

## LEGAL PRINCIPLES AND MECHANISM IN RELATION TO MISSING PERSONS IN SFRY AND AP KiM\*\*\*

**Abstract:** *Resolving the issue of missing persons in the former SFRY, including cases of disappearances and abductions in Kosovo and Metohia, is an important humanitarian and political issue. The process of reconciliation is based on the building of multiethnic societies democracy, the rule of law and tolerance in the region largely depend on solving this complex problem. At the same time, it is the obligation of the competent authorities towards the families of missing persons who have the right to know the truth about the fate of their loved ones. As the solution of the problem of missing persons should be approached primarily as humanitarian law, it was noticed that from the very beginning of this process there is a high degree of politicization. Although the need to find out the truth about the fate of persons who disappeared during the armed conflicts is expressed primarily among their family members, and then sporadically appears on the agenda of meetings of statesmen in the region, in reality there are real obstacles to the search for missing persons. These obstacles range from insufficient capacity of state bodies involved in the search for missing persons, insufficient financial resources, to a lack of political will to improve regional cooperation and a determination to make the search for missing persons more efficient.*

*As a consequence of the described situation, it is evident that the process is slowing down and giving priority to activities on the ethnic rather than humanitarian principle, which would enable this problem to be solved to approximately the same scope and dynamics in the entire region. Also, an insufficient degree of cooperation and openness in the exchange of information between participants in the process and cooperation for the necessary planning and synchronization of activities and the most precise determination of the dynamics in the process of exhumations and identifications in the region was noticed. Therefore, the denial of information on abductees and missing persons was characterized*

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*as a gross violation of the human rights of their family members. On the other hand, there remains an obligation that all perpetrators of crimes such as kidnappings and other acts of violence against civilians must be brought to justice in accordance with international norms and applicable domestic law.*

*Therefore, the aim of this paper is to show the importance of consistent application of international legal frameworks in the protection of the rights of missing persons and their families, with special reference to the relationship between international and national legal framework for clarifying the fate of missing persons.*

**Keywords:** *Missing persons, Legal framework, Legal cooperation.*

## 1. Introduction

One of the most severe consequences of the armed conflicts in the former SFRY and the Autonomous Province of Kosovo and Metohija is the large number of persons listed as missing. The number of missing persons kept in the records of the Commission for Missing Persons is<sup>1</sup>: 1,746 in the Republic of Croatia, 97 in Bosnia and Herzegovina and 570 in the Autonomous Province of Kosovo and Metohija. Out of that, there are 371 persons on the list of missing persons of the Republic of Serbia (citizens of the Republic of Serbia and persons for whom families submitted a request for search through the JCK) in the Republic of Croatia; There are 97 people in BiH, most of them members of the former JNA who disappeared during its withdrawal from Tuzla and Sarajevo in 1992, as well as several individual cases of disappearances, mostly in the area of Posavina and Kupres. Also, over 350 families of missing persons, citizens of BiH, who fled to the Republic of Serbia during the armed conflicts and who permanently settled on its territory and submitted requests for the search for the missing person through the Serbian Red Cross, were registered in the Republic of Serbia and on Kosovo and Metohija, about 5,800 people went missing after 1998, and the fate is still unknown for 1,658 people, of whom about 540 are Serbs and non-Albanians.

The Republic of Serbia has a legitimate interest in resolving the fate of missing persons of Serbian nationality, citizens of the Republic of Croatia, including missing persons in the actions of the Croatian Army and Police „Flash” and „Storm” in accordance with the signed Agreement and Protocol on Cooperation, bearing in mind that most of their families as refugees now live in the Republic of Serbia, and many have already permanently regulated their civil status on its territory. About 680 people have been reported to the International Committee

<sup>1</sup> Komisija za nestala lica Vlade Republike Srbije obrazovana je Odlukom Vlade Republike Srbije 8. juna 2006. godine („Službeni glasnik RS”, br. 49/06, 73/06, 116/06, 53/10 i 108/12) sa mandatom da se bavi rešavanjem problematike nestalih lica u oružanim sukobima na prostoru SFRJ i AP Kosovo i Metohija.

of the Red Cross, while the number of missing persons is significantly higher according to the records available to the Commission, and work is underway to verify these cases according to the ICRC criteria (695). In addition, the list of missing persons in the Republic of Serbia in BiH includes 97 people, most of them members of the former JNA who disappeared during its withdrawal from Tuzla and Sarajevo in 1992, as well as several individual cases of disappearances, mostly in Posavina and Kupres. Also, over 350 families of missing persons, citizens of BiH, were registered in the Republic of Serbia, who fled to the Republic of Serbia during the armed conflicts and who settled permanently on its territory and submitted requests for the missing person through the Serbian Red Cross. Also, the Commission has data for another 30 people who disappeared in connection with the conflict in the Autonomous Province of Kosovo and Metohija, and these cases are in the verification phase. The kidnappings in Kosovo and Metohija began in 1998, and after the adoption of Security Council Resolution no. 1244 and the signing of the Military-Technical Agreement in Kumanovo (June 10, 1999), kidnappings and disappearances in Kosovo and Metohija did not stop, even during June and July 1999 they were much more intense, and the victims were civilians of Serbian and other non-Albanian nationalities.

## **2. Scopes and limitations of established international legal frameworks in the protection of the rights of missing persons and their families**

The states of the region that emerged from the disintegration of the former Socialist Federal Republic of Yugoslavia still owe to the families of 10,315 missing persons<sup>2</sup> a full and impartial investigation into the circumstances under which their loved ones died or are missing, and also fail to punish those responsible for the crime. In Serbia, the legislative framework does not recognize the families of persons still considered missing as civilian victims of war, as the reparations system is flawed and discriminatory. The issue of missing persons during the conflict in the former SFRY and AP Kosovo and Metohija is a multi-dimensional challenge for the states and societies in the Western Balkans. Under the term missing in this article, we use the following definition that they are all persons whose disappearance is the result of an international or non-international armed conflict or internal violence.<sup>3</sup> The International Committee of the Red Cross provides the following definition: "A missing person is a person whose whereabouts are unknown to his or her relatives and / or who, on the basis of reliable information, has been reported missing under

<sup>2</sup> Data from the International Committee of the Red Cross, the Committee of the Red Cross from 13 June 2018, HLCIndexIn: 25-F134245. According to the data of the International Committee of the Red Cross from May 2018, 6,614 people are wanted in BiH, 2,051 in Croatia, while the number of missing in Kosovo is 1,650.

<sup>3</sup> International Review of the Red Cross was dedicated to the theme of missing persons. See International Review of the Red Cross, Vol. 84, No. 848, December 2002, particularly p. 823

national law relating to international or non-international armed conflict, domestic violence or disturbances, natural disasters or any situation that may require the intervention of the competent authority.”<sup>4</sup> During events that abound in the widespread use of armed violence, persons disappear and, unfortunately, their destinies for many reasons remain unknown to both families and social collectives as a whole. We can see that missing persons can be classified as members of armed formations, civilians and children. When it comes to members of armed formations, due to changes in front lines, dynamics and fragmentation of control areas, asymmetric attacks, ambushes further complicate their fate, accurate identification of the dead, status in the context of capture . An additional challenge is the participation of paramilitary and terrorist formations characterized by the absence of military diaries, as well as respect for the Geneva Conventions. Article 3 of the Geneva Convention relative to the Treatment of Prisoners of War specifies “Towards persons who do not take a direct part in hostilities, including members of the armed forces who have laid down their arms and persons incapacitated for combat due to illness, wound, imprisonment or any other cause , shall be treated, at all times, humanely, without any unfavorable discrimination based on race, color, religion or belief, sex, birth or property status or any other similar measure<sup>5</sup>. For that reason, another important thing is posed as a challenge, and that is the classification of people into fighters (in the broadest sense) who were captured, liquidated or disappeared on the one hand, and civilians who were captured and later systematically liquidated by such irregular formations. The gross violation of the Geneva Conventions and the accompanying protocols shows all the dimensions of the armed conflicts on the territory of the former Yugoslavia. Legitimate, and the actions and operations of regular forces against informal armed forces recorded in military diaries, from a practical point of view, make it difficult to identify members of informal formations. The absence of the application of international law of war, which regulates the status of guerrillas or insurgents, creates considerable confusion when identifying the missing and later liquidated. The Geneva Convention relative to the Protection of Civilian Persons in Time of War guarantees protection to persons even in the event of non-international conflicts. These are clearly guaranteed the status of civilians. „Persons who do not take part directly in hostilities, including members of the armed forces who have laid down their arms and persons incapable of fighting due to illness, wound, imprisonment, or any other cause, will be treated at any opportunity, humanely, without any unfavorable discrimination based on race, color, religion or belief, sex, birth or property status, or any other similar measure.”<sup>6</sup>. In the event that a person

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<sup>5</sup> [https://www.tuzilastvorz.org.rs/upload/Regulation/Document\\_\\_sr/2016-05/zen\\_konven-cija\\_3\\_lat.pdf](https://www.tuzilastvorz.org.rs/upload/Regulation/Document__sr/2016-05/zen_konven-cija_3_lat.pdf)

<sup>6</sup> [https://tuzilastvorz.org.rs/upload/Regulation/Document\\_\\_sr/2016-05/zen\\_konven-cija\\_4\\_lat.pdf](https://tuzilastvorz.org.rs/upload/Regulation/Document__sr/2016-05/zen_konven-cija_4_lat.pdf)

endangers the security of one party to the conflict by his actions, or indulges in espionage and sabotage activities, he still enjoys the right to fair and adequate treatment until the end of the legal proceedings, and such persons are protected from inhuman and degrading treatment until the end of the proceedings. most armed conflicts result in the death penalty.

If the party to the conflict did not wear the prescribed uniforms with clear insignia, but civilian clothes without markings, it imposes justified suspicion and dilemma whether they are civilians who are the subject of liquidation or members of an informal formation who were later buried during the clearing of the terrain. Protocol I of the Geneva Convention, Section III, which refers to missing and deceased persons, provides „As soon as the circumstances allow, and at the latest after the cessation of active hostilities, each party to the conflict should find persons whose disappearance was announced by the opposing party.” The said opposing party should provide all useful information about these persons in order to facilitate their finding. „<sup>7</sup> When it comes to missing persons, the benefit of the suspicion must be on the side of the victim. Because according to the very legal logic and the spirit of the regulations, for every suspicious and unexplained death, an investigation is opened on the basis of suspicion of a committed murder. Following this logic, every mass grave, every missing person should enjoy the status of a victim of armed conflicts, and his family has the right to the truth, by clarifying the fate of missing persons but also with adequate legal qualifications of war crimes related to the fate of missing persons.

Despite the internationally recognized rules and customs of war, the signatory states to the Geneva Conventions and Protocols recognized all the horrors and horrors of armed conflicts of international and non-international character, and in 1949 began to regulate such conflicts, emphasizing the protection of all participants. Since Hugo Grotius, legal science has been constantly regulating an area that is by nature quite uncontrolled. Significant efforts have been made to regulate the rights and obligations of war victims, including missing persons. The right to the truth, as a human right, is described in international documents. Thus the European Convention for the Protection of Human Rights and Freedoms<sup>8</sup> of 4 November 1950 in the First Part in Articles 2, 3, 4, 5. it is determined by the prohibition of illegal and discriminatory treatment of basic human rights and freedoms that are denied to missing persons and their families.

From the point of view of the relevance of detecting, listing and identifying missing persons, the role of the International Committee of the Red Cross must be a starting point and a credible basis as a source of knowledge about the circumstances of the disappearance. Maybe someone will return to the obliga-

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<sup>7</sup> [https://tuzilastvorz.org.rs/upload/Regulation/Document\\_\\_sr/2016-05/zen\\_protokol\\_1\\_lat.pdf](https://tuzilastvorz.org.rs/upload/Regulation/Document__sr/2016-05/zen_protokol_1_lat.pdf)

<sup>8</sup> [http://www.tuzilastvorz.org.rs/upload/Regulation/Document\\_\\_sr/2016-05/evr\\_konven-cija\\_ljudska\\_prava\\_lat.pdf](http://www.tuzilastvorz.org.rs/upload/Regulation/Document__sr/2016-05/evr_konven-cija_ljudska_prava_lat.pdf)

tion of the parties (which does not exclude) to report and declare the missing, but from the point of view of objectivity and protection from manipulation, it is necessary to systematically articulate this process through a third independent and credible party such as IC Red Cross.

Report<sup>9</sup> on the activities of IC Red Cross shows that after ten years of conflict on the territory of SFRY and AP KiM, there were approximately 25,000 missing persons. The Humanitarian Law Center in its publication dated July 13, 2018. states that for a little more than 10,000 missing destinies, it is still unclear and has no legal epilogue.

Despite a long-standing and legally regulated mechanism for regulating armed conflicts, the fate of missing persons remains a reality in the post-conflict area of the Western Balkans. Over time, and in this case decades, certainty in shedding light on the fate of the missing has become increasingly difficult. The role of legal science and established mechanisms are losing their power under the onslaught of daily politics, interstate relations, the lack of a common vision of the future of the region and security identity.

International humanitarian law has always faced the challenge of legitimacy. Declarative recognition of norms of international humanitarian law, its implementation in domestic legislation are not a necessary guarantee of application of the spirit of international humanitarian law and its norms, but often reflect a testing ground for manipulation, geopolitical struggle, dispute of territorial claims and often inflame genocidal intentions that did not necessarily exist. The need to establish international humanitarian law was the need to humanize armed conflicts in order to protect the minimum of human security and the consequences of armed action. However, the experiences of the wars on the territory of the former SFRY and the Autonomous Province of Kosovo and Metohija teach us that the opposing parties sought to evade international humanitarian law, and the political elites put the victims of their own crimes in the function of their own propaganda. As suffering is an integral part of armed conflicts, resolving the fate of missing persons should be interpreted in the context of an integral part of the reconciliation process. The multidimensional process of transitional justice aimed at summarizing the violent past should open the way to peace, democracy, respect for human rights and address the issue of missing persons from a certain community, due to violations of international humanitarian law and human rights in most cases.<sup>10</sup>

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<sup>9</sup> <https://reliefweb.int/report/serbia/icrc-activities-fr-yugoslavia-update-jan-2002>

<sup>10</sup> [https://international-review.icrc.org/sites/default/files/irrc\\_862\\_7.pdf](https://international-review.icrc.org/sites/default/files/irrc_862_7.pdf)

### **3. International and national framework for clarifying the fate of missing persons**

With the help of legal sciences, the society, through laws and institutions, puts into function international legislation and undertaken obligations in order to reveal the fate of missing persons. In this regard, the Republic of Serbia, in accordance with the Constitution and accompanying laws, has established the War Crimes Investigation Service, the War Crimes Prosecutor's Office, the Commission for Missing Persons of the Government of the Republic of Serbia, the Assembly Committee of the RS National Assembly, on this should be added the International Tribunal for the Prosecution of Those Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, international and bilateral treaties.

The role of law in discovering the fate of the missing is primarily in creating a normative and institutional framework. In that way, the right to the truth is satisfied, and the perpetrators of crimes are punished. In this process, the Republic of Serbia is fulfilling its obligations from the negotiating chapter of the 24th Accession Negotiations with the EU. In addition to the right to the truth, justice is also served for the missing and those who are victims of war crimes. Punishing the perpetrators within a reasonable time and in a transparent process reduces the space for manipulating the missing and killed. Only in that way it is possible to ensure optimal reconciliation among former compatriots.

The role of all presented domestic and international conventions, resolutions, laws and institutions fulfills its *de facto* and *de jure* function. Unfortunately, the burden of war crimes and violent disintegration from previous cases shows that it is very difficult to complete such processes without international assistance, such as the Hague Tribunal. Dealing with war crimes removes the burden of responsibility of future generations and provides justice for the victims.

The families of the victims can intervene in the various stages of the criminal proceedings and express their right to know the fate of their loved ones.<sup>11</sup> This right in the Republic of Serbia can be expressed before the prosecutor's office, the police, the office for missing persons of the Government of Serbia, the Red Cross search service. Regarding the issue of missing persons, it is not enough to treat it as an investigative and criminal procedure, but as an activity that protects human rights and in the center of which is a person. UN Human Rights Council by Resolution 9/11<sup>12</sup> relating to the Right to Truth is unequivocally stated "Recognizing, in cases of gross human rights violations and serious violations of international humanitarian law, the need to study the relationship between the right to truth and the right to justice, the right to an effective remedy and compensation and other relevant rights. „ From this document, we see

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<sup>11</sup> Član 32 Protokola I

<sup>12</sup> [https://ap.ohchr.org/documents/E/HRC/resolutions/A\\_HRC\\_RES\\_9\\_11.pdf](https://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_9_11.pdf)

the need for legal science to include elements such as the right to truth, the right to justice and the right to compensation. Precisely these three „rights” represent the basis of the dispute between the states of the former SFRY and the Autonomous Province of Kosovo and Metohija.

#### 4. Three „rights” as guiding principles for dealing with missing persons

##### 4.1. *The right to the truth*

The right to the Truth is one of the basic transitional rights. It does not only imply a mere knowledge of whether the missing person is dead or alive, but it also implies a true and timely statement of information from the investigative procedure, but also a judicial verification of the collected evidence. Only with the right to the truth treated in this way can the victim’s family partially find satisfaction and satisfaction of justice. The simple knowledge of the fate of a missing person that has not been verified by the court and announced in the verdict creates a feeling of revolt, desire for revenge and increases the space for manipulation, and makes the victim’s family vulnerable to radicalization. At the international level, the two ad hoc international criminal tribunals for Rwanda (ICTR) and for the former Yugoslavia (ICTY) have adopted a different approach and offered victims, including relatives of missing persons, very limited autonomous insight, except for those most likely to serve as witnesses for prosecution<sup>13</sup>. Through looking at criminology in a holistic sense and its connection with the fields of social sciences and humanities, it experienced its legal formulation in the Statute of the International Criminal Court, Article 68 (3). The statute recognizes the right of the victim in the secondary sense to participate in all stages of the proceedings and to demand reparations. At this point, we see that political crime depicts „the core of the understanding of criminology and the entire normative system of society” (Schafer, 1974). Progress in understanding the victimization of relatives of the victim or missing person is a very important step in fulfilling the right to the truth, the right to know the fate of loved ones.

By respecting the right to the truth, it contributes to the overall reconciliation in the region, prevents the manipulation of victims and eliminates the preconditions for the germination of hostilities. In the absence of the right to the truth, the vicious circle of violence remains present in post-conflict societies, the participants in the conflict are left to the elements to base their attitudes and beliefs on emotional and propaganda content. The unexplained fate of the missing is often abused for the purpose of a one-sided interpretation of armed conflicts. The use of hybrid actions is often present in the context of victims and missing persons. Thus, Balkan and non-Balkan factors incite interethnic hatred

<sup>13</sup> [https://international-review.icrc.org/sites/default/files/irrc\\_862\\_7.pdf](https://international-review.icrc.org/sites/default/files/irrc_862_7.pdf)

and continuity of divisions through manipulation of the numbers and fate of the missing. If we know that the hybrid war is defined by the Cambridge Dictionary as „the use of a range of different methods to attack the enemy, for example, spreading false information, or attacking important computer systems, instead of traditional military actions”<sup>14</sup>. The undiscovered fate of missing persons is subject to the abuse of hybrid actions through the placement of false information and misinformation about the fate of the missing, attributing collective responsibility to certain ethnic groups, continuous maintenance of collective war and hostile psychosis among former participants in the conflict. With all of the above, we see that the right to truth is a challenge directly proportional to the length of truth-seeking. The longer the secondary victim waits for his right to the truth, the more certain it is that the rationalization mechanism will do its thing to lose interest in shedding light on the fate of the missing, and thus the culprits may never be discovered. In the lines above, we have stated that the right to the truth applies to the relatives of the missing, as well as to the whole society. In this context, we return again to hybrid actions, in that sense certain circles, informally called „anti-Hague lobby” by their actions for ideological reasons, denied the right to truth to the entire national collective. A multidisciplinary analysis can be conducted on the work and functioning of the „Hague Tribunal”, but the legitimacy of that court cannot be disputed. „In the public discourse, the exponents of the so-called anti-Christian lobby especially emphasize the legal elements. However, the so-called the legal arguments of the anti-Hague lobby are not legally grounded at all (they are, by their nature, political and ideological)”<sup>15</sup>. The activities of delegitimizing the „Hague Tribunal” and the resulting indictments and verdicts have degraded justice, and diminished confidence in the Tribunal, which was established no less than in accordance with Chapter VII of the UN Charter.

#### ***4.2. The right for justice***

The right to justice is a human right that cannot be denied, and is under international monitoring under the EU Convention on Human Rights and Freedoms. In that sense, the Republic of Serbia has adopted a National Strategy for War Crimes Prosecution. The strategy reflects the political will and commitment to fully investigate war crimes and missing persons cases. The strategy pays special attention to empowering victims and witnesses. In that sense, „The goal of the activities envisaged in the National Strategy is to increase the security of witnesses in the protection system and increase trust in the protection system. Information from war crimes investigations containing data on protected witnesses may not be available to the public. It is necessary to ensure that witnesses

<sup>14</sup> Cambridge Dictionary ,<https://dictionary.cambridge.org/dictionary/english/hybrid-warfare>

<sup>15</sup> [http://www.slilic.com/bibliografija/2005\\_Antihaski\\_lobi.pdf](http://www.slilic.com/bibliografija/2005_Antihaski_lobi.pdf)

to war crimes testify without fear. They must be free from threats, intimidation and any other form of psychological pressure.”<sup>16</sup> Chapter 5 of the Strategy pays special attention to the fate of missing persons, through the improvement of the normative framework important for resolving the fate of missing persons as well as the improvement of institutional and administrative capacities of state bodies involved in the process of determining the fate of missing persons. It is through the set goals that the contribution of legal science in terms of improving the existing systemic solutions is reflected. Through a review of world practice, comparative legal and correlative analysis, frameworks can be offered for establishing a more efficient system for clarifying the fate of the missing. At this point, perhaps immodestly, we conclude that law, unfortunately, in practice, is not older than politics. All future and present obligations<sup>17</sup>, strategies, recommendations provide a sufficient basis for the effective work of investigative bodies. On the other hand, the post-Yugoslav space is burdened with inadmissible comparisons and hate speech, which is reflected in the non-acceptance of other people’s victims, the imposition of thesis substitutions in the context of „Srebrenica did not happen, and they are in Kravice”, the social discourse the very concept of reconciliation and cooperation of political elites. It is in this context that the National War Crimes Strategy represents a significant contribution to overcoming retrograde narratives, but also a strong political will to bring the legal issue of war crimes and missing persons to a judicial epilogue.

When it comes to the right to justice, it is of great importance when this principle is advocated from the highest state addresses, but it is quite clear that the right to justice, unfortunately, is not a normative legal matter but a political one. From the point of view of criminal proceedings, legal science should be put in the function of qualitative analysis of current proceedings, from the point of view of the number of repeated first instance proceedings, trial obstruction, while victimology could provide answers why more and more victims refuse to participate in proceedings. criminal policy analysis.

According to the report of the Humanitarian Law Center, the search for missing persons „is progressing slowly, due to the lack of an adequate legal framework and the passive attitude of the competent institutions.” A law has not been adopted that would regulate the legal status of the families of missing persons, and they remain one of the most vulnerable categories in society.”<sup>18</sup> Satisfaction of the right to justice is essential so that secondary victims, ie relatives, have more efficient access to justice.

<sup>16</sup> [https://www.tuzilastvorz.org.rs/upload/HomeDocument/Document\\_\\_sr/2016-05/p\\_nac\\_stragetija\\_lat.PDF](https://www.tuzilastvorz.org.rs/upload/HomeDocument/Document__sr/2016-05/p_nac_stragetija_lat.PDF)

<sup>17</sup> Više na <https://tuzilastvorz.org.rs/sr/propisi/zakoni>

<sup>18</sup> [http://www.hlc-rdc.org/wp-content/uploads/2016/06/izvestaj\\_o\\_TP\\_2013-2015.pdf](http://www.hlc-rdc.org/wp-content/uploads/2016/06/izvestaj_o_TP_2013-2015.pdf)

### **4.3. Right for compensation**

Without the Law regulating the legal status of the families of missing persons, it is difficult to talk about compensation. This legal matter is further complicated by the fact that the former states of SFRY and AP KiM are no longer part of the same constitutional and legal system. From a civil point of view, the issue of compensation for damages after the end of court proceedings remains open. Bearing in mind that over time the fate of missing persons becomes quite uncertain from a criminal-legal point of view, from the point of view of who is responsible for the disappearance, when the disappearance was happened, whether the disappearance is a consequence of abduction or capture, whether the person is reported missing parties to the conflict, whether the person was deprived of life and under what circumstances (especially in the case of persons who were premature children), who is subjectively responsible for the murder, under whose protection the person was formally missing. All of these are issues that make it difficult to complete the missing person status process. Unfortunately, many former republics hastily offered a Solomonic solution to the families of the missing, to declare their relatives dead, due to the bureaucratic-administrative lack of sensibility. In practice, most such actions were conditioned by an existential motive in order to exercise the right to a pension or other type of benefit.

The question of the responsibility of the newly formed states is also questionable from the point of view of territorial jurisdiction and thus responsibility, if we return to the beginning of this paper where we notice that there was an intensive and dynamic movement of state and non-state formations.

## **CONCLUDING REMARKS**

The wars fought in the former Yugoslavia during the 1990s, and then on the territory of the Autonomous Province of Kosovo and Metohija, left severe and long-term human, social and material consequences in the successor states of the former Yugoslavia. Of the approximately 130,000 people who lost their lives, more than 10,000 are still listed as missing. A large number of missing persons recall the failure of the state to protect the preservation of basic human rights, while failures to make the search for missing persons more efficient indicate a failure to establish the rule of law. Such a large number of missing persons calls on states to make additional efforts to ensure that the competent institutions, including prosecutors offices, courts and the police, effectively investigate the circumstances under which people went missing. Given that Serbia still faces serious challenges when it comes to the search for missing persons, a more coherent strategic approach and the effective implementation of all available mechanisms that can make this process more efficient are critical.

Addressing the issue of missing persons, even though it is a priority of humanitarian rights, was accompanied from the very beginning by a high degree of politicization, which resulted in slowing down the process and prioritizing activities on ethnic rather than humanitarian principles, which would allow to solve this problem throughout the region. Insufficient degree of cooperation and openness in the exchange of information between participants in the process and cooperation for the necessary planning and synchronization of activities and the most precise determination of the dynamics in the process of exhumations and identifications in the region was noticed.

Thus, we are witnesses that almost 20 years since the end of the armed conflicts in the former SFRY, in which Serbia participated, have passed in the absence of a decisive confrontation with the legacy of mass human rights violations. However, the consequences of the war past, as well as the consequences of not facing the past, are difficult to ignore. The number of 10,315 missing persons who are still being searched for, that is, thousands of families who are still waiting for answers about the fate of their loved ones, do not allow the countries of the region not to deal with the difficult legacy of the past.

The process of porting for missing persons, often inefficient, is a reflection of a lack of political will, but insufficient capacities of institutions responsible for searching, passivity of law enforcement agencies in searching for missing persons, prosecuting those responsible and preventing access to state archives relevant to the missing persons process. As the current dynamics of clarifying the fate of missing persons does not adequately correspond to the humanitarian dimension of this problem, this paper sought to point out the fact that the passage of time reduces the chances of finding missing persons, and that in addition to the legal aspect this process needs to be approached holistically which are available to both international and official institutions of the countries of our region.

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## PRAVNI PRINCIPI I MEHANIZAM U VEZI S NESTALIM LICIMA U SFRJ I AP KiM

**Sažetak:** Rešavanje pitanja nestalih u bivšoj SFRJ, uključujući slučajeve nestanka i otmica na Kosovu i Metohiji, važno je humanitarno i političko pitanje. Proces pomirenja zasnovan je na izgradnji multietničkih društava demokratije, vladavine zakona i tolerancije u regionu u velikoj meri zavise od rešavanja ovog složenog problema. Istovremeno, obaveza je nadležnih organa prema porodicama nestalih osoba koje imaju pravo da znaju istinu o sudbini svojih najmilijih. Rešavanju problema nestalih trebalo bi pristupiti pre svega primenom humanitarnog prava, ali primećeno je da od samog početka ovog procesa postoji visok stepen politizacije. Iako se potreba za otkrivanjem istine o sudbini osoba nestalih tokom oružanih sukoba izražava prvenstveno među članovima njihovih porodica, a zatim se sporadično pojavljuje na dnevnom redu sastanaka državnika u regionu, u stvarnosti postoje stvarne prepreke potraga za nestalim osobama. Te prepreke se kreću od nedovoljnog kapaciteta državnih organa uključenih u potragu za nestalim licima, nedovoljnih finansijskih sredstava, do nedostatka političke volje za unapređenjem regionalne saradnje i odlučnosti da se potraga za nestalim licima učini efikasnijom. Kao posledica opisane situacije, evidentno je da se proces usporava i daje prednost aktivnostima na etničkom, a ne na humanitarnom principu, što bi omogućilo da se ovaj problem reši u približno jednakom obimu i dinamici u čitavom regionu. Takođe, primećen je nedovoljan stepen saradnje i otvorenosti u razmeni informacija između učesnika u procesu i saradnji za neophodno planiranje i sinhronizaciju aktivnosti i najpreciznije određivanje dinamike u procesu ekshumacija i identifikacija u regionu. Stoga je uskraćivanje informacija o otetim i nestalim osobama okarakterisano kao grubo kršenje ljudskih prava od članova njihovih porodica. S druge strane, ostaje obaveza da svi počinioci zločina poput otmica i drugih akata nasilja nad civilima moraju biti izvedeni pred lice pravde u skladu sa međunarodnim normama i važećim domaćim zakonom. Stoga je cilj ovog rada da prikaže važnost dosledne primene međunarodnih pravnih okvira u zaštiti prava nestalih i njihovih porodica, sa posebnim osvrtom na odnos međunarodnog i nacionalnog pravnog okvira za razjašnjavanje sudbine nestalih lica.

**Ključne reči:** nestala lica, pravni okvir, pravna saradnja