

A comparative assessment on regulatory framework on enforced disappearance, related to investigation, and suggested practice improvements in Albania

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Abstract

This paper will provide an introduction to the basic legal aspects on regulatory framework on enforced disappearance, related investigation in Albania, contextualizing domestic approach and what is currently lagging from the implementation. Crimes against humanity, genocide as well as war crimes certainly must be viewed in the context and standards of the international law. The international law offers unified interpretation with regards to the national mechanisms in implementing and bringing justice to victim families, but it also takes into account the efforts to condemn the crimes against humanity openly and publicly. It is observed that international law are created to achieve an effective investigation and prosecution. In Albania, the international law enjoys a privileged position as it prevails over domestic law, according to the Albanian Constitution. In this paper it will be displayed also the current situation and recommended measures for the disappeared persons as in 2012 the Albanian government declared its engagement in taking necessary steps for creating the Disappeared Persons Section within Institute of Integration Former Politically Persecuted, aiming to initiate the process by identifying the massive graves and exhumations for the disappeared persons during the period of communism. Thus, it is of a vital importance to present some suggested practices of forensic management and due diligence rules, as well as provide grounds for comparative approaches that identify good practice and measures.

Keywords: enforced disappearance, extrajudicial killings, torture, human rights.

1. INTRODUCTION

European context and the international law standards

The most influential European parliamentary institutions have issued a number of non-binding political resolutions directly concerning the crimes committed by the communist regimes. From the standpoint of international law these acts can be considered as subsidiary tools or sources to interpret relevant rules of international law, to assess the crimes committed by communist regimes as meeting international legal criteria of crimes against humanity, war crimes and even genocide. Ultimately they also express the authoritative opinion regarding qualification of the crimes committed by the communist regimes as well as the measures to be taken by European States with regard to these crimes (their investigation and condemnation, raising public awareness about these crimes, commemoration and remembrance of the victims, etc.). First of all I would like to mention the resolution of the European Parliament on European Conscience and Totalitarianism adopted on 2 April 2009. This Resolution inter alia acknowledged that “*millions of victims were deported, imprisoned, tortured and murdered by totalitarian and authoritarian regimes during the 20th century in Europe*”; the European Parliament noted the specific historical experience of the Central European States by stating “the dominant historical experience of Western Europe was Nazism, and whereas Central and Eastern European countries have experienced both Communism and Nazism”. The European Parliament also condemned “strongly and unequivocally all crimes against humanity and the massive human rights violations committed by all totalitarian and authoritarian regimes”. That means that there is no question or doubts about the very fact of commission by the communist regimes of crimes against humanity, war crimes or, in some instances, even genocide. Furthermore the European Parliament underlined the importance of remembrance of the past, reconciliation, research, teaching and public awareness about the crimes committed of the communist regimes. Secondly, there are two important resolutions of the other authoritative and wider European institution – the Parliamentary Assembly of the Council of Europe. The first resolution is more of general character, - the 27 June 1996 Resolution 1096(1996) on Measures to Dismantle the Heritage of Former Communist Totalitarian Regimes as apart the

prosecution of the crimes it recommends a number of other measures to deal with the legacy of the communist regimes. As follows from the text of the Resolution, the fact of the crimes committed by the communist regimes is beyond the question; the Parliamentary Assembly is only concerned that justice should be done “without seeking revenge” in a manner compatible with democracy and rule of law, and the prosecution of individual crimes should go hand-in-hand with the rehabilitation of the victims. With regard the crimes committed by the communist regimes, this resolution was further continued by the 25 January 2006 Resolution No. 1481(2006) on Need for International Condemnation of Crimes of Totalitarian Communist Regimes, which is, to my mind, the most comprehensive resolution on the matter. The Parliamentary Assembly not only condemned the crimes committed by totalitarian communist regimes. It also noted that the totalitarian communist regimes “without exception, (were) characterized 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, of freedom of the press, and also lack of political pluralism”. Thus most of the violations noted fall into the category of crimes against humanity or war crimes, if committed in relation with the armed conflict. Furthermore the Parliamentary Assembly also noted that the crimes of the communist regimes “were justified in the name of the class struggle theory and the principle of dictatorship of the proletariat. The interpretation of both principles legitimized the “elimination” of people who were considered harmful to the construction of a new society and, as such, enemies of the totalitarian communist regimes”. This important passage can be understood as recognition, at least to some extent, of the genocidal intent of the communist regimes to eliminate a certain group of people (it was expressly stated in the Explanatory Memorandum included into the 16 December 2005 Report of the Political Affairs Committee on the Draft Resolution that “the important feature of communist crimes has been repression directed against whole categories of innocent people whose only ‘crime’ was being members of these categories. In this way,

in the name of ideology, the regimes have murdered tens of millions of rich peasants (kulaks), nobles, and bourgeois, and other groups”). Therefore the Resolution can substantiate the claim that at least in respect of some national and ethnic group the crimes of the communist regimes could amount to genocide, as well as we can find additional arguments to broaden the traditional legal concept of genocide so as to include elimination of social and political groups. The Resolution furthermore expresses concerns about poor public awareness about the crimes of the communist regimes, calls for the clear position of the international community on the past that would pave the way to further reconciliation; awareness of history and moral satisfaction of the victims are indicated among the further measures to be taken. The last resolution I would like to mention is the Resolution of the OSCE Parliamentary Assembly on Divided Europe Reunited: Promoting Human Rights and Civil Liberties in the OSCE Region in the 21st Century, which was adopted on 3 July 2009 by the annual session of the Assembly in Vilnius. In line with the above mentioned EP and PACE resolutions this Resolution expressly acknowledged the crimes of the communist regimes by noting that “in the twentieth century European countries experienced two major totalitarian regimes, Nazi and Stalinist, which brought about genocide, violations of human rights and freedoms, war crimes and crimes against humanity”; it also stressed the need to raise public awareness about the totalitarian legacy, to open archives and to facilitate reconciliation based on truth and remembrance. All totalitarian rules from whatever ideological background was declared unacceptable and incompatible with the values of the widest European organization. The basis for international condemnation of the crimes of the communist regimes could be the universal validity of the Nuremberg principles (the customary international law principles recognized in the Statute of the Nuremberg International Military Tribunal and the jurisprudence of this Tribunal). The universal validity of these principles has already been recognized by the European Court of Human Rights. The Court emphasized the universal validity of the Nuremberg principles in its decision on admissibility of 17 January 2006 in the case of Kolk and Kislyiy v. Estonia and in the decision on admissibility of 24 January 2006 in the case Penart v. Estonia stating that “responsibility for crimes against humanity cannot be limited only to the nationals of

certain countries and solely to acts committed within the specific time frame of the Second World War”. The Court also noted that the Nuremberg principles and their universal validity were perfectly known to the Republic of Albania, as member state of the United Nations since 1955.

2. INTERNATIONAL STANDARDS OF HUMAN RIGHTS LAW AND HUMANITARIAN LAW

Concepts and definitions

Enforced disappearance is defined as the arrest, detention, abduction or any other form of deprivation of freedom by state agents or by persons or groups of persons with the authorization, support or acquiescence of state agents, followed by a refusal to acknowledge that deprivation of freedom or a refusal to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law. In this document, the minimum standards refer not only to enforced disappearances but also to other cases of disappearances related to socio-political violence and armed conflicts. Even in cases where non-state actors are responsible for the disappearances, kidnappings and/or assassinations, the State is still obliged to search for, clarify and sanction those responsible for these disappearances. These state obligations derive from international law, international human rights law (IHRL) and International Humanitarian Law (IHL), including customary norms that incorporate obligations *erga omnes* and *jus cogens* norms.

Victims are persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights that affect their dignity, including those laws proscribing criminal abuse of power. A victim can also be considered a person, regardless of whether the perpetrator is identified, apprehended, prosecuted or sentenced and regardless of the family relationship between the perpetrator and the victim. Moreover, the expression “victim” includes, as is the case, family members or dependents that have an immediate relationship with the direct victims and the persons who have suffered damages when intervening to assist the victim in danger or to prevent victimization.

Forensic investigation is defined as the technical and multidisciplinary process for analyzing and identifying bodies or remains of victims of enforced disappearance and arbitrary or extrajudicial executions as scientific evidence for the identification and recognition of the circumstances related to their death. This process includes contact with the victims and families, collection of ante mortem information, archaeological excavation and recuperation of findings, analysis of the bodies and/or remains found, identification of the same, preparation of the forensic report, and delivery to the victims and families. The objectives of forensic investigation in cases of serious violations of IHRL and IHL will be to establish the identity of the victims, the cause and the most likely form of death.

3. FORENSIC INVESTIGATION STANDARDS AND PRACTICES

The dead body occupies a central place in the narrative of forensic investigations of mass graves. The importance of retrieving the human remains of combatants and civilians who have died as a result of armed conflict will therefore be discussed, from not only a legal, but also a psychosocial and moral viewpoint. The emergence of the practice of applying forensic expertise to the investigation of crimes in an international forensic context will be examined against the background of the development of these rules. Specific mention of the word exhumation in international humanitarian law texts is exiguous. The reference to exhumations is predominately connected to humanitarian purposes. In response to military practice, it is permissible under the First Geneva Convention of 1949 to exhume temporary graves in order to excavate the remains of deceased soldiers for the purpose of repatriation to their country of origin or to move the bodies to permanent military cemeteries. The 1977 First Additional Protocol contains further reference to exhumation, and here the scope of application is broadened. However, there are strict limits to the range of permissible circumstances under which excavations can be carried out. Although exhumations can be conducted for investigatory purposes, such as those connected to enquiries into war crimes, the permission to carry out the activity is granted to the State on whose territory the grave is located. This represents something of a gap in this

body of law in terms of the regulation of situations where an international criminal tribunal will seek to exhume the graves of victims of armed conflict. Thus the following section highlights some international standards that have developed a propos the forensic exhumation of mass graves. In recognition of the importance of treating the dead body with respect and facilitating the grief and mourning of families and communities left behind, a number of obligations have been codified in international humanitarian law. The requirements include the obligation to search for, collect, identify, handle with dignity and dispose of the dead in a respectful manner. The imperative to implement such legal obligations pertains not just to reasons of a cultural and religious nature, but also to legal and psychosocial concerns. Failure to follow the obligations outlined in international humanitarian law can have serious consequences and, as reflected upon by Tidball-Binz, - [t]he trauma suffered by bereaved families and affected communities as a result of the neglect and mismanagement of their dead, including lack of news of missing relatives, often lasts much longer than the more conspicuous physical effects of catastrophes. Issues pertaining to the application of medical and forensic sciences in the investigation of violations of international humanitarian law have come to receive increasing attention by both practitioners and academics in the past number of years. In addition, in recognition of the value attached to utilizing forensic techniques in the movement to combat impunity, a number of international bodies are currently focusing attention on how the synergy between the respective disciplines can be improved. The Office of the United Nations High Commissioner for Human Rights is particularly important in this regard. A recent report of the Office of the United Nations High Commissioner for Human Rights on the right to the truth and on forensic genetics and human rights highlighted the significant benefits that have accompanied the application of the forensic sciences in an international legal context. Whilst this synergy has undoubtedly resulted in substantial gains in the fight against impunity, as the report also indicates the marriage of distinctive disciplines in a new area has witnessed some operational complications. One of the main difficulties in this regard extends from the lack of a binding legal framework pertaining to the practice of forensically examining human remains for the purposes of reparative measures, including criminal

prosecutorial purposes, followings instances of serious violations of international human rights and international humanitarian law. The following passage articulates perfectly the conundrum: In a national context the application of forensic science is regulated by legislation and detailed domestic legal frameworks or domestically accepted practices that seek to ensure such conformity. At the international level, however, the rules and acceptable practices are often less clear, sometimes contradictory, or even absent altogether. That situation is rapidly changing due to an ever-increasing reliance on forensic methods and techniques, both domestically and across national borders. Although this point may appear axiomatic, international forensic investigations of gross human rights violations, war crimes, crimes against humanity and genocide should ensure compliance with the principles and provisions of international human rights and humanitarian law. Writing nearly a decade ago, Cordner and McKelvie warn that forensic scientists themselves can - wittingly, unwittingly or by virtue of poor practice, participate in violations of human rights. Forensic science is - one of the enabling tools to ensure the full implementation of the rule of law, and as such it needs to conform to the rule of law itself-. A number of guidelines pertaining to the conduct of investigations into alleged atrocities have been advanced by the United Nations. Of note are the Guidelines for the conduct of United Nations inquiries into allegations of massacres and annexed to these Guidelines, the model protocol for a legal investigation of extra-legal, arbitrary and summary executions, known as the Minnesota Protocol. Another effort to standardize methods for the investigation of extrajudicial killings was made with the 1991 United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions. The manual was intended to supplement the -Principles on the effective prevention and investigation of extra-legal, arbitrary and summary executions following the recommendation of the Committee on Crime Prevention and Control, at a session held in Vienna in February 1990. However, these guidelines are not legally binding and investigators are under no obligation to apply these protocols. Routinely, investigators will often develop their own sets of protocols and standard operating procedures specific to the context in which they work. In the absence of a binding legal framework to guide the practice of mass grave exhumations, the ad hoc Tribunals have been

free to develop their own protocols suitable for the challenges, and sometimes idiosyncratic problems, faced in the field. There are very practical reasons why a court will need to develop its own protocols, which can encompass aspects of the United Nations protocols; however, it should be noted that the lack of standardized protocols and operating procedures have resulted in challenges made by the Defense as regard the admissibility of forensic evidence during proceedings before the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda. Codes of practices that are negotiated between the legal system and scientific disciplines and validated by society provide useful non-case specific guidelines to adjudicators. This stands in contrast to the state of play in an international context where - no such negotiated code of practice between international law, scientific disciplines and the international community exists. There is neither a standardized agreement regarding forensic exhumation practices and principles, nor an overarching ethical code for practitioners on international missions. Overall, whilst the application of forensic science techniques to the investigations of crimes falling under the jurisdiction of the United Nations Tribunals can be seen as a very successful endeavor, the issues raised above do, nonetheless, point towards the persisting need to put in place a suitable legal framework to guide the practice of forensic work.

International Consensus on Minimum Standards for Psychosocial Work in Exhumation Search for persons who have been the victims of enforced disappearance, extrajudicial and arbitrary executions

Standard 1: All efforts must be made to search for victims of enforced disappearance and extrajudicial and arbitrary executions until they are found, clarifying the events regardless of when they occurred or requiring prior formal denunciation on the part of the relatives themselves, avoiding by all possible means any obstacles for the search processes.

Finding the relatives

Standard 2: All conceivable efforts must be made to identify, find and facilitate the participation of the possible relatives of victims of

enforced disappearance and arbitrary and extrajudicial executions, before starting forensic investigations and legal proceedings.

Active participation of relatives

Standard 3: Efforts must be made to promote and facilitate the active participation of relatives in the processes to search for the victims of enforced disappearance, extrajudicial and arbitrary executions and in the forensic investigations, favouring the existence of spaces where individuals can organize and reaffirm themselves, as well as take well-informed decisions in view of the technical and legal processes that affect their rights to justice, memory and comprehensive reparation.

Clarifying the events, right to truth and memory

Standard 4: The investigation of cases of enforced disappearance, extrajudicial and arbitrary executions and other human rights violations should be promoted until the events are fully clarified. Likewise, the conditions for the victims to reconstruct their historical memory should be facilitated as part of the process to ensure dignity and non-repetition.

Right to justice

Standard 5: The State must adopt both national and international measures of a legislative, administrative, judicial or any other nature, to ensure the full observance of the individual and collective rights to justice at individual, family, community and social level.

Comprehensive reparation

Standard 6: The rights of victims of enforced disappearance and other human rights violations to comprehensive reparation, contemplated in national and international regulations, must be acknowledged and put into practice and the necessary actions must be implemented in order to fulfil such rights and demands by victims, relatives and communities. The psychosocial perspective must be considered within the individual and collective processes, and the historical experiences, expectations and differential needs for reparation of individuals, families and communities should be actively integrated.

Protection and Security

Standard 7: To make available all necessary means for relatives to search for their loved ones and endeavour to clarify the events in conditions of dignity and security, in contexts of armed conflict or ongoing human rights violations. This security shall also be extended to all information obtained throughout the process, from evidences and proves to testimonies and reserved, personal information.

Constant information and transparency of the processes

Standard 8: During the process of searching for missing or arbitrarily executed persons, the relatives should be constantly informed, in a clear and precise manner, favouring clear decision making about future actions. The right to information includes: (a) access to know about the process of searching for missing or executed persons, the forensic investigation, its actions, implications, consequences and rights; this is particularly relevant on aspects of comprehensive reparation and the right to justice. (b) progress made, limitations and technical and legal relevant elements. (c) access to know the findings to elucidate responsibilities, the conduct of the perpetrators towards the victims, and what were the motives to commit the crimes.

Right to psychosocial care

Standard 9: Psychosocial care should be a fundamental pillar of the duty to provide humanitarian assistance to communities and relatives of victims of enforced disappearances, arbitrary or extrajudicial executions and serious human rights violations. All the necessary steps should be taken in search processes to prevent new forms of victimization of relatives, communities and their companions.

Self-care of people and intervening teams

Standard 10: Provisions should be made for the comprehensive care, physical and psychological, of the people who carry out the technical, legal and psychosocial processes related to the search of victims of enforced disappearance, and extrajudicial or arbitrary executions.

Cultural context

Standard 11: Search processes for missing or executed persons, and forensic investigations, should be based on the culture and meanings of the population teams are working with.

Gender approach

Standard 12: The Psychosocial work should provide accompaniment to women to meet their particular needs during the process to seek truth, justice and comprehensive reparation.

Work with children and adolescents

Standard 13: The treatment given to children and adolescents who are victims, or somehow find themselves involved in cases of enforced disappearance, arbitrary execution or forensic investigations, should be different and special; taking into consideration the utmost interests of minors.

Coordination

Standard 14: Mechanisms to coordinate the actions of all actors involved- such as persons, families, communities, the State, international and non-governmental organizations-, should be guaranteed. This includes the process of gathering and analyzing the information available, the legal, technical and psychosocial actions, as well as follow-up and assessment mechanisms for all actions to be undertaken.

Independent teams

Standard 15: To incorporate local, national and international organizations into the search processes and forensic investigations, whenever the situation requires it, in order to contribute to the effectiveness of the technical, legal and psychosocial processes, as well guaranteeing that the legal and scientific national and international standards are complied with, and the demand to act with transparency, independence and objectivity.

Scientific standards in forensic work

Standard 16: To guarantee that forensic work complies with national and international scientific and legal standards, ensuring that steps

are taken to individualize and handle bodily remains in a proper manner, regardless of their having been identified or not.

4. MANAGEMENT AND DUE DILIGENCE RULES IN FORENSIC INVESTIGATIONS

The process of identifying human remains of missing persons begins with the recovery of those remains from their specific location. An exhumation is the disinterment of a buried body from a designated burial site, cemetery or other place that may be unmarked. Exhumation serves several important purposes, including recovery of the remains for physical examination and analysis for their identification; release of remains to relatives so as to facilitate funeral arrangements and emotional healing; documentation of injuries and other evidence for legal proceedings and to uncover human rights abuses; the search for clues that may assist in the historical reconstruction of events and revelations to create awareness; and acknowledgement that is necessary for healing and to draw lessons for the future of the community. The entire process of exhumation is intricate and delicate, requiring well-trained and highly skilled personnel with expertise in various disciplines of forensic science. Forensic pathologists are generally conversant with these disciplines and able to work with a team of technicians with specialized training in the various fields. These include forensic archaeology, which consists of applying standard archaeological techniques modified to suit forensic crime scene processing where human remains are thought to be present. The archaeological approach provides a rational way to recover remains and reconstruct events, ensuring that evidence is not damaged, recovery is complete and documentation adequate. Another area of expertise is forensic anthropology, which consists of applying methods and techniques from physical anthropology and forensic medicine to legal cases involving skeletal human remains. A basic exhumation team would consist of diggers, a pathologist, an investigating officer, a photographer to serve in documentation, and a transport coordinator. Additional personnel would depend on the specifics of the case, availability of trained manpower and capacity of the local Missing Persons Clearinghouse, or MPC centre. Such centres are described below. The steps in exhumation are inter alia obtaining legal

permission, depending on local jurisdiction; informing interested parties, including relatives where possible; organizing the exhumation team; identifying the site; ensuring that protective health measures are put in place; manual or mechanical excavation; documentation, preliminary examination, removal, collection and transportation of the remains and other specimens and proper identification; and finally sealing of the site for any future investigation and historical purposes, bearing in mind local legislation and cultural sensitivities. The entire exercise must respect the wishes of the communities concerned, judicial proceedings and the demands of professionalism. The remains are transported to a mortuary or designated storage centre for complete examination and analysis. Standard traditional scientific methods must be employed and all findings must be properly documented throughout the process. Specialized techniques may be required in most cases dating back a long time. Correct procedure must be followed in handling the remains and obtaining samples for identification analysis. Acceptable methods of identification include visual examination based on anthropometric characteristics such as age, gender, height and unique identifying features, identification by radiological means, identification by dental records (forensic odontology) and identification by DNA. Most of the identification methods that are particularly useful in cases of missing persons, e.g. DNA testing, are extremely specialized, calling for highly trained personnel as well as expensive equipment and facilities. These factors must be taken into consideration when establishing local and regional MPC networks. After examination and analysis, positively identified remains must be released to the relatives if they so wish. Those that cannot be identified must be “protected” for any future re-examination and re-analysis, or for release to relatives in the event of subsequent positive identification matching; they should preferably be stored unburied in above-ground sepulchres to decrease the organic effect of soil. If that is not culturally acceptable or if there are economic or technical constraints, the remains should be buried in the hardest possible inorganic container or concrete underground storage facility that would allow future retrieval. Throughout the entire process and until the very end, the remains must at all times be accurately labelled and catalogued, with information tracking their movements securely stored in the central database. Whenever more information about missing or unidentified persons is received or

acquired, the database is utilized to make file entries and update personal files that may lead to positive identification matches. Relatives of missing persons would be asked to give DNA samples that would be used in DNA testing.

2.3 Institutional compliance obligations

The International Convention for the Protection of All Persons from Enforced Disappearances is ratified by the Republic of Albania by the law No. 9802, dated 13.09.2007. In accordance with this law, the Republic of Albania declares that pursuant to article 31, paragraph 1 of the Convention, it recognizes the competence of the Committee on Enforced Disappearances to receive and consider communications from or on behalf of individuals subject to its jurisdiction, claiming to be victims of a violation by Albania of provisions of this Convention. Pursuant to article 32, the Republic of Albania declares that it recognizes the competence of the Committee to receive and consider communications, in which a State Party claims that another State Party is not fulfilling its obligations under the Convention. In Albania, the international law enjoys a privileged position in relation to domestic one and it is in this sense that the Convention prevails over domestic law. The Constitution determines the obligation of the Albanian state to implement the international law. According to Article 122 of the Constitution, any international agreement ratified by the Parliament becomes part of the domestic law after its publication in the Official Journal. Article 122 of the Constitution provides that the international law applies directly, except when it is not self-executable and its application requires the promulgation of a law. International agreements ratified by the Parliament have priority over national laws that do not comply with it. Likewise, the norms issued by the international organizations prevail in case of conflict, over the domestic laws when the agreement is ratified by the Republic of Albania. Based on general rules and principles on implementation of legal norms, it can be concluded that the subjects (individuals) may apply and require the application of only those articles of the Convention, the implementation of which is guaranteed by the current legislation and for which there is no need to establish internal mechanisms. Taking into account the obligations deriving from this Convention, in cases where a specific article of the Convention requires the adoption of internal legal provisions or establishment of internal mechanisms for its implementation, we underline the provision of “enforced

disappearance” as a criminal offense. Based on Article 122 of the Constitution, this Convention is considered as part of domestic legislation, but on the other side, all provision of Convention is not self-executable. In accordance of Article 122, it is necessary to identify the provisions of the Convention that can be implemented by the domestic legislation, as well as those that can be implemented in practice by adopting concrete measures. From an overview of actual domestic legislation, it can be concluded that some provisions of the Convention are applied directly or indirectly in the domestic legislation.

5. CURRENT SITUATION AND RECOMMENDED MEASURES

In 2012 the Albanian government stated to engage in taking necessary steps for creating the Disappeared Persons Section within Institute of Integration Former Politically Persecuted, aiming finding the disappeared persons during the period of communism. This section would have the following objectives: (a) Collection of evidence from survivors of the communist dictatorship related executions with or without trial; died persons in prisons; killed persons at investigatory offices or psychiatric hospitals; taken by police forcibly from their homes, and then disappeared without a trace or killed without warning; executed persons in border who attempted to escape, during the period 1945-1991 and then buried in collective graves or unknown location; (b) A database on disappeared persons including data as name and surname, sex, country, date of birth, place and date, and where is not possible the supposed year and circumstances of disappearance; (c) To collect information, to find and monitor the return process and exhumation of disappeared persons, in close cooperation with central and local institutions. To date there is no clear and official evidence that such steps were implemented or the quoted objectives were followed.

6. RECOMMENDED MEASURES AND DISCUSSIONS

The issue of missing persons due to crimes of the communist dictatorship remains an open call for Justice, accountability and right to truth. Despite impressive results to address the issue (the MoU that the Albanian Government signed with the ICMP; some state run

initiatives related to dedicated places of historical memories), very little progress has been done in the finalization of the lists and records of the missing persons, the search of the execution places and potential grave locations still remain not open source to public. The “secrecy” is justified by the complicated procedures of the law on information about the files of the former State’ Security”; yet, there are families extremely frustrated by that. It is becoming urgent to ensure that the process of identifying mass grave locations and burial places should come to an end (where transparencies, reliability, the right to know and access to information are fully guaranteed). As a continuous process, the exhumation of body remaining and identification of the victims should be a process with a local ownership and possibilities for the families to know what happened. Additionally, and even more importantly, some relatives of missing persons are reaching the end of their lives and risk dying without ever knowing the truth about the fate or whereabouts of their loved ones. Regarding the current developments and the information, there are no investigations, or prosecution cases requested by any governmental authority regarding the extrajudicial killings, nor a direct engagement of the General Prosecutor Office related to the opening of the archives of this institution. This reinforces the climate of impunity and lack of truth and justice for the victims. The complicated and difficult process of exhumation requires also for support dedicated to the family relatives (be it medical, moral or material/financial support). Such support has not been addressed so far by any mechanism or legislation. The missing persons’ families should demand from relevant institutions the fulfillment of this obligation and concurrently should file complaints regarding those institutions not meeting this obligation. In order for this right to be implemented the families should be entitled to request court enforcement and, as a part of the court’s decision, a determination of the responsibility of the relevant organ or institution. Compared to the missing right of complaint by the former political persecuted, the tradition of excluding courts from this important process remains a concern. Another concern remains with after- identification processes. The current practices of the last two decades have shown individual initiatives of exhumations, where family relatives paid out-of pocket money to accomplish such process. By personal means, the family relatives have found the burial places of executed or missing relatives. And these were the only

initiatives that have successfully been addressed. While there is no clear information about human remaining, kept as “unidentified” in the forensic institute of Albania. Also no clear information what will happen with the identified remaining: will they be considered veterans, heroes or martyrs? May the law on the veterans apply for their closed relatives? What other rights may be applying to the relatives? There is an immediate need for the adoption of the Rulebook on Marking the Sites of Burial and Exhumation of Missing Persons, as part of the requirements of the UN Expert Group that recall for a comprehensive approach and a national strategy on transitional. Justice to deal with the crimes and gross violations of human rights committed in Albania under communism, yet remaining to be investigated and punished.

CONCLUSIONS

The absence of the legal framework to address the issue of the missing persons as victims of the communist regime has been filled by initiatives or interventions which indeed call for attention: the existing legislation does not provide a definition on the missing persons. This is a call for the authorities to address the crimes terminology, typology and timeframe of the crimes happening and the process’ deadlines (when and how it will end). The existing legislation on witness protection does not impact the process, as the state institutions have granted access of archive files and information which may easily provide information of what has happened with the extrajudicial killings, deaths during investigation and in detention; and executions during the communist dictatorship. As stated above, there are many international laws on the war crimes, communist regime violations and torture crimes that need to be addressed properly in Albania as there is an immediate need to address the process by drafting a law on the victims of communist dictatorship, as torture against victims (Art3.ECHR) and atrocities and as violation of the right to life (Art.2.ECHR). Hopefully, this paper will serve as an awareness message for the experts who deal with the issues of victims of communist dictatorship to try to raise their voice and play a role in prompting the government to apply the standards of the international laws provided above.

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