victims are thus socially invisible and likely to face bureaucratic systems that depersonalize them and are indifferent to both their individuality and the uniqueness of their suffering (Margalit, 1996; Rauschenbach et al., 2021).

Adequate social recognition requires providing ED victims with a space for their experiences to be voiced and acknowledged, so that knowledge “becomes officially sanctioned, when it is made part of the public cognitive scene” (Thomas Nagel, cited by Wechsler, 1990, pg.4). This recognition should thus be ideally official, coming from a state authority speaking in the name of the collective body of those affected, and expressing solidarity with the victim. It should serve to *validate* the suffering of the victim and to *vindicate* the undeserved and wrongful victimization suffered through the perpetrator’s actions (Haldemann, 2008). Acts of recognition “recall and reaffirm victims’ moral and civic worth”, thereby reintegrating them into the moral and political community (Haldemann, 2008, pg.704).

Recognition is a prevailing expectation for victims, which is not limited to the judicial realm. While some victims may obtain the formal recognition conferred by the establishment of legal accountability in a criminal trial and the punishment of perpetrators (Henry, 2009), recognition can also stem from other channels (Hoven & Scheibel, 2015; Rauschenbach et al., 2021). Reparations, as “acts of due recognition to victims” (Rubio-Marín, 2009, pg.71), can be a meaningful channel to convey recognition and express societal solidarity to the victim, especially in contexts of impunity (Wemmers & Manirabona, 2014). This recognition can be supplemented by the workings of a truth commission, which can confer public visibility on the victimization that individuals have suffered, It may be done, for example, by providing them a public forum to tell their truths (Rubio-Marín, 2009) and to have their victimhood acknowledged (Robins, 2013). The media has also been considered as a relevant channel for victims to have their

experiences publicly recognized (Balde & Wemmers, 2021).

Research on victims' perceptions of social recognition has defined it as "a victim's experience of positive reactions from society that show appreciation for the victim's unique state and acknowledge the victim's current difficult situation" (Maercker & Müller, 2004, p.345). A lack of recognition is related to experiences of negative feedback, such as rejection, blaming the victim or attitudes of denial and disapproval. Victims who do not feel recognized are likely to report feeling "unsupported, misunderstood or alienated from their surrounding" (Maercker & Müller, 2004, p.346). This strand of research has demonstrated positive links between perceptions of social recognition and recovery of traumatized crime victims (Müller et al. 2008). It also suggests that social recognition is not limited to emotional and instrumental support from those persons immediately surrounding the victim. It is, however, shaped also by the actions of the broader societal context: acquaintances, neighbours, colleagues, local authorities, church as well as social and pressure groups (van der Velden, et al. 2019).

On the collective level, promoting social recognition for ED victims is important because the act of ED itself breaks down social ties, fostering a climate of fear and subservience in communities (Kovras 2017; Dulitsky 2019), as well as community stigmatization (Adams, 2019; Robins, 2013). It is precisely this "terror and fear of repetition" that the ED incites (McCrory 2007, 557), which leads neighbours and other families to distance themselves from relatives of the disappeared, and communities to become increasingly fragmented and disconnected (Kovras 2017).

Moreover, restoring social ties is key for victims due to their potential as social capital, which concerns the "features of social organization [...] that facilitate coordination and cooperation for mutual benefit"; these features take the form of "networks, norms, and trust", which ensure that the "reciprocity" of actions within the society is sustained (Putnam 1993). These "networks", which enable the sharing of capital, are based on the "norms" and "trust" existing between two or more individuals. When these relationships of "trust" break down, due to the climate of fear and uncertainty surrounding the ED, forms of social capital within communities likewise diminish. This can have (negative) repercussions on the communal forms of support available to victims, affecting their ability to be recognised within their communities.

Social recognition and victims' broader social vulnerabilities and injustices

ED victims in the contexts analysed here are likely to come from marginalised communities that have suffered broader inequalities and injustices, which may also affect their ability to access and claim rights effectively (Pérez-Sales, Bacic & Duran, 1998). This disadvantaged status can also contribute to their experience of victimization, affecting the impact of ED in complex ways (Robins, 2013). Following Fraser's (2000) perspective on recognition, it can be argued that recognizing victims should go beyond recognizing their identities as individuals who were victimized through the particular violation of

ED, to encompass the unjust conditions that enabled and sustained this violence, and continue to hinder victims' daily struggle for truth. Recognition should also address the social impacts of ED and the way it affects relatives' lives in their relationships to the family, the community, and the nation. Moreover, the "disconnectedness" and "disempowerment" that the victims feel because of the ED should be understood as embedded within a more entrenched history of social exclusion and structural violence (Robins, 2013).

Gender constitutes an additional marginalisation factor in the case of ED and its impact on relatives. It is frequently observed that pre-existing gender-based hierarchies can pose obstacles for women in having their claims heard, accessing rights, and being granted adequate recognition (Rubio-Marín, 2009; Walker, 2009). Moreover, in addition to often suffering the most from ED, women, as wives and mothers of the disappeared, are also likely to see the psycho-social impact of ED amplified by the patriarchal structures of the societies they live in, as well as the exclusion they suffer due to poverty (Robins, 2013).

Research and policymaking on ED often focus on measures of state-led recognition (judicial and institutional), with less consideration for more informal and non-state forms of social recognition. Building up on previous work highlighting the recognition potential of various actors beyond the legal realm (Rauschenbach et al., 2021), this paper focuses specifically on how social recognition is experienced and perceived by ED-affected victims, as well as civil society and institutional actors in contact with victims. The role of gender and affiliation to a disenfranchised community are considered whenever relevant.

II. Methodology and Case Studies

Methodology

This multidisciplinary paper draws on research conducted in Colombia and El Salvador between January 2019 and March 2021. It is based on the analysis of legal frameworks relevant to the search for victims of ED in Colombia and El Salvador and on interviews carried out in both contexts. In total, fifteen semi-structured interviews were conducted (eight in Colombia and seven in El Salvador) with families of the disappeared, civil society representatives and representatives or former staff members of official search mechanisms.

Lasting between 1 and 2.5 hours, all interviews were transcribed, translated, and anonymised. They were then inductively analysed, and a set of codes was gradually generated alongside multiple readings of interviews transcriptions. The main themes were developed using a thematic coding method grounded in Braun & Clarke's (2006) approach and adapted by the team to fit the challenges related to analysing data without a qualitative analysis software.

Colombia

According to the National Registry of Victims, approximately 180.000 people have suffered harm because of enforced disappearances in the Colombian armed conflict. This number, contested as it is because of a natural sub-registry, reflects the size dimension of the phenomena in the country, but not its impact on victims, families, beloved ones, and communities.¹

Enforced disappearance in Colombia is a complex phenomenon, intertwined with the armed conflict and socio-political violence². Throughout history, different actors - ranging from the State and paramilitary forces to guerrilla and narco groups³ - have used ED as a tool in war to enact political violence, all over the country.⁴

According to Bello, Suárez & Márquez (2016), ED victimization is characterized by: (i) a disproportionate number of child victims⁵; (ii) indigenous and Afro-Colombian victims; (iii) many cases of disappeared peasants or persons associated with rural economy ; (iv) 1,600 victims registered an extra vulnerability derived from their status or activism, including political activists, unionists, communal leaders, teachers, public servants, indigenous authorities, former combatants, human rights defenders and journalists. Direct victims of ED are most often men, social leaders and from the low-income population; this includes activists and politically-engaged persons identified

1 The National Center for Historic Memory has recorded enforced disappearance over time in Colombia, finding that paramilitary groups are responsible for at least 20,207 events of enforced disappearance in the country, followed by guerrilla forces with 8,891, and state agents with 1,995; leaving 7,853 as unidentified and 2,272 related to post demobilization groups (Centro Nacional de Memoria Histórica, 2021).

2 ED started as a systematic practice at the end of the 1970s, becoming more frequent in the 1980s and, after lull in acts of ED between 1991 and 1995, was particularly prolific between 1996 and 2005, with approximately half of all EDs occurring during these years (Bello, Suárez and Márquez, 2016). Since 2005, the number of enforced disappearances has decreased but never completely ceased.

3 Even though ED is understood as a State crime in international law, Colombian law establishes the possibility of it being committed by non-State agents.

4 Bello, Suárez and Márquez's (2016) explains that ED started as a systematic practice at the end of the 1970s, increasing with the national strike in 1977 and the enactment of extraordinary measures by President Turbay's administration. In the 1980s, the practice became more frequent with the strengthening of paramilitary groups and the implementation of counterinsurgency tactics that relied on or benefited from ED. After a peace negotiation, state and paramilitary violence focused on the alternative political party Unión Patriótica, which in turn suffered especially from enforced disappearance as a political violence tool. During that time, narco-traffic and organized crime started to play a role in the conflict. Between 1991 and 1995 a period of deceleration on violence and enforced disappearance coincided with peace processes between the government and various guerrilla groups and the Constitutional National Assembly. In terms of enforced disappearances, the worst stage of the conflict started in 1996 and lasted until 2005: approximately half of all enforced disappearances reported by the National Center for Historic Memory occurred in these years. This is a consequence of raging paramilitary violence, failed peace processes and an all-out war declared by the government in 2002. Since 2005, the number of enforced disappearances has decreased but never completely ceased, with the following factors that explains its persistence: continuing paramilitary and organized crime related violence in the country, violence against human rights defenders and social leaders and an inability and lack of will on the part of the government to fulfil the obligations acquired through the 2016 peace agreement between the largest guerrilla group (former FARC-EP) and the government.

5 15.9% of documented cases.

or perceived as members of alternative/leftist parties or political movements (Centro Nacional de Memoria Histórica 2015; 2018).

Mobilization for the search of ED victims began soon after ED became a regular tool of state forces in the late 1970s. The first organized mobilization surrounding ED victims can be retraced to the creation, mainly by relatives,⁶ of the Asociación de Familiares de Detenidos-Desaparecidos (ASFADDES) in Bogotá in 1982. Today, ASFADDES supports and mobilizes with family members and loved ones of ED victims, helping to achieve: (i) the establishment of the prohibition of enforced disappearance as a human right in Colombia in 1991; (ii) the criminalization of enforced disappearance in 2005; (iii) the ratification of the Interamerican and International conventions against enforced disappearances.

The mobilization of victims and their loved ones in Colombia was furthered by formal non-governmental organizations (NGOs) dedicated to the protection of human rights⁷ (International Commission on Missing Persons, 2020). With the diversification of the profile of victims of enforced disappearance and the strengthening of paramilitary violence, victims and family members continued mobilizing and organizing in new regional and national groups⁸ (International Commission on Missing Persons, 2020; Vera, 2016).

Victims' mobilization in Colombia is not new and can be traced back to the late 1970s (Dávila, 2018; Vera, 2016). The political and social charge that the category of 'victim' receives today is the result of this mobilization. Even though criminal law has used the category of "victim" for many years, its relevance in legal and socio-political terms was properly crystallized only in the 2000s. ED victims participated in many mobilization activities, advocating for recognition and the legal criminalisation of ED and have fiercely opposed proposals of impunity for paramilitary groups since 2003. In 2005, a group of victims' organizations joined forces to form the Movimiento Nacional de Víctimas de Crímenes de Estado (MOVICE) (Grupo de Memoria Histórica, 2009). The agenda of the movement included the fight against ED, and both benefited from and contributed to the work of other organizations⁹ (Sánchez, 2013).

Bello, Suárez and Márquez (2016) explain that victims' organizations had to build resources to confront harm and deal with the damage suffered in their lives. The historic absence of institutions and mechanisms for the search of their loved ones and for reparations put them in charge of actions that should be carried out by the state. Thus,

6 The soon-to-be nongovernmental organization was backed by a Jesuit priest, Javier Giraldo, and a prominent lawyer, Eduardo Umaña, and initially included 14 family-members of victims of enforced disappearance (Rudling, 2019, 468; Sánchez, 2013, 69-70).

7 Such as the Centro de Investigación y Educación Popular (CINEP), Comité de Solidaridad con los Presos Políticos (CSPP) and the Comité Permanente por la Defensa de los Derechos Humanos (CPDH).

8 Such as Asociación Caminos de Esperanza Madres de la Candelaria, Familiares de Desaparecidos por el Apoyo Mutuo and Fundación Nydia Erika Bautista,

9 Some of those organizations contributed to MOVICEs work, namely ASFADDES and Hijos e Hijas (Grupo de Memoria Histórica, 2009).

organized victims became a safety net for other victims in search for guidance and support, whilst also participating in a dynamic action labelled as ‘human rights forensics’ in which families, human rights organizations and forensics professionals acted in the search for their loved ones and held perpetrators accountable. In time, this dynamic was replaced by a ‘humanitarian forensic’ administered by state bureaucracy (Humphrey, 2018).

Victims’ organizations became the institutional drivers behind Colombia’s advances in guaranteeing ED victims’ rights (Bello, Suárez & Márquez, 2016; Humphrey, 2018). Today, Colombia has in place a set of institutions and regulations, including special units of prosecutors and police, a humanitarian-focused search institution, inter-institutional networks and transitional justice criminal proceedings for the search of the forcibly disappeared. Most of these institutions come from the work and mobilization of victims. This work has been achieved in a setting where being a victim, especially a victim-activist, leads to not only a constant threat on victim’s life and their family members, but also, as Vera (2016) highlights, to stigmatization, political marginalization and social ostracism¹⁰.

El Salvador

El Salvador has a history of political violence that can be traced back to 1821 and its independence from Spain. After a massacre of almost 30,000 peasants and indigenous people who participated in an uprising attempt by the communists in 1932, the military took over the country until 1980, when the civil war started (Hume, 2013). The war was a consequence of “decades of relentless state brutality, high levels of socio-economic exclusion and deep inequality” (Hume, 2013), where state military forces confronted a coalition of leftist armed forces galvanized in the Frente Farabundo Martí de Liberación Nacional (FMLN).

The estimated number of enforced disappearances from 1979 to 1992, during El Salvador’s armed conflict, is 8000 (Granados, 2015). The disappearances were usually committed in the context of military operations, with the main goal being to enforce disappearance or execute people identified as (or suspected to be) opposite to the government and/or to generate terror and eliminate potential insurgents (Granados, 2015). One particular characteristic of ED in El Salvador is that many of the disappeared were children (Ocampo, 2013, 186-201). Between 1990 and 1992, the Salvadorian government and the FMLN signed agreements that had three main objectives: (i) democratization of the country, (ii) application of human rights and, (iii) reunification of the Salvadorian society (Díaz, 2015).

Victims of ED organized during the war, for example through the creation of the Comité de Madres y Familiares de Detenidos-Desaparecidos y Asesinados Políticos (CO-MADRES).

10 The National Center for Historic Memory (2018) has documented the stigma and social exclusion experienced by victims.

This brought together family members of people who had been detained, disappeared, or executed because of their political activities (Sprenkels, 2005)¹¹. Despite suffering harassment and direct violence by state forces, these organizations continued their work and mobilization efforts.

Since the early 1990s, the activity of non-governmental organizations (NGOs) in El Salvador has increased (Martín, 2013). After the civil war ended in 1992, community reconstruction and reintegration of former combatants into society were the focus of civil society and human rights-oriented organizations. In this period, the main struggle of organizations such as COMAFAC, CO-MADRES, CODEFAM and CDH-ES was their own survival, due to the above-mentioned change in the attention of international cooperation, the FMLN agenda and public opinion (Sprenkels, 2013; Martín, 2013).

By 2016, the Instituto de Derechos Humanos de la Universidad Centroamericana (IDHUCA) and Asociación Pro-búsqueda become the most active organizations in assisting justice demands made by victims, survivors, and their relatives (Martínez and Gutiérrez, 2016). Pro-búsqueda was founded in 1994 and composed of family members of victims of enforced disappearance¹². As Ocampo (2013, 192-193), Granados (2015, 181-184), and Rubin (2015, 9-24) explain, thanks to the work of Pro-búsqueda, the whereabouts of a great number of victims has been established.

III. Analyses

1. Meanings attached to lack of recognition

ED victims are likely to face a lack of recognition that is multifaceted. It stems from state-led institutions and actors, as well as the communities where victims are living in and the society more broadly. Participants in our study ascribed different meanings to these experiences.

Lack of recognition affects victims' sense of dignity and humanity

Participants describe how a lack of recognition profoundly affects their sense of dignity and individuality as human beings. It affects their access to basic rights and makes them feel as if they are second-class citizens.

For example, 1CV - whose husband's remains were found and is in the process of proving through DNA identification that her children are related to her husband - explains that

11 The immediate antecedent of this was the appointment of Monseñor Romero as archbishop of San Salvador in 1977 and the reorientation of the work of 'Socorro Jurídico', a legal assistance office that "became the first place where people whose relatives had been killed or disappeared went for legal help" (Sprenkels, 2005).

12 Pro-búsqueda's continuous work for the search of disappeared children, accountability for the perpetrators who caused their disappearances, and support for the families is in response to the deficient services provided by the state.

she has *“many questions in limbo”* and does not *“know who will answer them”*. She adds that she has no one to support her and her family in this process. Moreover, while she left with no answers, she knows that *“there are people who may know, but they won’t tell me”*. This lack of informational support translates into a lack of recognition for 1CV, who describes this experience as *“the most painful thing”*.

In many accounts, this lack of recognition leads victims to feel that they are of no value and are considered by society as less-than-human individuals. 14EV’s account is very telling in this respect: *“We have been treated as if we were from somewhere else, that we do not belong, we have been treated as something inferior, we have been re-victimized more [...]”*

3CVA denounces the fact that the state system does not consider the *“need of individual”* and *“doesn’t even give the victim humanity”*, highlighting how bureaucracy contributes to this lack of recognition, cynically predicting that the newly created Search Unit *“is going to be a totally infertile bureaucratic agent”*. The contribution of bureaucracy to the insensitivity of individual suffering, by distancing individual state officials from the emotions of the search, is also pointed out by 5CVA, who states *“There is no sensitivity [...] A civil servant is not hurt by the drama that a family lives.”*

Another victim explains how when people were disappeared *“nobody ever looked for them and we feel that nobody is looking for them now”*. Referring to a police inspector, with whom she was in contact, she explains further: *“of course he didn’t care, because that body that was there was of no value, I mean, he wasn’t a human being, he was worse [...] because he didn’t have any identification [...], he [the police inspector] didn’t have any way of knowing who he was, some of them didn’t have any prints, the thumbs that they had had been burned and many of them had had their faces disfigured, many of them were shot in the face, right?”* (5CVA)

Thus, unidentified remains lost their individuality as recognised victims and were instead considered solely as collectively recognised nameless remains. 5CVA sums this up, stating *“dignity was lost for this human being who surely had a story, and had family who were surely crying and who did not know where he was.”*

The clinical and bureaucratic approach to handling ED cases in state institutions is also highlighted by, 10CO, an official, who explains how when handling bodily remains within forensic investigations, he became immune to the individuality of victims, encapsulating this in the phrase *“you become a body checker, but you never know who it is”*.

He recognises that humanizing bodily remains and identifying with victims is difficult: *“it is more difficult to see the skin fresh, warm, with its tone, with its everything. I think that hurts a lot and makes you look at yourself.”*

4EVA presents a more extreme case of the lack of state recognition, describing how the death of her sister’s husband at the hands of a guard was not considered a crime by the judge because it was deemed constitutive of a legitimate action against a subversive. Here, 4EVA poignantly expresses how her sister’s husband was made less than human, as he had *“no right to be recognised”*.

No political space of recognition

Many victims also highlight that they do not have a political space of recognition, which impacts their ability to overcome their victimhood and their suffering, as well as navigate the search process.

As 7EVA explains, for decades the Salvadorian state did not recognise that ED was taking place. Nowadays, while the existence of these violations is officially recognised, impunity still prevails because of a lack of political will to address victims' claims and fulfil state obligations to ensure that victims' rights to truth, justice and reparation are respected. *"If the authorities had paid attention and said "let's look for them, really, let's look for them", and "look, you come, we'll take care of you, (...). I'm going to compensate you", if that happened, it would advance, and people would take more interest. [...] it has to do with the political part because some are a little less interested, some more interested [...]"*

The impact of the lack of recognition on affected victims is also a corollary of the state's inability to bring those involved in ED to account for their responsibilities, as 14EV underlines: *"The State has not been able to make the aggressor and the military aware of the error."*

For many participants in the survey, there is also a sense that the suffering generated by the ED and its devastating impact on the lives of families and communities is not recognised at the political level. This is reflected in the absence of the much needed support structures to support victims in their painful search for answers and justice. 1CV, who has been struggling to find evidence proving that she is a victim (meaning an identification process that proves her relationship to the disappeared), explains that she would like a *"complete"* support *"in the process of mourning"*, with *"complete"* meaning psychological assistance and legal advice. She regrets not having benefited from such a support, suggesting that this reflects a lack of recognition that she is also a victim and that her pain has not disappeared: *"I'm a victim because you don't see that it's my children's dad and it's my husband who died? [...] But what about the pain that's left?"*

3CVA also underscores that psychological support is lacking in her experience of ED: *"Neither I nor any of the disappearance victims I know receive any kind of comfort or spiritual or psychological help, no. It [ED] happens and you have to get over it and learn to live without it [help]."*

Similarly to 3CVA, 14EV explains that the lack of will to put ED on the political recognition agenda has left families unaided to deal with their pain, fear and trauma. *"They feel a terror, and then in the end they have conformed to live like this and not look back, because the State has not given them a chance to be able to look for their family [...] I believe that one can learn to live with this pain and everything, but one does not forget that it is there, alive."*

3CVA further explains how this lack of political recognition of ED persists across regimes of governance to affect historically excluded and victimized communities: _____

"We are passive people, people of pain, who have been extinguished at play; they have beaten us hard; humble, simple, but we do have a heart; we understand the pain of the people, so I think that the State has failed to do this, right and left, they have done the same."

A Colombian victim, 5CVA, also mentions that the judiciary's failing to investigate ED cases thoroughly and engage in effective search processes is the result of a lack of political will to prioritize the ED issue within state institutions: *"All this has to do with political will, right? There is no political will."*

Similarly, a Colombian official explains that: *"Either there's no money or politically they're against it, or nobody cares... Because the missing person is like only the family cares, nobody else".* (10CO).

Lack of recognition is re-victimizing and felt as a double injustice

The lack of recognition from state institutions is frequently described by victims and activists as adding to their distress in a highly re-victimizing way. One victim explains how this lack of recognition is humiliating and triggers a deep sense of injustice: *"My brother and I suffered in our own flesh and directly the humiliation, that pain. [...] And we have continued to be outraged. The mere fact of denying us at least recognition as a victim."* (11CV)

A Colombian activist, 8CA, concisely explains how victims were disappointed by the state's framework for victims, which was misportrayed as an *"achievement"*. The lack of state response created a profound sense of *"disappointment"* for many victims, which, as he qualifies further, *"is something that marks a lot"*.

9CA explains more pointedly how the lack of an effective state response is harmful in and of itself for activists: *"it is precisely the lack of an effective response from the State that generates this type of damage in the people who work in this field."* (9CA)

Feelings of helplessness pervade victims' experiences of ED and subsequent navigation of the search process. This is voiced by 1CV, who describes feelings of *"anxiety, stress, helplessness, [and] powerlessness"*, rhetorically asking *"where am I going? What should I do?"* in relation to the search process. Her sense of powerlessness in the face of ED is attributed also to the lack of *"humaneness"* from the part of state actors, leading her to experience *"blow after blow"* as they continuously fail to understand her experience of suffering.

3CVA explains evocatively how her sense of agency following the initial act of ED got worn down over time due to state inaction, likening her declining agency to a spinning top losing momentum: *"The victim of forced disappearance is a 'pirinola', (a spinning top) who begins to roll until he gets tired and falls and is defeated by the System."*

Community stigmatization

A lack of recognition is also reflected in victims' recounted experiences of stigmatization from members of their communities and civil society institutions. For 1CV, feelings that she is being judged by her community pervade her ED experience: *"I don't want any more rejection or more attitudes from people. That's why I try not to tell everyone, nobody, because it scares me."* Along with the fear surrounding the act of ED itself, this causes 1CV to keep her experiences to herself.

4EVA also explains that when she and her family were desperately looking for their disappeared loved ones, they could not count on support from the community - in particular the church - and were confronted with rejection and stigmatisation instead. *[...] well if we were pointed out, the whole family was pointed out, not only him, for example in this case not only my husband was pointed out, [...] The same situation forced us to suffer that inner pain and we couldn't even cry"*

This stigmatization and the fear of reprisal led 4EVA's family to stop searching for answers and to accept the disappearance "as something that had happened", which they could not do anything about; as she explains, her family had to *"settle for that because [they] didn't have a choice, [they] couldn't search"*.

15EV, whose children were disappeared, explains having been told *"why are you looking for them, for so long, they must be better off with another family, or maybe they died, [...] you don't even need them"* while looking for her children everywhere, including *"at the Red Cross, in the newspaper, on television"*.

Both 15EV and 4EV demonstrate that community opinion towards ED not only often failed to provide victims support, but openly denigrated victims in their search for the disappeared. This can be linked in part to the act of ED itself, which facilitates the destruction of the social fabric of communities by fostering fear, distrust, and stigmatisation. 11CV recounts how there was *"fear, a lot of fear"* surrounding ED, which *"broke all...all relationships and contact"*.

2. Recognising the magnitude of the impact of ED

Lack of recognition is all the more felt as unjust because of the devastating and far-reaching nature of the impact of ED for victims in its emotional and social magnitude as will now be discussed.

Before and after

As also highlighted by Adams (2019), many relatives refer to ED as a turning point, after which their lives would never be the same. This has profound, sudden and indelible psychological impacts on their lives. 1CV recounts the life-changing and devastating impact of ED on the lives of those still alive, describing that *"it's not the same life that you lead now"*.

Similarly, 11CV evocatively describes how this renders the victim “speechless”, explaining how ED has “a very hard psychological impact. One does not have an expression, one looks at oneself and there is mourning, there is pain and there is impotence.”

The devastating nature of ED is also underscored by 8CA, an activist: ED “destroys life projects”, leaving victims of ED “bitter”, “resentful”, in “great despair” and “great sadness”. She adds that victims often feel responsible for finding their loved ones, and that this is a “very big burden” in their lives.

8CA recognises the magnitude of the impact of ED on victims, which makes it even more crucial for victims to obtain professional psycho-social support: “it is a tragedy so strong, so great, that it requires a psychosocial support [...] it takes a lot, a lot of psychosocial help, yes.”

The emotional response to ED is coupled with a lack of time and space to process these difficult emotions. 1CV describes how she must continue to keep looking after her children, which leaves her unable to process the act of ED perpetrated on her family, as “there are different things on [her] mind to think about”. Moreover, 1CV, just as many other interviewees, describes how they were fearful of voicing their emotions due to the ongoing fear surrounding ED. She kept the psychological impact of the disappearance of her relative to herself to protect her children: “That’s why I try not to tell everyone, nobody, because it scares me. I’m afraid someone will come and do something to me, not so much to me, to my children.”

2CV and 14EV similarly describe their inability to voice their emotions due to a fear of repercussions, respectively stating “What happened, just happened” (2CV) and “[...] in the end [victims] have conformed to live like this and not look back” (14EV).

Ripple effect on the family: economic, psychological, and structural aspects

ED affects not just one relative, but it shatters the lives of entire families in manifold ways. Many victims describe how the psychological impacts on the whole family need to be better considered when devising support for victims, with 1CV calling for “psychological support for both one victim and the family” as “pain affects all of us”.

14EV similarly voices the need for familial psychological support: “I think that families also need mental healing, [...] because I see mothers who sometimes are well and then suddenly scream, these families are affected, [...] they are very moved by the pain and they burst, and they are left crying”.

Furthermore, ED affects the relationships between individual family members; as 13EA describes, in addition to the “psychological impact” there is also a “social impact”, with ED causing the disintegration of family ties. 13EA notes ED’s “social impact on children and adolescents”, as their family structures are changed by the disappearance of a parent, leaving their relatives or grandparents, or even family friends, in charge.

ED's social impact often includes an economic dimension, since it *"generates a decrease in the economic capacity of the family, because perhaps this person was the one who provided and is no longer there, disappears"*, as 13EA explains.

This economic dimension is coupled with an awareness amongst interviewees of their increased vulnerability as women having experienced the disappearance of their husbands or sons. The disappearance of the male member of the household leaves women as the sole providers and carers for their families. 1CV's experience illustrates also the complex and gendered nature of the ED impact on relatives. When her husband did not reappear one day, without her knowing what had happened to him, she was forced to move on and to take on two roles in the family to fill the void left, stating *"I'm mom and dad at the same time"*.

Further, she adds that twenty years later she is informed that her husband's remains had been found, providing her confirmation that he was forcibly disappeared. This shatters her beliefs and plunges her back in painful feelings, as she had assumed for all these years that he had purposefully left her: *"Now there's a lot of uncertainty, it's going to go back, relive what's already happened. (...) I had already unloaded that cross that I had loaded, and now I have to reload it in a very different but painful way."*(1CV)

4EVA describes how the disappearance of her husband forced her to live on the street: *"when he died, I stayed in the street because I could no longer pay for the house, (...) I was all alone looking for myself, I couldn't pay for a house but a room in a corridor I had my things there and we slept on the floor"*.

2CV's experience also reflects how ED can render women particularly vulnerable, especially when they come from disenfranchised communities. ED adds one more layer of vulnerability to cope with in a life-context of poverty and disempowerment: *"I've been left alone in the house, with my daughters, without a job, without anything, you see? It's hard. [...] an injustice, that's unjust! It is not justified after having one's little children alive, poorly, [...] Having to go and ask, having to endure hunger"*

3. Forms of support which reflect social recognition

Relatives and friends of the disappeared express the need for support at various levels and from various actors. This section focuses on support concerning the psycho-social impacts (emotional, logistical and economic) of ED on individuals, families and their communities, as well as victims' needs for support in the search process. It explores how informal and non-state channels of support can reflect social recognition in addressing the psycho-social impacts of ED and victims' needs for support in their search for their loved ones. This section explores two areas of support, namely psychological forms of support such as empathic consideration, information and listening, and social forms of support including economic, material, or logistical assistance.

Support from family

Consideration for the **psychological impact of ED** plays a key role in helping victims to feel supported in their emotional response to the act of disappearance. In this respect, some victims highlight the importance of dealing first with the loss and pain within the family. For example, 1CV describes the support received from her children, who are living with her and who are concerned *“to not leave her alone”*, staying at her side when she has nightmares. She explains how she struggles *“to live those two lives”*, where she is trying her best to cope, *“to stay strong”* and to not fall apart, whilst also experiencing feelings of *“anxiety, stress, helplessness”, “powerlessness”, and “being tired of fighting”* with *“nobody’s help”*.

Another major form of social recognition that is not directly related to the search is the **social support offered to victims in their daily lives** following the act of ED. When there is a disappearance, relatives are often left as the sole breadwinners and support for their families. 4EVA describes how she went out to work with her sister, supporting the rest of her family, who all live in the same house: *“My sister and I went to Ciudad Delgado, bought corn in Tusa and made tortillas to sell [...] There by the refinery was my mum and my aunt; we were a great crowd, because we all lived in the same house, I with my children, my sister with their children, and my mum and my aunt.”*

The use of ties between family members as a way to gain **economic support** is also demonstrated by 12EV, who explained how each of her family members contributed to keep the family afloat. *“My grandmother from time to time brought us a carnita, a couple of pounds of rice, beans,[...] the rest of the family helped to meet a little, the economic cost and needs.”*

Notably, the family members described by both 4EVA and 12EV are all women of different generations (‘sister’, ‘mum’, ‘aunt’, and ‘grandmother’). Additionally, there is a sense that the effect of losing a son is particularly great, as 2CV expresses, referring to her boys: *“[I]f I had my two children alive, because they were male, I believe that I would not have suffered as much, nor would I have carried as much of the burden as I have carried it because I would have the support of my children, see?”*

Support from the community

Families and relatives affected by ED often come from marginalised communities who have suffered historical and recurrent injustices and inequalities. Relatives need support not only in relation to the blatant psycho-social impacts of ED on their well-being and livelihoods, but also in relation to less obvious obstacles and disadvantages that have more deep-seated roots.

Ties between families provide extra support, in particular with regard to **ensuring that families’ basic needs are fulfilled**. This is clearly demonstrated by 4EVA, who describes how a family friend provided her with enough goods to start up a livelihood and sustain her family. *“I went to live in San José de las Flores; my sister stayed there;*

she kept the business of tortillas, and I went to live there, and a lady who was a friend of hers [...] gave me some packets of feminine towels, and she gave me two boxes full of jelly; she gave me half a sack of beans; she had a store, and she said to me "with this your little shop will begin". "

4EVA comes from coming a poor and disenfranchised community. This constituted an obstacle to engaging in the search for her loved ones (due to the repression her family suffered), whilst also preventing her from giving her husband's remains a decent burial. Fortunately, she could count on members of the community to help her out financially to bury him in an individual grave: *"they were going to throw him into the mass grave, because, I told him, I do not have money to get him out of here. "Do not worry" he said, "I will help you".*

By drawing on interfamilial ties, relatives make use of informal channels of social capital. Acting as "networks" which enable the transfer of social capital between people, these interfamilial ties provide 4EVA with **physical social capital** in the form of food supplies and financial help.

These networks are sustained by the "norms" and "trust" existing between two or more individuals related to a collective sense of shared suffering uniting members. This is explained by 2CV, who tells that many mothers are "in the dark" about the whereabouts and fate of their children and questions poignantly: *"What did they do with our loved ones?"* Not only does she recognise that many other mothers have also had their sons disappeared, but in grouping their children together, 2CV powerfully conveys the shared experience of their suffering, which unites them in their struggle for the truth.

This shared sense of suffering also acts as a tool in connecting together a community of women, who can in turn support each other. 9CA explains how women *"tend to create these bonds of solidarity and psychological accompaniment"*, becoming *"supporters of each other"*. She draws on a shared recognition of suffering between women within collectives. This, in turn, forms modes of emotional support when women are feeling low, as there is a shared understanding of what they are each going through and how ED has impacted their lives in multiple ways. *"I recognize the collective process as something important that even helps me: when I'm down, the others support me and when the others are down, I support them."* (9CA)

Faced with a lack of psychological support from state institutions, as explained by 3CVA, relatives of disappeared persons may find **healing and recognition** from other relatives who are in the same situation and who are able to understand what they are going through: *"We heal ourselves and each other, see?"*

Similarly, 5CVA explains how relatives found themselves mutually sharing and recognizing their experiences and suffering, which helped strengthen their mobilization for the search. *"So, having ASFADDES as a space allowed us to talk about facts, to share them; it also allowed us to cry and (...) when we went to the court, when we went to the Attorney General's office, when we went to the morgue, well, we didn't cry anymore, you see? That's why we started to shout the slogan that we relatives don't cry anymore, see."* (5CVA)

The emotional support provided by victim collectives is coupled with an understanding amongst victims of their shared gender identity. 15EV describes how the mothers of the disappeared are the driving force behind collectives, stating *“it’s always the mothers”*.

Support from NGOs

Many participants describe positive experiences of **psychological support received from NGOs**. They often contrast these experiences to the lack of support received from state institutions and actors. As she struggles to cope with the news confirming that her husband is dead and that his remains were found, as well as to find answers and information in the face of unhelpful state institutions, 1CV describes an activist who is supporting her as *“the only person who encourages me”, (...)* *“she calls me, speaks to me, writes to me”*.

The support received from human rights and NGO actors is often described as alleviating victims’ feelings of loneliness and helplessness in the face of a search process that is rife with bureaucratic complexity and experienced as insensitive.

Similarly, 2CV explains how beneficial the support from 3CVA, a victim and a human rights activist who participated in this study, was in dealing with judicial actors at different stages of the investigation. *“Since [3CVA] arrived in XXX, she has been very attentive to me and to the case of my two children (...) Since the Attorney General’s office (...), she has not left me alone for anything (...) where I came to unburden myself was with 3CVA, that she gave me the confidence.*

Several Salvadorian victims also put forward the importance of the support they received from the NGO *Pro-Búsqueda*, which has helped many victims in the search for their loved ones, notably through its DNA database. Looking back at her experience and referring to the search mechanisms available to them 7EVA explains that *“we trust the NGO Pro-Búsqueda more than the state-run one”*.

14EV contrasts the support in the search received by *Pro-Búsqueda*, which has done a *“very honest, clean and well done job”* to the state’s search mechanism, which while *“creates a lot of expectations for the victims, it re-victimizes them more because it is going to tell them about the possibility that they have already found the relative, and maybe it is someone else, and they are not sure of what they are doing”*. He then elaborates on the support received by this NGO by highlighting how he felt recognised and understood in his pain. *You know the one who is hurt, the one who is destroyed, needs an comforting that gives him strength, that helps him to live with the pain that he takes, to be able to survive with all that suffering, (...) it has known to understand the victims, that is more than everything”* He adds that empathetic support was also important in helping his whole family cope with the emotional pain caused by ED, as well as in helping with interactions within the wider community.

Victims receive also much needed psychological support from NGOs in the forensic investigations, particularly at the stages of notification (when the relatives are informed

of the discovery of their loved one's remains), identification (when the remains are identified by the family), and repatriation (when the remains are returned to the family). 13EA explains how supporting victims during the notification phase was a balancing act, between providing "great care" and reassurance that they were going to "bring them home", in reference to the disappeared loved one, and managing victims' expectations, by only telling them "a day before" (the identification process) that their loved one had been found.

13EA emphasises also the importance of ensuring victims could understand the information they were being given, describing how the report was "explained to [victims] in an accessible way, by the Argentine team or by forensic medicine". Information on victims' loved ones should be conveyed in a sensitive manner, which respects the humanity of the disappeared.

For the notification, 13EA's NGO would hire a psychologist, describing how victims benefitted from group sessions, as "when they see people who are in the same situation, they feel comfortable, and they start talking about it". The presence of a psychologist is also felt as important in the identification and repatriation stages. 13EA explains that one should ensure that victims are as comfortable as possible during the specific moment of repatriation, so that they can receive the remains of their loved ones "with dignity". There is a need for "[...] a welcoming place [...] where [victims] can sit for a moment, have an oasis, have tea, [...] they could receive their family, have a moment of silence if they wanted". Curating a space within which victims feel dignified whilst they receive the remains of their loved ones constitutes an important form of support during the search process, reflecting the social recognition of victims by NGO actors.

The importance of treating victims and their disappeared relatives with dignity is similarly expressed by 10CO, who emphasises the need to communicate information about the disappeared with humaneness. He explains that it is not only the actual information on their loved one that is important, but also how this information is conveyed. Moreover, the fact that the disappeared person is recognised, that "there is someone (a person who does not know him) who is looking for him", shows the victim that their relative is "important" and "exists".

Support from broader civil society

The importance of the broader civil society's recognition of ED is also highlighted by our survey participants. 10CO describes how the institutionalised silence around the act of disappearance absents the disappeared from the "social conscience" of his country in that "people do not talk about the disappeared", likening this silence to a "curse". He adds that this silence limits recognition to only within the family, poignantly stating "only the family cares, nobody else".

10CO does later explore one example where the civil society had attempted to address this societal recognition, through the 'Forest of Peace' ('Bosque de Paz') in Colombia. The project involved individuals, who were unrelated to the disappeared, planting trees

in their memory and giving them to their loved ones left behind. 10CO described the power of this connection between the victims and non-victims of ED. *“But there is also someone, another one who is not from the institution, who is another Colombian who, without knowing it was his son, planted the tree for him [...] that’s important and that means that [...] you care about me, having nothing, nothing.”* The trees “adopted the history of the disappeared” in the form of name plaques (10CO), enabling less affected individuals to show their support for the victims and stand in solidarity with them. This reparation measure as a form of symbolic recognition can contribute to placing ED into the social conscience of the civil society.

3CVA suggests that such recognition measure could be extended to include a ‘day for the disappeared’, which might encourage victims to come forward and participate in the search process. She postulates how this could involve non-state officials, explaining that *“without you being an authority, without you being a prosecutor or a CTI or any of them, believe me that a lot of people would show up.”*

The importance of increasing the public’s awareness of ED using the media is similarly discussed by 15EV, for whom television provided a platform to communicate her experience. The media’s interest in ED catalysed public opinion explaining that *“when [the television interview] happened, the public was moved and everything, they came to have an exchange here, and we were gathered with all the Guatemalan women.”*

The interview as another channel of social recognition was also highlighted by 3CVA for whom her motivation to be interviewed was rooted in the belief that it will bring visibility to the issue of ED. *“I will participate in that [the interview] because it’s going to produce a document that allows them to shed light and rectify the errors that are being committed and that re-victimize people”.*

Similarly, 1CV notes the usefulness of the interview in itself, as a space where she can talk and be heard. *“I agreed to do this because you give me confidence and that makes me free a little from the pain, (...) sometimes I can’t find the space or the people to do it.”* Her reasons for participating in the interview are more individual. The interview serves to have her thoughts and feelings recognised as valid and important.

IV. Conclusions

This paper explores the potential of social recognition in contexts where state and official recognition is absent or partial and where opportunities to seek legal recognition are fraught with obstacles for relatives affected by ED. It addresses the meanings attributed to the experience of social recognition, as well as how support as a reflection of social recognition can stem from various sources and address different impacts of ED, including those amplified by individuals’ social vulnerability and marginalization due to gender and other disadvantaged statuses.

Participants describe experiences of lack of recognition in relatives’ interactions with various actors in their environment, particularly state institutions and actors, and the

communities they are living in. Their experiences with state actors, such as the district attorney, a judge or the police, are mostly described as uncaring and made them feel like their dignity and individuality as citizens with equal rights was not recognized. They illustrate how this bureaucracy embodies the state insensitivity to their suffering and contributes to their lack of recognition.

This lack of recognition stems also from the absence of political will to put the issue of ED on the agenda so as to ensure that victims' claims are addressed, and their rights are guaranteed. This reflects in the impunity enjoyed by the perpetrators of ED, as well as the lack of opportunities to obtain support from the state during the search, in the form of legal and psychological assistance, as well as receive compensation. This seems to be particularly highlighted by Salvadorian victims who are confronted with an absence of effective responses from state institutions (Rauschenbach et al., 2021).

Lack of recognition by the state is described as a double injustice and re-victimization for relatives who are struggling to come to terms with the disappearance of their loved ones and are desperate for answers. Relatives also often report facing stigmatization from their community, which adds another layer to the lack of recognition they experience. The distress and injustice felt by victims who face lack of recognition is often described as adding to the impact caused by ED. This impact is psychological, emotional, and social and affects relatives' families in their everyday structure and financial livelihood.

The channels of support available to the family and friends of the disappeared are often informal and non-state driven. Many relatives describe having received meaningful support from other channels, which convey a social recognition of the psychological and social impacts of ED, as well as of their needs in the search process. The family plays a key role as a provider of support, whether psychological or more logistical and economic one, particularly when a disappearance leaves relatives struggling with ambiguous loss (Robins, 2013), while having to cope with their new status as their household's main provider.

Relatives can also count on the support of other relatives of disappeared individuals, forming networks of solidarity based on their shared experiences of suffering and a mutual recognition of the impact ED. This support can facilitate relatives' mobilisation in the search process in that it provides them with the psychological resources to continue their struggle to look for answers amidst uncertainty and fear of reprisals.

The psychological and informational support received from NGOs is often highlighted as an important source of social recognition, in contrast with the lack of support from state institutions. Many victims describe having felt understood by human rights or NGO actors who helped them navigate the bureaucracy and insensitive practices of the state system, as well as provided them with psychological accompaniment at various stages of the search process, including the forensic investigations.

The broader civil society, including society as a whole and the media, constitute another source of support highlighted as a significant form of social recognition for victims. In the view of activists who participated in our study, they should be given more attention to

counter the state-level institutionalized lack of recognition of ED, which results in erasing this issue from social conscience. For example, memorialization measures, research or media interviews have the potential to demonstrate society's solidarity towards victims, validate their undeserved suffering and allow them to reintegrate in the social and political community.

Finally, our findings also show that the impact of ED should be understood in how it is embedded within other sources of vulnerability, particularly gender and coming from a disenfranchised and poor community. The evidence that women are rendered particularly vulnerable by ED, especially when they come from a historically marginalized community. In addition to having difficulties to access information given their marginalized status, as the family's main provider, they are often left on their own to deal with the economic hardships, as well as structural (also patriarchal) barriers in their struggle for justice and truth. The broader impact of ED on the family structure, economy and well-being is thus likely to be amplified by victims' gender and social status. For many victims, having to deal with the aftermath of ED constitutes an additional layer of vulnerability to a life of hardships and injustice, which should be considered when thinking of promoting the social recognition of ED.

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CLOSING REMARKS BY MS. CLARISSE PASZTORY, DEPUTY HEAD OF OSCE PRESENCE IN ALBANIA

Honourable Ministers, dear Rector of the University of Tirana, colleagues and excellencies, distinguished speakers and panellists, dear participants,

Good afternoon! We have reached the end of the international conference on enforced and involuntary disappearances in dictatorship, authoritarian past, and contemporary settings.

It is my great honour to be amongst such a diverse and fascinating group of scholars, practitioners, and advocates who, over the course of the past three days, examined the issue of enforced and involuntary disappearances and offered novel perspectives from legal, social and historical points of view.

It has been an incredibly enriching, emotional and emotive discussion and I am particularly humbled by the participation of the relatives of those missing. Your courage and determination in sharing unvarnished truth about your experience provided us with a better understanding on existing gaps and opportunities in identification and recovery of the bodies of the missing. It was a staunch reminder for why we do what we do.

The issue of enforced and involuntary disappearances is of significant importance to the OSCE Presence in Albania, and to me. Ever since our foundation, the Presence has been a staunch supporter of legislative reform, enhanced institutional co-operation, as well as academic and policy debate on the issue of missing persons. Such a debate MUST be part of a painstaking transition from totalitarian to democratic rule. Just past month, in co-operation with the University of Tirana, we launched the first interdisciplinary Master programme in Transitional Justice with the aim to enhance research and public awareness about social, political, and legal issues related to transitional justice, including enforced and involuntary disappearances. Prior to that, the Presence supported the establishment of the specialized Centre for Justice and Transformation at the University of Tirana, whose co-operation in organizing this conference was just phenomenal.

Ladies and gentlemen,

At the heart of the mandate of the OSCE Presence in Albania is the promotion of the protection of human rights and the rule of law. This conference has been an outstanding reminder for the need to further support legislative, policy-making, institutional capacity and awareness raising efforts to ensure accountability and provide justice and reconciliation for the relatives of those missing.

Over the course of the past three days, numerous references were made to recent developments, such as the signing of the Memorandum of Understanding between the Albanian government and the International Commission on Missing Persons. While it marked the first systematic attempt of the Albanian government to find those missing, no single case of an estimated 6,000 missing persons has been effectively solved to date. I must repeat and underline that.

Governments have an internationally normed duty to provide justice and reconciliation to their relatives through effective investigation and reparations. The crime of enforced and involuntary disappearances has no statute of limitation. States are therefore obliged to investigate these cases, to protect the dignity of those missing and provide long overdue justice to their relatives.

This conference highlighted progress as well as a number of legal and political shortcomings in our joint efforts. Yet the issue is not only a matter of legal framework and policy-making; it is first and foremost a matter of moral and psychological trauma endured by the 1,000s of persons persecuted, convicted, or extra judicially executed. Their scars remain evident in the morale of the Albanian society to this day. Unifying collective memory and countering the emergence of false narratives are key elements to preserve historical truth and safeguard the dignity the victims of dictatorial past.

It has been noted in the opening and is worth highlighting again – no victim should be forced to the humiliating extremes of identifying and excavating the remains of their relatives themselves. Such heinous practices cannot be tolerated; effective inter-institutional coordination, adequate financial and human resources, and robust political will are needed to ensure the dignity of the missing and provide justice and reconciliation to their relatives.

It is my firm belief that the conference provided plentiful evidence for and offered novel solutions to the way forward. We, the OSCE PiA, within the remits of our mandate, will do our part: For example by assisting the relevant Albanian institutions to find common ground for action in the field; or by further training of practitioners on the legal obligations stemming from international instruments; or by policy documents that will delineate concrete roles and responsibilities in the process of identification and recovery of the bodies of the missing. We will also continue to be engaged in raising public - and in particular youth - awareness regarding enforced disappearances from communist times and what the consequences for the families of the missing and Albanian society at large are and continue to be. We are not giving up. Our next ‘appointment’ is already set: the 2022 Memory Days.

In closing, I would like to once again thank all the distinguished panellists, speakers, students, and relatives of the missing for your kind participation and enriching discussion. I am convinced that the fascinating discussions and knowledge exchange that took place over the past three days will not only foster further research, but will also incentivise decision-making processes through facts-based historical evidence and

lived experience of the victims and their relatives. Research and academic debate are often undervalued in policy-making processes. However, in order to address this heinous crime, engagement of all stakeholders is crucial to redress past wrongdoings and uncover historical truth.

And finally, I heartily thank the co-organizers of this conference – the Centre for Justice and Transformation at the University of Tirana, as well as the Embassy of the Federal Republic of Germany for their generous financial and moral support. And, of course, my team for their tireless efforts in bringing together this extraordinary group of speakers and researchers to address of the most painful remnants of Albania’s communist past. Not to forget the invisible voices in our ears, our dear interpreters.

Thank you.

Clarisse Pasztory

Deputy Head of OSCE Presence in Albania

