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CLUSTER ONE EU NEGOTIATIONS PLATFORM – ALBANIA

POLICY PAPER

“On the measures undertaken by the responsible actors for guaranteeing the human dignity of enforced and involuntary disappeared citizens during the communist era in the country”





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Abbreviations

Authority for Information on Documents of former State Security – AIDSSH

Albanian Helsinki Committee – KShH

Independent Qualification Commission – KPK

International Committee on Enforced Disappearances – ICMP

Institute for Legal Medicine – IML

Ministry of Internal Affairs – MIA



I. Background

Every democratic state, whose value foundations are based on the human dignity, has the responsibility to establish effective mechanisms for ensuring sustainable social peace as well as process and address the legacy of the past. Part of this responsibility is also finding the missing persons as well as shed light into the circumstances of their disappearance. The investigation on the fate of disappeared persons serves as reinstatement of justice to all involved families.

During the communistic regime, it is estimated that circa 6,000 persons disappeared in Albania. According to the official data, circa 5,501 persons were found guilty for political reasons and were executed during this period¹, whereas their bodies were never returned to the families. Official data show also that 987 politically imprisoned persons died for different causes in prisons or other pre-detention centres in Albania², while the whereabouts of their remains are unknown to the survived families.

In a questionnaire published online by Kujto Foundation, results that from the families of 175 victims disappeared during communism, more than **55%** admitted having conducted private researches in state institutions and archives for discovering their fate, while **45%** mentioned that they had not carried out researches³. Furthermore, around 71% of families who have conducted research, failed to find the whereabouts, while 29% have found them; 50% of the families declared that their family members have been executed, with or without trial during the communist regime; 23% declared that they died while in detention or internment camps. Circa 7% reported torture by the investigator as a cause of death, while 6% execution on the borders. **Around 62% of interviewee** declared that they requested assistance from the authorities such as Ministry of Internal Affairs, Authority for Information or the police. However, **61% assessed negatively** the reactions from these institutions.

Notwithstanding all acknowledged figures, the establishment of the legal environment for finding, identification and recovery of disappeared persons, began only in 2007 with the approval of Law no.9802, dated 13.9.2007 “On ratification of the international convention of United Nations “On the Protection of All Persons from Enforced Disappearance”.

¹Report of ICMP ALBANIA, MISSING PERSONS FROM THE COMMUNIST ERA: A NEEDS ASSEMENT, 2021, pg.4, <https://www.icmp.int/wp-content/uploads/2021/03/icmp-gr-wb-152-6-alb-W-doc-albania-missing-persons-from-the-communist-era-a-needs-assesment.pdf>

² Ibid.

³ Searches on disappeared victims during communism, between the clash of institutions, <https://kujto.al/kerkimet-per-viktimat-e-zhdukura-te-komunizmit-peng-i-perplasjes-mes-institucioneve/>



The Authority for Information on Documents of former State Security was established in 2015, upon approval of Law no.45, dated 30.04.2014 “On the right to information on the documents of the former State Security in the Socialist People’s Republic of Albania”, as amended. The amendments introduced by the Assembly in July 2020 strengthened the role of the Authority and enlarged the competences by including cooperation with central and local state institutions in the process of identification and recovery of the remains of disappeared and executed persons during communism, as well as for taking the measures for the protection and storage of in adequate places, for all those identified, or which shall be identified as burial sites.

In total 280 requests have been registered with the Authority for the period 2017-2023 for clarifying the fate of disappeared⁴. This constitutes only 4.5% of the cases of the convicted for political purposes, who were executed during the communist regime.

17 years later, notwithstanding the establishment of a legal and regulatory framework in accordance with the best standards, an effective system with significant records (track record) on the finding, identification and recovery of the remains of the disappeared, is not yet in place. Among the actors, it is an acknowledged fact that the few cases where identification and discovery of remains was successful, this is due to a private endeavour of the family. Since in the early stages, this process is considered ‘*a private matter*’, managed entirely by the families of the victims, who have opted to not involve state structures, for different reasons.

⁴ Annual Report of the Authority for 2023



II. Legal and regulatory framework

Albania has ratified the ECHR in 1996, which foresees protection by law of right to life and established the procedural obligation to conduct investigations (Article 2). The main aim of the investigation based on Article 2, as an international instrument of human rights, is to ensure the effective implementation of national legislation, the protection of right to life and accountability.

The approval of Law no.9802, dated 13.09.2007 “On ratification of the international convention of United Nations “On the Protection of All Persons from Enforced Disappearance” foresees other specific obligations pertaining to the finding, identification, and recovery of disappeared bodies.

Circa 10 years later, on 18.07.2018, the Council of Ministers of the Republic of Albania signed with ICMP a cooperation agreement, which entered into force on 3.05.2019⁵. The main purpose of this agreement was to define the scope of cooperation between the parties and exercise of functions of ICMP, establishment of an ICMP office in Albania, the status of ICMP in Albania and the manner of functioning, status and treatment of the Commissioners, officials, and experts of ICMP.

The legal amendments adopted in July 2020 upon Law no. 45/2015 “On the right to information on the documents of the former State Security in the Socialist People’s Republic of Albania”, defined the Authority, as the coordinating institution, responsible for the cooperation with central and local state institutions in the process of identification and recovery of the bodies of disappeared or executed during communism as well as for taking the measures for the protection and storage in the most appropriate manner, in the places where they are or will be identified as burial sites (Article 22, paragraph 1). Furthermore, it is provided that the rules of collaboration between the Authority and central and local state institutions for the identification and recovery of the remains are foreseen in bilateral agreements or multi-party agreements signed for this purpose (paragraph 2). The Council of Ministers shall adopt a decision which defined the responsible authorities and the modalities for the protection and storage of the identified or alleged burial sites (paragraph 3). The above-mentioned DCM has not been adopted yet. Its approval is considered crucial by the Authority⁶ given that the legal framework in place⁶ defines the responsible institutions but does not foresee technicalities on how to develop the whole process as well as the ‘weight’ that will carry each institution in this chain process.

⁵ Published in the Official Gazette no.67, dated 10.05.2019.

⁶ Ibid pg.37



It needs to be highlighted that the amendments to Law no.45/2015 for the first time introduce in the Albanian legislation, the definition of disappeared person⁷. Article 4 foresees that: “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”.

Whereas previously missing persons from the communist era were legally defined as “politically persecuted”, the above-mentioned amendments codify the recognition of the issue of persons missing for involuntary reasons by the legislator.

Furthermore, the Authority in the ambit of the administrative investigation: “With the purpose of establishing the factual and circumstantial situation related to the case, may a) *collect declaration from the parties, testimonies and experts by guaranteeing in any case confidentiality of the persons who offer the information as persons involved or having knowledge on the circumstances of the case; b) get other documented materials through photo registration tools or other technical tools; c) visit and control items or places which are related to the process* (Article 5, point 1.1, paragraph “a”, “b” and “c”). Additionally, in Article 5, point 1.2 it is foreseen that each person is obliged to collaborate with the Authority, if it results that he/she has knowledge on the circumstances of the case, is requested information as a person involved in or who has knowledge on the circumstances of the case or when he/she has information which helps the Authority in its tasks. When implementing the law, the Authority is obliged to guarantee confidentiality for each person who collaborates.

The establishment, feeding-in, access to the archived of the different state institutions (State Archive, Archive of MIA, Archive of the Intelligence Service, National Museum, Institute for the Research of Communist Crimes in Albania) and update of the archive of AIDSSH constitutes a crucial element which is related (not only the exercise of the other competences of the authority) but also with the competence for identification and recovery of remains of disappeared during the communist era.

Although in this delicate process AIDSSH has an initiating and coordinating role, which interlinks administrative and criminal elements⁸, the implementation of the legal provisions is not the sole

⁷ Report of ICMP ALBANIA, MISSING PERSONS FROM THE COMMUNIST ERA: A NEEDS ASSEMENT, 2021, pg.11, <https://www.icmp.int/wp-content/uploads/2021/03/icmp-gr-wb-152-6-alb-W-doc-albania-missing-persons-from-the-communist-era-a-needs-assesment.pdf>

⁸ The Code of Criminal Procedures foresees the obligation of the prosecutor to conduct and control the preliminary investigation and the activities of the judicial police and the conduct of each investigation activity which he/she



responsibility of this institution. This is a complex chain process, characterized by the interaction of several institutions with constitutional competences (prosecution office for the criminal investigation), law enforcement (state police), territorial (local government units) or special technical (Institute of Legal Medicine). Considering the above, the law which foresees the competences of AIDS H shall be read in conjunction with the other legal provisions in force⁹, including the procedural codes. Therefore, interinstitutional collaboration is a prerequisite in the *pre-recovery* and *post recovery* phase.

The pre-recovery phase implies actions related to the collection of the information on the location, site reconnaissance, procedural acts in compliance with the codes and the excavation. While the phase post recovery, includes in the cases of discovery of remains the forensic examination and autopsy, sampling, testing of matching and the process of official identification of the disappeared person.

The successful interlink between all institutions is crucial for the overall success of the finding, identification and remains recovery process. From a macro perspective, the results of one institution shall remain modest for the overall process, if not accompanied with activities of the other responsible institutions. The non-approval of the DCM constitutes an obstacle for the overall implementation of the process in compliance with the law, so that it can achieve concrete and tangible results.

All initiatives undertaken by the government on good governance, strengthening of state institutions and the rule of law, cannot reach their full potential if restrained by the country's painful past. For this purpose, the state shall encourage and facilitate the public debate on the legacy of the communist past and how to collectively overcome its painful consequences¹⁰.

Although the interaction between all institutions has not reached the aspired levels, which are required also by the international and national institutions, as well as the other actors, the Authority has undertaken all steps within its sphere of competence. To this end, the Authority has adopted decision no. 625/10, dated 30.03.2023 “On the rules and procedures for the verification of the circumstances and facts based on the documents of the former state security” related to the detailed regulation on the procedures and methodology for carrying out the administrative verifications.

deems necessary (Article 24) which includes the order to excavate the human remains, with a view of enabling the examination of the human remains by the prosecutor in presence of legal medics (Article 200). In compliance with the Code, the only institution competent for carrying out the excavation in accordance with the standards of rule of law are the prosecution offices near the first instance courts, re-organized as per the new judicial map.

⁹The Institute of Legal Medicine, established in 2003, underwent a thorough re-organisation as per DCM nr.680, dated 2.9.2020 “On the manner of organisation and functioning of the institute of legal medicine”

¹⁰ Preliminary observations of the Working Group on Enforced or Involuntary Disappearances at the conclusion of its visit to Albania (5-12 December 2016) | OHCHR, <https://www.ohchr.org/en/statements/2016/12/preliminary-observations-working-group-enforced-or-involuntary-disappearances>



III. Assessment of international institutions

1. Position of the European Commission

In its Screening Report 2023¹¹ the European Commission, after analysing all political and legal developments regarding this topic, highlights that the existing legal framework needs to be further strengthened. Furthermore, it highlights the importance of allocating sufficient resources (financial and human) regarding the process of identification as well as formalisation of the cooperation agreements. Finally, it encourages the institutions to design a unique data base, harmonised and comprehensive and for all disappeared persons, which is publicly accessible.

2. Position of the International Commission on Missing Persons

The Commission in its 2021 published report presented several detailed recommendations related to:

- Adoption of the legislation that includes provisions which protect the rights of the families of missing persons. The Law should uphold non-material rights of families, such as memorialization of important dates or at locations of importance.
- The Government should ensure the Authority is granted the necessary financial and human resources so that it can effectively coordinate activities pertinent to the investigation and identification of all missing persons from the communist era.
- In order for the Authority to fulfil its role in line with amendments to Law 45/2015, the Council of Ministers should draft without delay the necessary secondary legislation for the effective functioning of the new department on missing persons within the Authority.
- The secondary legislation should mandate the Authority to establish and maintain a single, harmonized and comprehensive database of missing persons. This would allow the state to provide accurate and reliable information regarding cases of missing persons. Such a database will be crucial in strengthening the state's capacity to locate the missing and allow families to register missing relatives and to exercise their social and economic rights. In this regard, it is important that all institutions, non-governmental organizations, and individuals in possession of information on missing persons supply records in their possession to the Authority that will organize, manage and verify them.
- The Authority should ensure public scrutiny of its activities, particularly with reference to families of the missing, which will increase their level of trust in its actions.

¹¹https://neighbourhood-enlargement.ec.europa.eu/document/download/b83313ef-48c5-4bef-9f00-f5d66509572e_en?filename=AL%20Cluster%20Draft%20screening%20report_external%20version.pdf



- The General Prosecutor’s Office should ensure that there are enough prosecutors to provide an ex officio response to clandestine gravesites and crime sites from the communist era, in cooperation with relevant existing institutions.
- The Albanian authorities should allocate sufficient resources to the IML for the examination and identification of missing persons cases in line with international forensic standards and for the appropriate storage of human remains until their burial.

These recommendations are partially addressed regarding the level of accountability of the Authority and the increase of the trust of the families in this institution. However, in terms of the overall implementation, much remains to be done as regards the other institutions (Council of Ministers, Assembly and General Prosecutor’s Office).



IV. Findings

1. Analysis of the implementation of the legal framework

Even though a legal framework is in place, including the respective obligations of the institutions, until this moment, it can be observed an inability of the institutions and actors to solve jointly this issue¹². The process is at the early stages related to the *pre-recovery* phase. Notwithstanding the awareness of the institutions and actors on the challenges, encouraging developments took place such as the current accreditation of the Scientific Police pertaining to the laboratory, with the support of foreign donors.

a. Administrative measures

Establishment of a sustainable and effective coordination

Following the new legal framework, AIDSSH has signed on 03.02.2022 an agreement with the General Directorate of the State Police, for guaranteeing and implementing the due process of identification and recovery of the remains of the disappeared during communist era.¹³ From the review of the official website, it is not visible that other agreements have been signed. Notwithstanding the existence of the agreement, the Authority has requested information from several institutions, whereby the level of feedback from the Ministry of Internal Affairs, General Prison Directorate and Archive Directorate remains low.

A positive collaboration was established between the Authority and the municipalities regarding the preservation of 107 mapped burial sites. Following the information provided by the Authority¹⁴, the meetings in the municipalities of Shkodër, Mirditë, Ersekë, Fushë-Arrëz, as well as the joint activities carried out with the local institutions, the marking of the presumed burial sites or in some cases the dismissal of the alibies for their presence, constitute good starting points for achieving the desired results.

According to the information provided by the Authority, it is in process the signing a three-party agreement between the Ministry of Internal Affairs, and ICMP, which aims at seeking an understanding on the role of each institution in the process as well as the establishment of an interactive collaboration consisting of exchange of information, by providing an added value to

¹² Statement of the Chairperson of AIDSSH in the event of 5 March 2024.

¹³ Annual Report 2022, pg.15

<https://autoritetidosjeve.gov.al/uploads/raporti%20faqosje%202022%20print%20ok.pdf>

¹⁴Report “On the activity of the Directorate for Inter-institutional Relationships in the process of identification and recovery of disappeared persons during 2023”



the activities of each party, and by serving the purpose of identification and recovery of disappeared.

Roundtables organized with the support of donors¹⁵ constitute an important tool for coordination and interaction with other institutions (Ministry of Internal Affairs, General Prosecution Office, Institute of Legal Medicine, ICMP). Referring to the Annual Report 2022, in these meetings a preliminary understanding was established on the responsible organs/institutions for the implementation of the procedures (step by step) as well as details related to the DCM content. These organizations shall not remain a sporadic endeavour but shall be transformed into a sustainable and effective coordination mechanism.

Changes in the internal organization of AIDSSH

Following the above-mentioned legal provisions, the Authority has undertaken the necessary steps for the internal re-organisation by establishing the Directorate for Interinstitutional Relationships in the Process of Identification and Recovery of Disappeared¹⁶. This unit is composed of 5 persons and is functional and responsible for the administrative communication between the responsible institutions involved in this process.

Based on the requests of families, this Directorate has initiated with the processing of cases for the identification of burial sites for disappeared, in the cases where ocular testimonies were and are available or other persons who have information on their fate.

Furthermore, the Directorate¹⁷ for all the requests submitted by families of disappeared, has carried out investigations with the Archive Directorate of the Authority, Ministry of Internal Affairs and General Prison Directorate, by assessing in due time the replies and including them in the database which is updated accordingly. The rest of the work of the Directorate consist of scanning all practices for facilitating the investigation and finding of the data which help the identification, recovery, and clarification process.

Establishment of a database

AIDSSH has established an internal functional database¹⁸; however, what is still missing, and which also constitutes a suggestion of ICMP, is the establishment of unified database of all responsible institutions, with simultaneous data access. This implies that the Directorate has updated the database in excel format with detailed data of disappeared in correlation to the persons

¹⁵ In reference to the Annual Report 2022, the OSCE presence in Albania has organized several technical round tables on the identification and recovery of disappeared persons during the communist era (4 November 2021, 22 February 2022, and 6 April 2022) and in different timetables.

¹⁶ Annual Report 2022, fq.36,

<https://autoritetidosjeve.gov.al/uploads/raporti%20faqosje%202022%20print%20ok.pdf>

¹⁷ These data were provided by AIDSSH following the findings and discussions in the event of 5 March 2024.

¹⁸ Presentation of the Chairperson of AIDSSH in the event of 5 March 2024.



filling request, by doing to the extent possible, the first step in the process of identification and recovery of disappeared and which serves the positive internal administration of this process.

Also, the establishment of the database shows the complexity of the process, whereby the contribution and responsibility of all involved institutions is requested, so that the steps that are undertaken have the desired effects. Again, also this process is connected to the approval of the sublegal normative act that defines the weight of each institution.

Administrative investigation of cases

An effective investigation is measured based on 4 standards: independence, proportionality, length, and public scrutiny. These standards were established in the case law of ECtHR in the cases related to infringement of Article 2 of ECHR¹⁹. The ECtHR has highlighted that based on Article 2, the investigation on the alleged infringement cannot be left to the families of victims but shall be carried out by authorities in compliance with their official duties. In all cases, the families cannot be allowed to conduct private procedures without any involvement of the state.

In total there are **280 registered requests with the Authority for the period 2017-2023, in regard to the clarification of the fate of disappeared**; the number of requests during 2023 continues to be higher than the average figures in years, which shows that the families are assessing the collaboration possibilities with the Authority²⁰. This number constitutes only 4.5% of the cases of those convicted for political reasons, who are executed during the communist era. These figures remain modest which confirms the hesitation of the families to reach out to state authorities and consider this process a private matter (endeavour).

Notwithstanding the above, it is encouraging that after all these years, the families believe that they can clarify the fate of disappeared through AIDSSH. During 2023, the Authority has adopted three decisions²¹ related to the administrative investigation as follows:

- (i) Decision **no.372, dated 30.05.2023**²² on initiation of the administrative investigation with the purpose of verification and clarification of circumstances and facts on disappeared for the first cases;
- (ii) Decision **no.374, dated 02.06.2023** on initiation of the administrative investigation with the purpose of clarifying the fate, finding, identification and recovery of the remains of dead or disappeared persons during the detention time in Spaç prison;

¹⁹ *Al-Skeini and Others v. the United Kingdom*- 55721/07 dated 7.7.2011

²⁰ Data provided by the Authority, part of the Annual Report 2023.

²¹ Copies of the decisions were made available to KShH for the purpose of this Report by AIDSSH.

²² Press release in the official website of the Authority, <https://autoritetidosjeve.gov.al/blog/aidssh-nis-hetimin-administrativ-per-verifikimin-e-vendvarrimeve-te-fshehta-dhe-qartesimin-e-fatit-te-44-te-zhdukurve-ne-burgun-e-spacit>



(iii) Decision **no.535, dated 29.08.2023** on approval of the initiation of the in-depth administrative verification with the purpose of identification of burial sites of dead or disappeared in Shkodër during communist era and the clarification of the fate, identification and recovery of their remains.

The initiation of the investigation on concrete cases (burial sites) shows the willingness of AIDSSH to undertake administrative investigations within their sphere of competences, notwithstanding the existence of a partial legal framework.

In regard to the **Spaç prison**, the Authority has established working groups to gather testimonies from former convicted for political reasons, families of executed or dead persons, former employees of the prison police of Spaç and other former employees. This investigation aims at clarifying the fate of 44 disappeared, executed or dead during the detention time in this prison. The working groups have met also with families who have found the remains of their relatives who were executed or dead in prison in the early democracy year; furthermore, they undertook burial site visits where they found the remains, by learning and receiving information from their experience. Verification visits in sites took place, by carrying out also the marking of the presumed burial sites and the definition of the coordinates with the State Authority of Geo-space Information. In parallel to the above, the Authority has continued to keep the communication with the Association of Former Politically Persecuted by gaining from them data and testimony on the presumed burial sites.

Another administrative investigation is related to the finding of the remains of disappeared in **Shkodër, near the funeral site Rrmajit**. Through the communication and cooperation with the municipality of Shkodër, the Police Directorate Shkodër, Catholic Church of Shkodër it was possible to mark a presumed burial site, by placing an information sign (mark) in which the Authority and the municipality underline the untouchability and un-changeability of this territory until the search and excavation for the remains has been completed.

Another engagement of the Authority is related to the definition of those killed on the borders during the communist era, clarification of the fate, until their remains are found, **in the area of Ersekë**, as a place with large number of executions and dead, in the attempt to pass the borders.

Furthermore, based on the request of the families of disappeared, the Authority has carried out investigations and visits in presumed sites, for which it has also taken testimonies from persons who had information such as in Mallkeq, Municipality of Selenicë, ShënVasil, Municipality of Sarandë, Vorfë, Administrative Unit Gruemirë, Municipality Malësi e Madhe, Kërpicë, Municipality Gramsh, Grekan, Administrative Unit Sulovë, Elbasan, Shelegur, Municipality Leskovik. In these cases, through the testimony of persons who have knowledge/information, visits



in the presumed burial sites, it was possible to localize the presumed sites, mark the coordinates and perform the bar code for each in accordance with the State Authority of Geo-space Information.

Other activities

Memorials organized by state structures or with their support bear particular importance in regard to the maintenance of collective memories⁴.

Apart from the above-mentioned activities, the Authority has undertaken steps for the establishment of a memory culture through the construction of memorials in honour of the dead and disappeared from the dictatorship, in prisons, camps, investigation office or on the borders such as in Rehovë, Leskovik. Other places include the memorials in Tepelenë and Maliq.

The purpose is not only to reestablish the denied dignity of disappeared from the dictatorship, but also by providing to the process itself more dignity. This positive initiative is in the early stages.

b. Criminal investigation

Impunity for forced disappeared is a source of new infringements in the future. The Declaration requires that the State guarantees to victims of enforced disappearance an effective remedy that includes a thorough and impartial ex officio investigation with a view to identifying those allegedly responsible for the disappearance and imposing the appropriate penalties²³.

Criminal investigation in this context includes the commitment of the criminal offence “Forced disappearance”, according to Article 109/c and “Hiding or destroying cadavers”, according to Article 303 of the Criminal Code, due to the continuous character of the crime. The Authority enjoys the right to refer on the prosecution the commitment of the above-mentioned criminal offences. It needs to be highlighted that the right for ex officio prosecution has not been exercised in any case by the prosecution offices, in the cases of crimes pertaining to the communist era.

The number of cases according to Article 200, point 2 of the Criminal Procedure Code for excavation and identification of remains, reported as missing, remains significantly under the expectation of families and lawmakers.

One of the reasons which affected it, are the results of the transitional re-evaluation process of judges and prosecutors in the country. The implementation of this process overlapped with the

²³ [Preliminary observations of the Working Group on Enforced or Involuntary Disappearances at the conclusion of its visit to Albania \(5-12 December 2016\) | OHCHR, https://www.ohchr.org/en/statements/2016/12/preliminary-observations-working-group-enforced-or-involuntary-disappearances](https://www.ohchr.org/en/statements/2016/12/preliminary-observations-working-group-enforced-or-involuntary-disappearances)



entry into force of the new legal amendments. According to the Report of KPK²⁴, 103 prosecutors were dismissed (and 155 have been confirmed) from duty from the beginning of this process, leading to significant vacancies in human resources in the first instance prosecution offices. Considering the above, naturally the resources focused on the most pressing cases in terms of legal deadline as well as on criminal offences which have more social effect. The termination of this process and the filling of the vacancies with new magistrates in the system, constitute a positive development regarding the implementation of the legal amendments.

In 2019, an excavation order was issued by the prosecutor at the Saranda District Court based on the information provided by a member of the family, regarding a former camp and prison in the village Borsh, Circuit of Saranda. The human remains of a person, which was believed to be one of the disappeared from the communist era, were excavated in October 2019. The prosecutor sent the request to the laboratory of the Scientific Police Institute for DNA analysis. However, the DNA laboratory of the Scientific Police Institute reported that it was not able to process the DNA sample after the death, taken from the remains, due to the lack of technical capacities²⁵.

The other case, occurred in Fier in 2018, and presented by the representative of the General Prosecution Office in the event of 5 March 2024, constitutes another example of ‘stuck’ criminal proceedings. This case does not constitute a criminal proceeding in the name and against a person in investigation; however, it was attested lack of cooperation between the Ministry of Internal Affairs and the local government unit, which lead to lack of implementation of the execution order.

The Helsinki Committee for the purpose of this Report and in order to understand the process of implementation of the law, and the cases in practice, in accordance with the legislation on the right to information, has filed requests for information in 13 prosecution offices near the first instance courts of general jurisdiction (Tiranë, Shkodër, Dibër, Kukës, Durrës, Lezhë, Sarandë, Korçë, Elbasan, Fier, Berat, Gjirokaster, Vlorë). The scope of the information request was:

1. *Number of criminal proceedings for the criminal offence “Forced disappearance”, according to Article 109/c and other similar offences and which charge with criminal responsibility persons who have influenced the forced disappearance of certain persons.*
2. *Number of cases where legal procedures took place in accordance with Article 200 of the Criminal Procedure Code for the excavation and identification of remains which were reported disappeared.*

²⁴ Statistical Report February 2018-February 2024 <https://kpk.al/wp-content/uploads/2024/03/raporti-statistikor-shkurt-2018-shkurt-2024.pdf>

²⁵ Report of ICMP ALBANIA, MISSING PERSONS FROM THE COMMUNIST ERA: A NEEDS ASSESSMENT, 2021, pg.12, <https://www.icmp.int/wp-content/uploads/2021/03/icmp-gr-wb-152-6-alb-W-doc-albania-missing-persons-from-the-communist-era-a-needs-assesment.pdf>



11 prosecution offices replied to the request of KShH: Prosecution of Sarandë, Korçë, Lezhë, Kukës, Diber, Tiranë, Gjirokaster, Elbasan, Fier, Durrës, and Berat which stated in their reply that no criminal proceeding related to Article 109/c of the Criminal Code and no procedure for excavation was undertaken in relation to the communist era. While the prosecution of Shkodër and Vlorë did not provide a reply on the requested information.

The abovementioned cases remain the only ones according to the officially published or put at the disposal data, until the preparation of this Report.

2. Role of the civil society

The engagement of the civil society focused mainly on compensation and property issues. The topic of the disappeared gained sporadic and non-continuing attention. Even in the cases when there was engagement, they are related to commemorating activities and less on the exchange of data with state authorities to establish correct registration on disappeared persons for historical and practical purposes. The level of information in possession of the organisations dealing with persecuted persons, their accuracy, usefulness, and the extent to which they were put at the disposal of state structures, remains unclear. In all cases, the coordination mechanism mentioned above shall include also civil society in order to understand their contribution in this process.

A positive example is the engagement of Kujto Foundation and the documents published in the official website kujto.al. The foundation has established a map of burial sites by providing a concrete contribution. According to the map, it is assessed that near rivers, in mountains, near the prisons or prison-camps, military sites or populated villages, there are lost burial sites, used by the former state security for execution and later burial of political opponents²⁶.

²⁶ <https://kujto.al/harta-e-vendvarrimeve/>. The map of burial sites was supported by “ICMP Small Grant project” in the ambit of the EU project “Increase of awareness of the public for transition and reconciling justice: addressing issues of disappeared persons during communist era” implemented by ICMP-AIDSSH, financed by EU and Swiss Embassy in Tirana.



IV. Recommendations

Based on the above-mentioned developments (revised legal framework and the efforts undertaken by AIDSSH) following steps are recommended:

- Approval of sublegal normative act which enables the full implementation of the law and in particular in regard to the clear division of competences for all involved institutions;
- Establishment of a sustainable, transparent, and effective coordination mechanism as well as an action plan (road map) agreed with all institutions, which includes periodical exchange among them as well as technical roundtables to discuss common challenges such as identification of potential excavation areas, unified modalities for their storage as well as development of a centralized map of all sites. This process goes beyond the signature of cooperation agreements between the institutions.
- The Albanian state shall ensure the necessary funding for the effective implementation of the competences for all involved institutions, including but not limited to AIDSSH, prosecution offices, National Archive Directorate, Institute of Legal Medicine and municipalities.
- AIDSSH shall continue the efforts for the establishment of a harmonized and comprehensive database for all disappeared persons. AIDSSH shall undertake all necessary measures for ensuring the integrity and reliability of the data. In this context, it is of utmost importance, that the collection of the information which stems from different state and/or private sources, is cross checked and analysis (consolidated) with the aim of compiling information leading to successful investigations.
- AIDSSH shall organize technical roundtables (training) with the participation of law enforcement officers, prosecutors, judges, lawyers (attorneys) who represent the victims in regard to the implementation of international standards, characteristics of crimes of forced disappearance, and the relevant investigation as well as the judicial practice, by taking into consideration the high sensitivity of interacting with victims.
- The General Prosecution Office shall strengthen the efforts for collaboration with AIDSSH and the state police in regard to proactive investigations in compliance with the law.
- The lawmaker needs to foresee the legal possibility for families of victims to benefit from the legal aid scheme and promote the active participation of victims in official investigations and court proceedings.
- The government needs to increase the capacities and infrastructure of the Institute for Legal Medicine so that it can fulfil the legal obligations foreseen in the law.



V. Literature

Reviewed law

- Law no.9802, dated 13.09.2007 “On ratification of the international convention of United Nations “On the Protection of All Persons from Enforced Disappearance”;
- Cooperation Agreement between the Council of Ministers and ICMP on disappeared persons;
- Criminal Procedure Code;
- Criminal Code;
- Law no. 45/2015 “On the right to information on the documents of the former State Security in the Socialist People’s Republic of Albania”;
- DCM nr.680, dated 2.9.2020 “On the manner of organisation and functioning of the institute of legal medicine”

Reports

- Report of ICMP ALBANIA, MISSING PERSONS FROM THE COMMUNIST ERA: A NEEDS ASSESSMENT, 2021, <https://www.icmp.int/wp-content/uploads/2021/03/icmp-gr-wb-152-6-alb-W-doc-albania-missing-persons-from-the-communist-era-a-needs-assesment.pdf>
- Preliminary observations of the Working Group on Enforced or Involuntary Disappearances at the conclusion of its visit to Albania (5-12 December 2016), <https://www.ohchr.org/en/statements/2016/12/preliminary-observations-working-group-enforced-or-involuntary-disappearances>
- Screening Report 2023 of the European Commission, 20 July 2023 https://neighbourhood-enlargement.ec.europa.eu/document/download/b83313ef-48c5-4bef-9f00-f5d66509572e_en?filename=AL%20Cluster_1%20Draft%20screening%20report_external%20version.pdf
- Statistical Report of KPK February 2018-February 2024 <https://kpk.al/wp-content/uploads/2024/03/raporti-statistikor-shkurt-2018-shkurt-2024.pdf>
- Annual Report AIDSSH for 2022 <https://autoritetidosjeve.gov.al/uploads/raporti%20faqosje%202022%20print%20ok.pdf>
- Roadmap of AIDSSH <https://autoritetidosjeve.gov.al/files/uploads/Udherrefyesi-SHOIP-1.pdf>
- Burnmouth Protocol in Albanian Language, <https://autoritetidosjeve.gov.al/files/uploads/Burnemouth-Protocol-Albanian-Final-Print.pdf>
- Decisions provided by AIDSSH for the purpose of this Report

Other publications



Kujto Foundation “Searches on disappeared victims during communism, between the clash of institutions”, <https://kujto.al/kerkimet-per-viktimat-e-zhdukura-te-komunizmit-peng-i-perplasjes-mes-institucioneve/>

Decisions of ECtHR

- Al-Skeini and Others v. the United Kingdom - 55721/07, dated 7.7.2011