



**Republika e Kosovës • Republika Kosovo • Republic of Kosovo
Institucioni i Avokatit të Popullit • Institucija Ombudsmena • Ombudsperson Institution**

UN Working Group on Enforced or
Involuntary Disappearances (WGEID)

1 February 2019

Report on the issue of missing persons in Kosovo

The Republic of Kosovo is still, since the end of the war in Kosovo in 1999, facing the problem of disappeared persons. According to the Government's Commission on Missing Persons (GCMP) and International Red Cross Committee Office in Kosovo (ICRC), 1653 persons are still missing.

International Red Cross Committee Office (ICRC) in Kosovo is not happy with the progress in resolving the cases in 2017 and 2018. According to ICRC, the reason for the lack of progress is lack of new information on missing person's whereabouts. Also, due to political disputes between the Republic of Serbia and the Republic of Kosovo (The Republic of Serbia does not recognize Kosovo as an independent country), both Governmental Commissions on Missing Persons still have no direct contacts. It is the ICRC that is facilitating the contacts between the Commissions. According to the ICRC, currently there is lack of progress in dialogue between Serbia and Kosovo, which is also causing lack of progress in the work of both Commissions for Missing Persons.

The ICRC maintains a provisional list of missing persons, agreed upon by Kosovo and Serbia delegations to the WG, and provides new versions regularly to both sides. The Working Group on persons who are unaccounted for in connection with the events in Kosovo (WG) is a strictly humanitarian mechanism chaired by the ICRC. The WG holds regular sessions at which the delegations from both sides exchange information and plan activities aimed at clarifying the fate and whereabouts of persons who went missing as a result of the 1998-1999 events in Kosovo.

With regards the Kosovo Law on Missing Persons, ICRC estimates that the law is in full compliance with ICRC standards. However, the Ombudsperson notices that the Law on Missing Persons stipulates adoption of sub legal acts (Administrative Instruction on Central Register and Administrative Instruction on Case Closure). These sub legal acts are not yet adopted by the Kosovo authorities. The Ombudsperson so far received very few complaints concerning missing persons and rights of their family members.

In 2011, the Republic of Kosovo adopted the Law No. 04/L-023 on Missing Persons. This Law aims to protect the rights and interests of missing persons and their family members, in particular the right of family members to know about the fate of missing persons, who were reported missing during the period 1 January 1998 –31 December 2000, as a consequence of the war in Kosovo during 1998-1999.

Kosovo Serb families nominated Negovan Mavrić, for the position of the Deputy Chairperson of GCMP in line with the Law No. 04/L-23 on Missing Persons, which stipulates that the GCMP shall be composed of three representatives of associations of family members of missing persons, including one from a non-majority community. Milorad Trifunović, Coordinator of the Missing Persons Resource Center, represents the association of families from non-majority communities in the GCMP as of May 2018 in line with Article 9 of the Law No.04/L-023 on Missing Persons.

Also, the Republic of Kosovo in 2012 adopted the Regulation No. 15/2012 on the Work of Government Commission on Missing Persons. This Regulation defines responsibilities, the scope, rules and procedures of the Government Commission on Missing Persons, including the organization of the administrative unit of the Commission. Commission is a governmental body which heads, supervises, harmonizes and coordinates the activities with local and international institutions, cooperates with Institutions and International Organizations and the other stakeholders with regards to clarification of the fate of missing persons as a result of 1998-1999 war, regardless their ethnic background, religion or military or civil status. Commission operates within the Office of the Prime Minister.

The Law lays down competences of the Regulation: Commission shall protect the rights and interests of missing persons and their families, shall coordinate the activities in collecting the data relating to the missing persons, shall establish a Central Register on Missing Persons, Commission shall inform the family members of missing persons and shall cooperate with their associations, notifying the family members of the fate of missing persons, raising the consciousness (awareness) and supporting initiatives related to missing persons by reporting publicly the outcome of its findings, Commission exercises its activity in full cooperation with local institutions, international institutions and organizations, Public Prosecution Office, Courts and other responsible structures authorized by law to collect data on missing persons, Commission cooperates with local and international organizations and associations involved in protection of the rights of missing persons and their families, Commission cooperates with the relevant authorities of countries in the region in relation to missing persons in compliance with international agreements and applicable Laws in Kosovo.

According to the Law, Missing person is a person whose whereabouts is unknown to his/her family members and seekers who based on reliable information was reported missing during the period 1 January 1998 –31 December 2000, as a consequence of the war in Kosovo during 1998-1999. Chapter II of the law stipulates the rights of missing persons and their

family members. According to Article 4 of the Law, there shall be no prejudice to the rights and interests of a missing person due to his or her status as a missing person.

Article 5 of the Law stipulates the right of family members to get informed on the fate of missing persons. As regards this right, the Law stipulates that everyone shall have the right to know about the fate of his or her missing family member(s), including the whereabouts, or in case they deceased, the circumstances of their death and location of burial, if such location is known, and they shall also have the right to recover the mortal remains. Governmental Commission on Missing Persons (hereinafter: Commission) shall inform, in writing, the family members of the outcome of searching requests. Commission reviews all requests relating to missing persons, including the request referred to in the paragraph above. Nobody holds criminal liability nor shall be exposed to threats, violence or any other form of threat when he or she wants to know about the fate or whereabouts of his or her missing family members.

Article 6 of the Law stipulates the rights of the family members in relation to the legal status of missing persons. According to the Law, the civil status of the spouse of a missing person does not change until the identification of mortal remains of a missing person is conducted and a death certificate is issued, or the missing person is proclaimed dead by the court pursuant to Law on Non-contested Procedure. In case where both parents are reported missing to the Commission, the custody shall be imposed pursuant to Family Law of Kosovo. The custody shall protect the best interest of the child.

A family member of the missing person may request from the Basic Court of the last residence address of the missing person to take an authorization on temporary administration of property and assets belonging to the missing person. The court may issue such authorization if this petition is in the best interest of the missing person. In case the missing person is proclaimed dead thereafter pursuant to provisions of Law on Non-contested Procedure, the same person (family member) may be appointed as a custodian pursuant to the same Law.

A family member of the missing person, who can prove his or her material dependency on the incomes of the missing person, may apply to the Basic Court of the last residence address of the missing person to receive a payment (daily fee) from the properties of the missing person, so that the family member could fulfill their needs. The expenses of reburial after the identification of mortal remains of missing person shall be covered by Governmental Commission on Missing Persons.

Further, the Law stipulates that the request for the beginning of procedure for the missing person shall be submitted to the Governmental Commission on Missing Persons. The request for missing person may be submitted by the family member of missing person, other persons, and competent bodies. The search for a missing person is considered completed when the missing person is located or his/her mortal remains are identified.

The search for a missing person shall not be terminated even if a missing person is declared dead in accordance with the Law on Non-Contentious Procedure. The search for a missing person shall continue until the fate and, when possible, the whereabouts, of the reported missing person have been determined and the family and relevant authorities have been duly informed. Procedures for termination of research shall be regulated by sub-legal acts, proposed by the Ministry of Justice and approved by the Government.

The Law stipulates the obligation of the Commission to establish a Central Register on Missing Persons with purpose of ensuring the implementation of its mandate and clarifying the fate of missing persons. Commission collects and centralizes the data on missing persons in its Central Register, which data have been collected from all available sources to assist in revealing their identity and location as well as circumstances to their disappearance.

As regards access to Central Register on Missing Persons, the Law stipulates that the access to information available in Central Register shall be enabled to families or legal representatives of missing persons and other organizations, which have the mandate to conduct searching, finding and identification of missing persons. These data shall be available pursuant to relevant legislation on personal data protection.