

Disappearance of persons under the communist regime

Collection of studies



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





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Abbreviations

ECHR-	European Convention on Human Rights
UDHR-	Universal Declaration of Human Rights
UN-	United Nations
CED-	The Committee on Enforced Disappearances
CoE-	Council of Europe
ICMP-	International Council on Missing Persons
ICC-	International Criminal Court
ICRC-	International Committee of the Red Cross
ICPPED-	The International Convention for the Protection of All Persons from Enforced Disappearance
WGEID-	The Working Group on Enforced or Involuntary Disappearance
AIDSSH-	The Authority for Information on Former State Security Files
IML-	The Institute of Forensic Medicine
KRSH-	The Constitution of the Republic of Albania
KP-	The Criminal Code of the Republic of Albania
KPrP-	The Code of Criminal Procedure of the Republic of Albania
IIP-	The Institute for Integration of Formerly Persecuted

Missing People during the Communist Regime in Albania

**International Standards
and National Context**

Mirela Bogdani

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DISAPPEARANCE OF PERSONS UNDER THE
COMMUNIST REGIME - COLLECTION OF STUDIES

I. International Standards on “missing people” and “victims of enforced disappearance”

A. THE INTERNATIONAL CONCEPT OF A “MISSING PERSON” AND A “VICTIM OF ENFORCED DISAPPEARANCE”

i. The general concept

The concept of a missing person is broad and is seen from different perspectives. First, the definition of a missing person is not always the same in different countries and legislations. However, according to the International Commission of Missing Person’s definition, subjectively, a missing person is anyone whose whereabouts are not known and who is being sought by another person or other persons. The term “missing person” acquires an objective meaning when a person is formally reported as missing, or when an unidentified body is discovered.¹

Seen from a legal perspective, several national legislations establish a number of conditions to be met for a person to be considered “missing”. For example, the UK Guardianship (Missing Persons) Act² lays down three important conditions to be met: (a) the person is absent from his or her usual place of residence, (b) the person is absent from his or her usual day-to-day activities, and (c) the first or second condition is met. The first condition is met if the person’s whereabouts are not known at all, or are not known with sufficient precision to enable the person to be contacted for the purposes of decisions relating to his or her property and financial affairs. The second condition is met if the person is unable to make decisions relating to his or her property and financial affairs or to communicate such decisions with a view to their implementation (or both), and the reason for that is something beyond the person’s control, other than illness, injury or lack of capacity in relation to a matter (within the meaning of the [UK] Mental Capacity Act 2005).³

Differently, the international humanitarian law, identifies “missing persons” or “persons unaccounted for” from a different (humanitarian) point of view. In this context, missing persons are regarded as those whose families are without news of them or who are reported missing, on the basis of reliable information, owing to an international or non-international armed conflict, a situation of internal violence,

1 For more information visit ICMP’s website: <https://www.icmp.int/the-missing/who-are-the-missing/>

2 United Kingdom Guardianship (Missing Persons) Act, passed on 27 April 2017: <https://www.legislation.gov.uk/ukpga/2017/27/enacted>

3 Article 1(1), (2) and (3) of the Guardianship (Missing Persons) Act of 2017.

disturbances, natural calamities or catastrophes.⁴

As defined above, the concept of “missing people” is broad and encompasses a large number of situations in which a person can be considered missing. This paper will focus on one group in particular among the missing persons in Albania: the *victims of enforced disappearance* during the Communist regime in Albania. The latter is a smaller and specific group of missing persons, among other missing persons’ groups. “Disappearance” is defined as any situation where persons are arrested, detained, or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of the government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law.⁵

Authoritarian regimes, like the Communist regime that ruled Albania for about 45 years, used the practice of “enforced disappearance” as an instrument of social and political control. Since illegal arrest and detention were devoid of due process, families of those who were “disappeared” by the state had no means of requesting information about their missing relatives. Only after the fall of the Communist regime in Albania, efforts have been made to shed light on what happened and where the remains of these missing persons are.⁶

ii. The special case of Albania

From November 1944 until 1991,⁷ Albania was ruled by a totalitarian communist dictatorship that is remembered as one of the harshest and bloodiest in Eastern Europe. On the grounds of “the war of classes”, a large number of people who were accused of not (properly) supporting communism or even individual communist leaders, were deported, imprisoned, and some of the latter even killed, away from their other relatives, friends, and acquaintances. According to the Institute for the Study of the Crimes and Consequences of Communism (ISKK) in Albania, 5,577 men and 450 women were sentenced to death and killed. There are also numerous reports that political prisoners died in prisons or labor camps as a result of torture or other causes, such as suicide. Even in these cases, the bodies were not returned to the families, because in the Communist regime, the body of the convict remained at the disposal of the state throughout the duration of the sentence, even if he/she died.⁸

4 International Committee of the Red Cross (ICRC), *Guiding principles. Model law on the missing*, 2009, Article 2.1.

5 United Nations Declaration on the Protection of All Persons from Enforced Disappearances, December 18, 1992.

6 This topic will be further elaborated upon throughout this study.

7 This period is considered a totalitarian regime, as defined by Law No. 10242 on the Institute of Studies of the Communist Crimes, and Law 45/2015 on the Authority of Former State Security Files.

8 Guide to the rights of the families of the missing persons during the Communist period, the Authority for Information on Former State Security Files, page. 5

After the fall of the communist regime in Albania, the exact number of persons who went missing between 1945 and 1991 remains unclear, though the figure is believed to be in the region of 6,000.⁹ The Albanian authorities have adopted several legislative acts since 1991 addressing the issue of victims of the former regime, but uncertainty remains about the fate of missing persons and the location of gravesites, and little has been done to give concrete assistance to the families of the missing.¹⁰

Since the transition to democracy in 1991, the Albanian authorities have taken measures to ensure that the rights of the families of the missing from the Communist era are fulfilled. In 2018, the Council of Ministers of the Republic of Albania and ICMP signed the Cooperation Agreement between the Council of Ministers of the Republic of Albania and the International

Commission on Missing Persons, in order to advance efforts to locate persons who went missing during the Communist period in Albania, between 29 November 1944 and 2 July 1991, as well as in other circumstances for which the Council of Ministers may seek the assistance of the ICMP. The Cooperation Agreement is predicated on the desire of the Council of Ministers of the Republic of Albania to protect the rights of family members of persons who went missing, in particular by ensuring that the whereabouts of the missing and the circumstances of their disappearance are investigated effectively.¹¹

B. RELEVANT INTERNATIONAL BODIES DEALING WITH ENFORCED DISAPPEARANCE

i. The International Commission on Missing Persons (ICMP)

The ICMP is a treaty-based international organization with headquarters in The Hague, the Netherlands. Its mandate is to secure the cooperation of governments and others in locating missing persons from conflict, human rights abuses, disasters, organized crime, irregular migration, and other causes and to assist them in doing so. It is the only international organization tasked exclusively with working on the issue of missing persons. It was created in 1996 at the G-7 Summit in Lyon, France, and is engaged in developing institutions and civil society capacity, promoting legislation, fostering social and political advocacy, and developing and providing technical expertise to locate and identify the missing.¹² On 15 December 2014, the

9 For more information visit the ICMP's website: <https://www.icmp.int/where-we-work/europe/albania/>

10 *Ibid.*

11 ICMP Report: Albania, missing persons from the communist era: a needs assessment, Sara-jevo, 2 March 2021 ICMP.GR.WB.152.6.W.doc, page 5.

12 For more information, visit the ICMP's website: <https://www.icmp.int/about-us/>

Foreign Ministers of the Netherlands, the United Kingdom, Sweden, Belgium, and Luxembourg signed the Agreement on the Status and Functions of the International Commission on Missing Persons (also known as the ICMP Treaty), granting ICMP full international legal personality. The ICMP Treaty provided for a new organizational structure, including a Board of Commissioners, a Conference of State Parties, and an executive to be headed by a Director General.

The ICMP operates in diverse societal, political and cultural environments, engaging in all aspects of locating and identifying missing persons, from fostering the involvement of civil society, to providing technical assistance and building institutional capacity. The ICMP has been active in some 40 countries that have faced large numbers of missing persons as a result of natural and man-made disasters, wars, widespread human rights abuses, organized crime, and other causes.

Some of the major objectives of the ICMP are:

- Working with governments to develop their institutional capacity to address the issue of missing persons efficiently and impartially.
- Helping governments to develop legislation to safeguard the rights of families of the missing, and working with civil society organizations to empower them to advocate for their rights.
- Assisting the process of justice by ensuring that governments adhere to a rule-of-law-based approach to investigating disappearances and providing evidence in criminal trials.
- Assisting governments with fieldwork, as the ICMP has been involved in the excavation of more than 3,000 mass and clandestine gravesites and has spearheaded the application of advanced forensic techniques to locate and recover missing persons.
- Managing all data pertaining to its missing persons process by maintaining a unique, specialized Online Inquiry Center (OIC) and Identification Data Management System (IDMS).
- Operating the world's leading high-throughput DNA human identification facility. To date, more than 20,000 missing persons from around the world have been identified using DNA with ICMP's assistance.
- Providing training and education programs to a wide range of individuals, including government authorities, prosecutors and judges, NGOs, families of the missing, and forensic practitioners.

ii. The Committee on Enforced Disappearances

The Committee on Enforced Disappearances (CED)¹³ was created by the Convention for the Protection of All Persons against Enforced Disappearance (ICPPED) (see below) in its Second Part. It is a body of independent experts that monitors how the ICPPED is implemented by the state parties. The Committee and its Secretariat work daily to support victims, civil society organizations, national human rights institutions and states in their search for and location of disappeared persons, to eradicate, punish, and prevent this crime, and to repair the damage suffered by the victims.¹⁴ It has competence solely in respect of enforced disappearances that commenced after the entry into force of the ICPPED.¹⁵

The Committee consists of ten experts of high moral character and recognized competence in the field of human rights who serve in their personal capacity and are independent and impartial. The members of the Committee have a term of 4 years. They are elected by the States Parties according to equitable geographical distribution. Due account is taken of the usefulness of the participation in the work of the Committee of persons having relevant legal experience and of balanced gender representation.¹⁶ Each State Party submits to the Committee, through the Secretary-General of the United Nations, a report on the measures taken to give effect to its obligations under this Convention, within two years after the entry into force of the ICPPED for the State Party concerned.¹⁷ If the Committee receives reliable information indicating that a State Party is seriously violating the provisions of this Convention, it may, after consultation with the State Party concerned, request one or more of its members to undertake a visit and report back to it without delay. Following its visit, the Committee shall communicate to the State Party concerned its observations and recommendations.¹⁸ On the other hand, if the Committee receives information that appears to contain well-founded indications that enforced disappearance is being practised on a widespread or systematic basis in the territory under the jurisdiction of a State Party, it may urgently bring the matter to the attention of the General Assembly of the United Nations.¹⁹

iii. The Working Group on Enforced or Involuntary Disappearance

The Working Group on Enforced or Involuntary Disappearance (WGEID)²⁰ is one of the thematic special procedures overseen by the United Nations Human Rights Council. By Resolution 20 (XXXVI) of 29 February 1980, the Commission on Human

13 For more information, please visit: <https://www.ohchr.org/en/hrbodies/ced/pages/cedindex.aspx>

14 Ibid.

15 ICPPED, Article 35.

16 ICPPED, Article 26.

17 ICPPED, Article 29.

18 ICPPED, Article 33.

19 ICPPED, Article 34.

20 For more information visit: <https://ijrcenter.org/un-special-procedures/working-group-on-enforced-or-involuntary-disappearances/>

Rights decided to establish a working group of five independent experts to examine questions relevant to enforced or involuntary disappearances of persons. Since then, the mandate of the Working Group has been regularly renewed.²¹

The purpose of the WGEID is to help the relatives of disappeared persons ascertain the whereabouts of their disappeared family members. The Working Group communicates with governments regarding individual cases and requests that the state investigate and inform the Working Group of the results. By acting as a channel of communication between families of disappeared persons and governments, the Working Group has been able to develop dialogues with many governments, regardless of whether they have ratified any legal instruments providing for an individual human rights complaints procedure.²²

The WGEID activities include duties like:

- assisting relatives to ascertain the fate and whereabouts of their disappeared family members;
- transmitting enforced disappearance cases to the competent governments;
- conducting country visits and reporting on the findings of these visits;
- receiving claims for acts of enforced disappearance that may amount to crimes against humanity;
- monitoring the states' progress in implementing the UN Declaration on the Protection of All Persons from Enforced Disappearance (see below);
- issuing general comments on the states' progress in implementing the UN Declaration on the Protection of All Persons from Enforced Disappearance;
- protecting relatives of disappeared persons, their legal counsel, witnesses to disappearances or their family, members of organizations of relatives and other nongovernmental organizations, human rights defenders or individuals concerned with disappearances;
- reporting annually to the Human Rights Council on its activities; etc.

iv. The International Committee of the Red Cross

The International Committee of the Red Cross (ICRC)²³ is an independent, neutral organization ensuring humanitarian protection and assistance for victims of armed conflict and other situations of violence. It takes action in response to emergencies and at the same time promotes respect for international humanitarian law and its implementation in national law. The work of the ICRC is based on the Geneva Conventions of 1949, their Additional Protocols, its Statutes, and those of the

21 Enforced or Involuntary Disappearances, Fact Sheet No. 6/Rev. 3, Office of the United Nations, High Commissioner for Human Rights, page 11.

22 *Ibid.*

23 For more information, please visit: <https://www.icrc.org/en/mandate-and-mission>

International Red Cross and Red Crescent Movement, and the resolutions of the International Conferences of the Red Cross and Red Crescent.²⁴

The ICRC works to locate persons reported missing and put them back into contact with their relatives. This includes looking for family members, restoring contact, reuniting families, and seeking to clarify the fate of those who remain missing. In situations of conflict, the ICRC promotes the filling of tracing requests by relatives of missing persons and submits these forms to authorities that may be able to provide information on the persons sought.²⁵ In this respect, the ICRC organized an international conference in 2003 to tackle the problem of missing people and seek ways to help the families and communities affected, which was widely attended by human rights organizations, governments, experts, and missing family associations. It reaffirmed the right to know the fate of missing people, already enshrined in international humanitarian and human rights law, by identifying concrete measures that parties to a conflict should take to prevent disappearances, such as respecting and protecting civilians and managing information on people properly. Additionally, the conference identified the crucial role of forensics and the proper handling of human remains. Moreover, it recognized the vital role of networks that restore family links in which the ICRC, the Red Cross, and the Red Crescent, and many family associations are involved.²⁶

The ICRC has launched an online tracing service when large-scale emergencies occur. Relatives can look for information on their loved ones through this service, which is currently available for persons, reported missing in connection with, among others, the conflicts in Bosnia and Herzegovina, Croatia and Kosovo*.²⁷

C. MISSING (DISAPPEARED) PEOPLE UNDER COMMUNIST REGIMES

Societies emerging from authoritarian regimes like the communist one have to deal with a legacy of human rights violations, including enforced disappearances. It is argued that dealing with a past which is marked by massive violence should be a necessary precondition for the establishment of the rule of law and the pursuit of reconciliation".²⁸ The search for missing persons is often an important first step in such a process and the immediate priority for relatives and victims.

24 <https://www.icrc.org/en/what-we-do/restoring-family-links>

25 Missing persons and victims of enforced disappearance in Europe, Council of Europe Commissioner for Human Rights, March 2016.

26 For more information, please visit: <https://www.icrc.org/en/document/protected-persons/missing-persons>

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

27 For more information, see: Missing persons and victims of enforced disappearance in Europe, Council of Europe Commissioner for Human Rights, March 2016, page 31.

28 J. Sisson, Anne-Marie La Rosa and Monique Crettol, "The Missing and Transitional Justice: The Right to Know and the Fight against Impunity", *International Review of the Red Cross*, Vol. 88, No. 862, 2006, available at: www.icrc.org/en/international-review/article/missing-and-transitional-justice-right-know-and-fight-against-impunity

The need for international condemnation of the crimes of totalitarian communist regimes is proclaimed in the Council of Europe Parliamentary Assembly's Resolution 1481 (2006).²⁹ As seen from the perspective of the rights against enforced disappearance, the above Resolution establishes that:

- The totalitarian communist regimes which ruled in Central and Eastern Europe in the last century, and which are still in power in several countries in the world, have been, without exception, characterised by massive violations of human rights. The violations have differed depending on the culture, country, and the historical period and have included individual and collective assassinations and executions, death in concentration camps, starvation, deportations, torture, slave labour and other forms of mass physical terror, persecution on ethnic or religious grounds, violation of freedom of conscience, thought, and expression, freedom of the press, and also lack of political pluralism;
- The crimes were justified in the name of the class struggle theory and the principle of dictatorship of the proletariat. The interpretation of both principles legitimised the "elimination" of people who were considered harmful to the construction of a new society and, as such, enemies of the totalitarian communist regimes. A vast number of victims in every country concerned were their own nationals;
- The fall of totalitarian communist regimes in Central and Eastern Europe has not been followed in all cases by an international investigation of the crimes committed by them. Moreover, the authors of these crimes have not been brought to trial by the international community;
- Awareness of history is one of the preconditions for avoiding similar crimes in the future. Furthermore, moral assessment and condemnation of crimes committed play an important role in the education of younger generations. The clear position of the international community on the past may be a reference for their future actions;
- The victims of crimes committed by totalitarian communist regimes who are still alive or their families deserve sympathy, understanding, and recognition for their sufferings; etc.

An important legal instrument condemning the crimes committed in the name of communism is Prague's Declaration on European Conscience and Communism.³⁰ The latter was initiated by the Czech government and signed on 3 June 2008 by European politicians, former political prisoners and historians. This Declaration is not binding on the states; however it has been granted a lot of support by prominent politicians. The main aim of the Prague Declaration is the criminalization of communism. As regards enforced disappearance, this Declaration calls for:

29 The Council of Europe Parliamentary Assembly's Resolution 1481 (2006) <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17403>

30 See the full text of the Prague's Declaration at: <https://www.legal-tools.org/doc/e123be/pdf/>

- Reaching an all-European understanding that both the Nazi and Communist totalitarian regimes should be judged by their own terrible merits to be destructive in their policies of systematically applying extreme forms of terror, suppressing all civic and human liberties, starting aggressive wars and, as an inseparable part of their ideologies, exterminating and deporting whole nations and groups of population; and that as such they should be considered to be the main disasters, which blighted the 20th century recognition that many crimes committed in the name of Communism should be assessed as crimes against humanity, serving as a warning for future generations, in the same way Nazi crimes were assessed by the Nuremberg Tribunal;
- Introduction of legislation that would enable courts of law to judge and sentence perpetrators of Communist crimes and to compensate victims of Communism;
- European and international pressure for an effective condemnation of the past Communist crimes and an efficient fight against ongoing Communist crimes, etc.

D. MAJOR INTERNATIONAL INSTRUMENTS ON ENFORCED DISAPPEARANCE

i. The Universal Declaration of Human Rights: Related violations concerning enforced disappearance

The Universal Declaration on Human Rights (UDHR)³¹ is one of the most important legal instruments concerning international human rights. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, it was proclaimed by the United Nations General Assembly in Paris, on 10 December 1948, as a common standard of achievements for all peoples and all nations. It sets out, for the first time, the fundamental human rights to be universally protected.

The UDHR sets out a number of international human rights, which can be categorized into at least two major groups: first, *civil and political* rights, and second, *economic, cultural, and social* rights. Enforced disappearance of persons is considered to breach the fundamental human rights belonging to both of the above groups. According to the United Nation's (UN) High Commissioner for Human Rights' Fact Sheet on Enforced or Involuntary Disappearances,³² the following *civil or political* rights may

³¹ For more information on the Declaration's full text, please visit: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

³² United Nation's (UN) High Commissioner for Human Rights' Fact Sheet No. 6, rev. 3, Enforced or Involuntary Disappearances, July 2009.

be infringed upon in the course of a disappearance:

- The right to recognition as a person before the law;
- The right to liberty and security of the person;
- The right not to be subjected to torture and other cruel, inhuman, or degrading treatment or punishment;
- The right to life, when the disappeared person is killed;
- The right to an identity;
- The right to a fair trial and to judicial guarantees;
- The right to an effective remedy, including reparation and compensation;
- The right to know the truth regarding the circumstances of a disappearance.³³

On the other hand, the same Report stresses out that enforced disappearance is connected to violations of additional economic, social, and cultural rights, not only as regards the disappearance victims themselves, but also as regards their family members. Such violations encompass breaches of:

- The right to protection and assistance to the family;
- The right to an adequate standard of living;
- The right to health;
- The right to education.³⁴

Disappearances can also involve serious breaches of international instruments that are *not conventions*, such as: the *Standard Minimum Rules for the Treatment of Prisoners*, approved by the United Nations Economic and Social Council in 1957, the *Code of Conduct for Law Enforcement Officials* and the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, adopted by the General Assembly in 1979 and 1988, respectively.³⁵

ii. The European Convention on Human Rights: Related articles concerning enforced disappearance and the European Court on Human Rights' approach

The European Convention on Human Rights (ECHR)³⁶ is a major legal instrument protecting human rights and liberties in the Member States of the Council of Europe

³³ Ibid. page 8.

³⁴ Ibid. page 9.

³⁵ See also: United Nation's (UN) High Commissioner for Human Rights' Fact Sheet No. 6, rev 3, Enforced or Involuntary Disappearances, July 2009.

³⁶ For more information on the Convention's full text, please visit: https://www.echr.coe.int/documents/convention_eng.pdf

and it has been signed by all 47 Members.³⁷ This makes the ECHR part of the national legal systems of the signing members. The Convention guarantees specific rights and freedoms, and prohibits unfair and harmful practices whereas the European Court of Human Rights applies and protects the rights and guarantees set out in the ECHR.

The ECHR does not address the enforced disappearance of persons in one single dedicated article. However, this does not imply that the issue of enforced disappearance is not covered by this convention. In fact, the enforced disappearance tackles a number of rights established in the ECHR articles.

First, the European Court on Human Rights (the Court) analyses the cases of enforced disappearance in connection with **Article 2 of ECHR** (The right to life). The latter establishes that:

“1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

(a) in defense of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

The Court applies a presumption of violation of the substantive limb of Article 2 of the ECHR when the victim has last been seen alive in life-threatening circumstances and the respondent state fails to provide convincing explanations as to his or her fate and whereabouts.³⁸ When disappearances occur in these circumstances, the state’s obligation to conduct an effective investigation and to identify and prosecute perpetrators does not come to an end upon discovery of the body or presumption of death. In certain cases, the Court has examined whether the respondent state took effective operative measures to protect the right to life of the disappeared person, as required by the positive obligations stemming from Article 2 of the ECHR.³⁹

It is important to emphasize that the respondent state may be held accountable by the Court only in cases where there is a genuine temporal link between such violations and the entry into force of the ECHR in that specific state. For instance,

³⁷ For more information on the list of the Council of Europe’s Member States, please visit:

<https://www.coe.int/en/web/portal/47-members-states>

³⁸ The European Court of Human Rights, *Cyprus v. Turkey*, judgment of 10 May 2001.

³⁹ Missing persons and victims of enforced disappearances in Europe, Council of Europe Commissioner for Human Rights, March 2016, page 37.

Albania has ratified the ECHR in 1996. Therefore, the Court would be lacking in competence to deal with applications concerning the violations of Article 2 in Albania caused by enforced disappearances that happened before 1996. However, the Court has also affirmed that the *procedural* obligation arising from Article 2 of the ECHR is separate and autonomous from the substantive limb and can be regarded as “detachable”, thus binding states also when the disappearance or death of the victim took place before the entry into force of the ECHR for the state concerned. The procedural obligation continues *as long as measures to clarify the circumstances* of the violation and establish responsibility can reasonably be expected.⁴⁰

Second, the enforced disappearance cases are linked to violations of **Article 3** of the ECHR (Prohibition of torture). This Article stipulates that:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

This Article can be applied as regards the victim(s) of enforced disappearance themselves, but also concerning their family members. As regards *the direct victims*, the Court does not revert the burden of proof with regard to an alleged violation of the substantive limb of Article 3 of the ECHR in respect of a disappeared person, nor does it apply any presumption, instead requesting applicants to prove beyond reasonable doubt that their relative has in fact been tortured.⁴¹ The Court has often asked respondent states to provide copies of the criminal investigation files, but cooperation on the part of the authorities has been unsatisfactory. In these cases the Court has found breaches of the states’ duty to provide all necessary facilities for the examination of applications, in violation of Article 38 of the ECHR.⁴²

On the other hand, Article 3 of the ECHR can be applied to protect the enforced disappearance victims’ family members or relatives as well. To assess the occurrence of such violation, the Court considers:

- The *proximity* of the family tie;
- The *circumstances* of the relationship;
- The extent to which the relative *witnessed the events* in question;
- The *involvement* of the family member in attempts to obtain information on the disappearance;
- The fact that they need to be born *before the time* the enforced disappearance took place.⁴³

40 European Court of Human Rights, *Šilih v. Slovenia*, judgment of 9 April 2009, par. 157-160.

41 European Court of Human Rights, *Zaurbekova and Zaurbekova v. Russia*, judgment of 22 January 2009, par. 91 and 92.

42 Missing persons and victims of enforced disappearance in Europe, Council of Europe Commissioner for Human Rights, March 2016, page 40.

43 European Court of Human Rights, *Janowiec and Others v. Russia*, judgment of 16 April 2012, par. 151 to 154.

Third, enforced disappearance is related to violations of **Article 5** of the ECHR (Right to liberty and security), which provides that:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

- (a) the lawful detention of a person after conviction by a competent court;*
- (b) the lawful arrest or detention of a person for noncompliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;*
- (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;*
- (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;*
- (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;*
- (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.*

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

This article directly addresses the human rights’ violations that occur in all cases of enforced disappearance. Despite some scarce efforts, the Court usually has not treated the right to liberty separately from the right to security.⁴⁴

⁴⁴ See also: Kyriakou, Nikolas, An affront to the conscience of humanity: Enforced disappearance in international human rights law, European University Institute, Florence, June 2012.

Similarly to Articles 2 and 3 of the ECHR, the Court emphasizes the distinction between the substantive and procedural limbs of Article 5 of the ECHR. The substantive limb of Article 5 imposes on the Member States the obligation to respect people's right to liberty and security. The Court has established that "Having assumed control over the individual, it is incumbent on the authorities to account for his or her whereabouts". For this reason, Article 5 must be seen as requiring the authorities to take effective measures to safeguard against the risk of disappearance and to conduct a prompt effective investigation into an arguable claim that a person has been taken into custody and has not been seen since.⁴⁵ On the other hand, the procedural limb of Article 5 obliges the member states to conduct an effective investigation into the disappearance of a person who has been shown to be under their control.

Last, enforced disappearance triggers the right of the damaged parties to claim reparations in accordance with **Article 13** of the ECHR (Right to an effective remedy), which provides that:

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The goal of remedy and reparation is to achieve *restitutio in integrum* and, where that is not possible, compensation and other adequate and appropriate forms of reparation.⁴⁶ As part of the right to remedy and reparation, victims, in the majority of cases, the immediate family members, have a right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person. The Court has emphasized that where relatives have an arguable claim that a member of their family has disappeared at the hand of the authorities, or where a right with as fundamental an importance as the right to life is at stake, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation, capable of leading to the identification and punishment of those responsible and including effective access for the relatives to the investigatory procedure.⁴⁷ This is also known as "the right to the truth". The above remedy, required by Article 13 of the ECHR, must be "effective" in practice, as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or the omissions of the authorities of the respondent state.⁴⁸

However, the ECHR has come under severe criticism for its restrained approach due to low amounts of damages awarded to the relatives of the victims of enforced disappearance.

45 European Court of Human Rights, *Kurt v. Turkey*, judgment of 1998.

46 *Mujkanovic and others v Bosnia and Herzegovina*, Application No. 47063/08.

47 *Tanis and others v. Turkey*, Application No. 65899/01, para. 235.

48 *Ipek v. Turkey*, Application No. 25760/94, para. 197.

iii. The UN Declaration on the Protection of All Persons from Enforced Disappearance

The UN Declaration on the Protection of All Persons from Enforced Disappearance (hereinafter the UN Declaration) was adopted by the General Assembly of the United Nations through the Resolution 47/133 of 18 December 1992 and concluded in 2006⁴⁹. It is proclaimed as a *body of principles* for all States. It is not a legally binding document; however it has had an important impact in raising awareness as regards the rights of the victims of enforced disappearance and their family members and also in drafting the International Convention for the Protection of All Persons from Enforced Disappearance (see below).

In its Recitals, the Declaration lays down a *definition* of enforced disappearance, describing it in the meaning that “*persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law*”.⁵⁰

In addition, this UN Declaration provides a list of other international legal instruments which provisions would be breached by the acts of enforced disappearance, including: the Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 1977; the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (especially as regards the right to life, the right to liberty and security of the person, the right not to be subjected to torture and the right to recognition as a person before the law); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Code of Conduct for Law Enforcement Officials; the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and the Standard Minimum Rules for the Treatment of Prisoners, etc.

The Declaration on the Protection of All Persons from Enforced Disappearance considers any act of enforced disappearance as an offence to human dignity, violating, *inter alia*, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, and constitutes a grave threat to the right to life.⁵¹ In this respect, the states do not only have the obligation under this Declaration *not to practice, permit or tolerate* enforced

49 For more information on the full text of the Declaration, please visit: <https://www.ohchr.org/en/professionalinterest/pages/enforceddisappearance.aspx>

50 Paragraph 3 of the Recitals

51 The UN Declaration on the Protection of All Persons from Enforced Disappearance, Article 1

disappearances, but also *to contribute by all* means to the prevention and eradication of enforced disappearance. In addition, they have the obligation to take *effective* legislative, administrative, judicial, or other measures to prevent and terminate acts of enforced disappearance in any territory under their jurisdiction.⁵² Moreover, the Declaration introduces a three-fold responsibility for the states involved in enforced disappearance. It emphasizes that the state or state authorities that organize, acquiesce in, or tolerate such disappearances will be liable under *criminal law* and *civil law*, without prejudice to the *international responsibility* of the state concerned in accordance with the principles of international law.⁵³

As regards the persons participating in acts of enforced disappearance, the Declaration stipulates that they shall be brought before the competent civil authorities of that state for the purpose of *prosecution* and trial unless he has been extradited to another state wishing to exercise jurisdiction in accordance with the relevant international agreements in force. All states should take any lawful and appropriate action available to them to bring to justice all persons presumed responsible for an act of enforced disappearance and who are found to be within their jurisdiction or under their control.⁵⁴ In addition, persons alleged to have committed these acts should be suspended from any official duties during the investigation; tried only by the competent ordinary courts in each state; not be granted privileges, immunities or special exemptions; not benefit from any special amnesty law or similar measures that might have the effect of exempting them from any criminal proceedings or sanction etc. However, they should be subject to fair treatment in accordance with the relevant provisions of the Universal Declaration of Human Rights and other relevant international agreements.⁵⁵

Further, the Declaration focuses on the rights of the victims of enforced disappearance and their family members. It establishes the right to a *prompt and effective judicial remedy* as a means of determining the whereabouts or state of health of persons deprived of their liberty and/or identifying the authority ordering or carrying out the deprivation of liberty⁵⁶; the right of any person deprived of liberty to be held in an *officially recognized place of detention* and, in conformity with national law, be brought before a *judicial authority promptly after detention*⁵⁷; the right to *accurate information for the family members or counsels* on the detention of such persons and their place or places of detention, including transfers⁵⁸; the right to complain to a competent and independent state authority and to have that complaint promptly, thoroughly and impartially investigated by that authority⁵⁹.

52 The UN Declaration on the Protection of All Persons from Enforced Disappearance, Article 3.

53 The UN Declaration on the Protection of All Persons from Enforced Disappearance, Article 4 and 5.

54 The UN Declaration on the Protection of All Persons from Enforced Disappearance, Article 14.

55 Ibid., Article 16.

56 Ibid., Article 9.

57 Ibid., Article 10 (1).

58 Ibid., Article 10 (2).

59 The UN Declaration on the Protection of All Persons from Enforced Disappearance, Article 13 (1).

iv. The International Convention for the Protection of All Persons from Enforced Disappearance

The International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED)⁶⁰ was adopted by General Assembly resolution A/RES/61/177 in December 2006 and came into force on 23 December 2010. Over 70 states, as well as numerous NGOs, associations of families of the disappeared and experts participated in the three-year negotiation process.⁶¹ Countries that ratify the Convention agree to be legally bound by it and are called state parties. It is the first universally legally binding human rights instrument concerning enforced disappearance. It was preceded by the Declaration on the Protection of All Persons from Enforced Disappearance (see above), which remains an important reference as a body of principles for all states. However, the ICPPED introduces new standards and strengthens the ones established by the UN Declaration.

In its Preamble, the ICPPED lays down a list of other international instruments with which it is interconnected, like: the Universal Declaration of Human Rights (especially the related articles discussed above); the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; etc. It provides a definition of enforced disappearance, stating that *“enforced disappearance” is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.*⁶² The above definition is very similar to the definition provided by the UN Declaration on the Protection of All Persons from Enforced Disappearance, which is a sign of the important impact that the Declaration has had on the drafting of the ICPPED. However, unlike the UN Declaration, that mentions this definition in its Preamble, the ICPPED has dedicated an individual Article to its establishment. Moreover, this convention reaffirms the UN Declaration’s standing that the widespread or systematic practice of enforced disappearance constitutes a **crime against humanity**.

The ICPPED establishes the *absolute* nature of the prohibition of enforced disappearance. In its first article, it provides that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability, or any other public emergency, may be invoked as a justification for enforced disappearance.⁶³

60 For more information on the full text of the Convention, please visit: <https://www.ohchr.org/en/hrbodies/ced/pages/conventionced.aspx>

61 Enforced or Involuntary Disappearances, Fact Sheet No. 6/Rev. 3, Office of the United Nations, High Commissioner for Human Rights, page 12.

62 ICPPED, Article 2.

63 ICPPED, Article 1(2).

- *Signing States responsibilities under the ICPPED*

As regards the *Signing States' responsibilities*, the ICPPED emphasizes that they must take measures to avoid any kind of enforced disappearance. First, the Signing States should guarantee to any person with a legitimate interest, such as relatives of the person deprived of liberty, their representatives or their counsel, **access to information** regarding a person's deprivation of liberty.

A Signing State which applies a **statute of limitations** in respect of enforced disappearance shall take the necessary measures to ensure that the term of limitation for criminal proceedings is of long duration and is proportionate to the extreme seriousness of this offence and commences from the moment when the offence of enforced disappearance ceases, taking into account its continuous nature.⁶⁴ In addition, the same article emphasizes that it is the states' responsibility to guarantee the right of the victims of enforced disappearance to an **effective remedy** during the term of limitation.

Moreover, each Signing State shall ensure that any individual who alleges that a person has been subjected to enforced disappearance has **the right to report the facts to the competent authorities**, which shall examine the allegation promptly and impartially and, where necessary, undertake without delay a **thorough and impartial investigation**.⁶⁵ The contracting states are bound by an obligation of close cooperation with each other. They have to afford one another the greatest measure of mutual assistance with a view to assisting victims of enforced disappearance, and in searching for, locating and releasing disappeared persons and, in the event of death, in exhuming and identifying them and returning their remains.⁶⁶

- *Persons involved in committing enforced disappearance acts*

In addition, the ICPPED gives an important emphasis to the measures to be taken against the *persons participating in acts of enforced disappearance*. It provides that each signing state shall take the necessary measures to hold criminally responsible at least any person who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to or participates in an enforced disappearance and also their superiors who knew that their subordinates were committing acts of enforced disappearance.⁶⁷

- *Victims of enforced disappearance*

Importantly, concerning the *victims of enforced disappearance*, the ICPPED provides a definition of "victims of enforced disappearance", stipulating that it refers to the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance.⁶⁸ The approach of considering victims of enforced disappearance even the family members of the disappeared persons constitutes a novelty among international instruments. The latter have the right to know the truth regarding the circumstances of the enforced disappearance, the progress and

64 ICPPED, Article 8.
65 ICPPED, Article 12.
66 ICPPED, Article 15.
67 ICPPED, Article 6.
68 ICPPED, Article 24.

results of the investigation and the fate of the disappeared person and to obtain reparation and prompt, fair and adequate compensation.⁶⁹ In this respect, it is important to underline that the victim's right to compensation is interpreted broadly by the ICPPED, stating that the right to obtain reparation covers *material and moral damages* and, where appropriate, *other forms of reparation*, such as: restitution; rehabilitation; satisfaction, including restoration of dignity and reputation; guarantees of non-repetition.⁷⁰

- *The Committee on Enforced Disappearances*

In its second part, the ICPPED establishes *The Committee on Enforced Disappearances* (see above for a more detailed review) to carry out the functions provided for under this Convention. This fact makes an important difference between the Declaration on the Protection of All Persons from Enforced Disappearance and the above convention, as the former does not provide a monitoring body for its application. For a more detailed review of the functions and membership of the Committee, see Section I(b)(ii) of this study.

69 Ibid.

70 Ibid.

II. National Context on “missing people” and “victims of enforced disappearance”

E. PROVISIONS OF THE CONSTITUTION OF THE REPUBLIC OF ALBANIA ON MISSING PERSONS AND ENFORCED DISAPPEARANCE

27

The Constitution of the Republic of Albania (CRoA)⁷¹ is the highest fundamental law in the hierarchy of norms in the Republic of Albania. In the context of this study, it is important to note that the Constitution was drafted, adopted and came into effect after the fall of the Communist regime in Albania. The Constitution does not explicitly provide for the terms “enforced disappearance” or “missing person”. In fact, the only Albanian law that provides for a definition of the term “missing person” is Law no. 45, dated 30.04.2015, “On the right to information on the former State Security documents of the People’s Socialist Republic of Albania”⁷², which stipulates that “*A missing person, according to the scope of this law, is a person who is arrested, detained, abducted or deprived of liberty in any other form by agents of the state or other persons or group of persons acting upon the state authorization, support and approval followed by the non-acceptance of the deprivation of liberty or by concealment of the fate or whereabouts of the missing person, by denying to this person protection in compliance with the law.*”⁷³

However, given the **principles** put forth in the Constitution, it is evident that enforced disappearance is unacceptable and intolerable in Albania at the level of constitutional principles. From the very Preamble, the Constitution states on “*the guarantee of **fundamental human rights and freedoms**, with a spirit of religious tolerance and coexistence, with a pledge to protect human **dignity and personhood**, as well as for the prosperity of the whole nation, for peace, well-being, culture, and **social solidarity** ... with a deep conviction that **justice, peace, harmony** and co-operation between nations are among the highest values of humanity.*”

In reference to this view, the Constitution provides in **Part One (Fundamental Principles)** that: “*the ..., **dignity of the individual, human rights and freedoms, social justice, ... are the basis of this state, which has the duty of respecting and protecting***

71 Law No. 8417, dated 22.11.1998, “Constitution of the Republic of Albania”.

72 This law is further analysed in detail below.

73 Article 1(8) of Law “On the right to information on the documents of former State Security of the People’s Socialist Republic of Albania”.

them.”⁷⁴ This article establishes the **positive obligation** of the state to protect the individual’s dignity and human rights. An action (such as enforced disappearance) that violates the right to life, the prohibition of torture, the right to liberty and security, the right to fair trial, etc., is automatically considered unconstitutional in reference mainly to its Article 3.

Part two of the Constitution is fully dedicated to the respect of fundamental human rights and freedoms. Again, this part sanctions not only the negative obligation of respecting human rights and freedoms but also the positive obligation of protecting them in case of any violation. Article 15(2) of the Constitution stipulates that the bodies of public power, in fulfilment of their duties, shall **respect** the fundamental human rights and freedoms, as well as to **contribute to their realization**. The Constitution dedicates a special article to the protection of the right to life. Article 21 stipulates that:

“The life of a person is protected by law.”

In addition, the Constitution sanctions in Article 25 the right on prohibition of torture:

“No one may be subjected to torture, cruel, inhuman or degrading punishment or treatment.”

The Constitution pays special attention to the right to liberty and security. Article 27 stipulates that:

1. *No one may be deprived of liberty, except in the cases and according to the procedures provided for by law.*
2. *Freedom of person may not be limited, except in the following cases:*
 - a) *when punished with imprisonment by a competent court;*
 - b) *for failure to comply with the lawful orders of the court or with an obligation set by law;*
 - c) *when there is reasonable doubt that he/she has committed a criminal offense or to prevent the commission by him/her of a criminal offense or his/her escape following its commission;*
 - ç) *for the supervision of a minor for purposes of education or for escorting him to a competent organ;*
 - d) *when the person is the carrier of a contagious disease, mentally incompetent or dangerous to society;*
 - dh) *for illegal entry at state borders or in cases of deportation or extradition.*
3. *No one may be deprived of liberty just because of not being able to fulfil a contractual obligation*

The Constitution and the ECHR seem to follow the same line on the guarantees that should be provided for the protection of the right to liberty and security.⁷⁵ This is a comprehensive article that addresses different situations in protecting human rights, but it is particularly important as it supports the victims of enforced disappearance and prevents the recurrence of such violations in the future.

F. ALBANIA'S RATIFIED INTERNATIONAL AGREEMENTS ON MISSING PERSONS AND ENFORCED DISAPPEARANCE.

International agreements ratified by the Republic of Albania play a crucial role in the Albanian legal framework as the CRoA, Article 116, ranks them right below the Constitution and above any law or bylaw. Similarly, the Constitution itself guarantees that the Republic of Albania applies international law that is binding upon it.⁷⁶ Concerning the enforced disappearance of persons during the Communist era, Albania still needs new laws and bylaws to fully address the issues caused by almost 50 years of violations. For this reason, especially at this moment, it is essential that the victims of enforced disappearance during the Communist era (or their descendants) have the possibility to rely upon related international agreements signed by Albania.

The obligations arising from international agreements with Albania as a signatory have a major impact on addressing issues related to the enforced disappearance of persons. Albania has signed and ratified several important international agreements in the framework of addressing enforced disappearance of persons-related issues, such as the Universal Declaration of Human Rights, the European Convention on Human Rights, the Cooperation Agreement between the Council of Ministers of the Republic of Albania and the International Commission of Missing Persons, the International Convention for the Protection of All Persons from Enforced Disappearance of the United Nations, etc.

i. The role of the ECHR in the Albanian domestic law on enforced disappearance

Among the international agreements ratified by the Republic of Albania, it is important to distinguish the European Convention of Human Rights (ECHR), to

⁷⁵ See subchapter 1(d) (ii) herein for more information on the ECHR provisions on the right to liberty and security.

⁷⁶ Article 5 of the Constitution of the Republic of Albania.

which the Constitution of the Republic of Albania, in its Article 17, attributes a special and superior status in comparison to other international agreements. Paragraph 2 of this Article provides that the limitations of the constitutional rights and freedoms may not infringe the essence of the rights and freedoms and, in no case, may exceed the limitations provided for in the European Convention on Human Rights. Thus, in reference to the **limitations of the constitutional rights, the ECHR stands on top of the hierarchy of sources of law, along with the Constitution.**

As previously stated, the ECHR does not address enforced disappearance of persons in one single dedicated article. However, the ECtHR interpretations on the ECHR articles violated by the enforced disappearance of persons are significantly important as they may be directly applied by the victims of enforced disappearance in Albania (or their descendants). Hence, in compliance with the ECHR provisions and the ECtHR interpretations, enforced disappearance of persons may violate such rights as the right to life, the right on the prohibition of torture or inhuman or degrading treatment, the right to liberty, the right to an effective remedy, etc.⁷⁷

ii. The role of the International Convention for the Protection of All Persons from Enforced Disappearance in the Albanian domestic law

The study analyses the International Convention for the Protection of All Persons from Enforced Disappearance in the frame of the international standards related to the phenomenon of enforced disappearance. However, it is also necessary to address an analysis of the impact that this Convention has on the Albanian domestic law. Such a need arises especially in the circumstances when, due to the lack of exhaustive bylaws to address in practice issues of enforced disappearance from the Communist period in Albania, the victims or their family members may also directly refer to ratified international agreements in adherence to Article 116 of the Constitution.⁷⁸

Albania signed the International Convention for the Protection of All Persons from Enforced Disappearance on 06 February 2007 and ratified it on 8 November 2007.⁷⁹ In accordance with the provisions of this convention, Albania bears many obligations (summarized in paragraph I(d)(iii) of this study), among which, it is important to note Article 12. The latter sets down a series of guarantees which, in addition to serving the victims of enforced disappearance or their families to report directly to the Albanian authorities, do also constitute legal obligations for the competent authorities, such as the prosecution offices of the courts, to conduct the investigation of such an offence.

⁷⁷ See chapter 1(d) (lii) herein for further information on the ECHR interpretations on the enforced disappearance of persons.

⁷⁸ Article 116 of the Constitution of the Republic of Albania sets forth the ratified international agreements as part of the normative acts regulating the whole territory of the Republic of Albania, and the second ones in the hierarchy, following the Constitution.

⁷⁹ Prior to the Convention's entry into force.

First, these institutions must examine the allegations of any individual who alleges that a person has been subjected to enforced disappearance. Investigations must be undertaken promptly and impartially. In addition, according to this convention, the competent institution, i.e., the prosecution office in this case, must take the appropriate steps, where necessary, to ensure that the complainant, witnesses, relatives of the disappeared person and their defence counsel, as well as persons participating in the investigation, are protected against all ill-treatment or intimidation as a consequence of the complaint or any evidence given.⁸⁰ It is important to note that even if there has been no formal complaint lodged by the complainants, the competent authorities (i.e., the prosecution office in the case of Albania) shall undertake an investigation where there are reasonable grounds for believing that a person may have been subjected to enforced disappearance. Such a position is significant enough to be considered by the prosecution office, which in this case must initiate an *ex officio* investigation. It also complies with the provisions of the Criminal Procedure Code (to be further analysed below), which provides that the Prosecutor, inter alia, “conducts himself every investigatory action he evaluates as necessary”.⁸¹

On the other hand, in the framework of the investigative work progress, Albania, as a signatory of this convention, shall bear the obligation to ensure that the prosecution office has the necessary powers and resources to conduct investigations effectively in this area, including access to the location where enforced disappearance is believed to have happened.⁸²

80 Article 12(1) of the Convention.

81 Article 24(1) of the Criminal Procedure Code.

82 Article 12(3) of the Convention.

iii. Co-operation agreement between the Council of Ministers of the Republic of Albania and the International Commission on Missing Persons

The law on the ratification of the agreement between the Council of Ministers of the Republic of Albania and the International Commission on Missing Persons (ICMP)⁸³ has already made this important agreement part of the Albanian domestic law. The agreement defines the co-operation between the Republic of Albania and ICMP to locate persons who went missing during the 1944-1991 period as well as in other circumstances for which the Council of Ministers may seek ICMP's assistance. It also defines ICMP's legal status and functions in Albania in accordance with the Vienna Convention.⁸⁴

First, the agreement pays special attention to the mutual desire for co-operation. It underlines the **desire to protect the rights of family members of missing persons**, in particular by ensuring that the whereabouts of the missing persons and the circumstances of their disappearance are investigated effectively; **reference to the human rights treaties** to which Albania is a party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms and the International Convention for the Protection of All Persons from Enforced Disappearance; **advancing of efforts** to locate persons who went missing during the communist period in Albania between 29 November 1944 and 2 July 1991, as well as in other circumstances for which the Council of Ministers may seek the assistance of the ICMP.

The agreement also concentrates on defining in detail the **responsibilities and competencies of the ICMP office in Albania**. It is worth noting the duties of ICMP:⁸⁵

- Undertake efforts **to assist the Albanian authorities in drafting the list of missing persons and their families** by using the ICPM Online Inquiry Centre (OIC) and the Identification Data Management System (IDMS);
- Provide **technical assistance** regarding forensic archaeology and anthropology;
- Assure that the **families of the missing persons are informed regularly** on the progress made with locating and identifying the missing persons;
- **Provide access to the public on the information** related to the process of locating, recovering and identifying missing persons, in consultation with the Albanian authorities;
- **Collect ante-mortem (before death) data** on missing persons and reference genetic samples from their family members in line with the ICPM policies on data protection;

83 Law No. 83/2018, "On the ratification of the Co-operation Agreement between the Council of Ministers of the Republic of Albania and the International Commission on Missing Persons (ICMP)".

84 For more information, please visit the ICPM official website at: <https://www.icmp.int/press-releases/icmp-and-government-of-albania-sign-cooperation-agreement/>.

85 Summary of Article 2 of the Agreement.

- **Conduct DNA tests of the post-mortem** (after death) **samples** submitted by the Albanian competent institution and compare matching with the DNA profiles obtained through the family reference samples in adherence to its Standard Operating Procedures.
- Communicate promptly the **results of findings** to the Ministry of Interior as the Albanian competent institution; etc.

The Agreement dedicates special importance to the responsibilities of the Albanian authorities, party to this Agreement, namely:⁸⁶

- **Provide any machineries, tools and man-power** needed to excavate the gravesites and to conduct examinations;
- Facilitate **safety in the gravesites** prior to and post excavations;
- Adopt measures to ensure that the **recovered remains shall be stored appropriately**;
- Take **post-mortem (after death) samples** in adherence to the ICMP's Standard Operating Procedures and submit them to the ICMP laboratories;
- **Observe the Albanian legislation** in the investigation of missing persons, including the excavation of human remains and the identification of located persons;
- Conduct **final identifications** by using the ICMP DNA reports and issue **death certificates**;
- **Inform the families** of the missing persons on the identifications;
- Take measures to record the relevant data in the **appropriate registers**; etc.

In addition, the agreement states the ICMP's status, privileges and immunity in Albania. Chapter 3 of the Agreement lays out the data on the ICMP office in Albania, legal status, funds, managers, staff, experts, immunities and privileges, etc.

In the context of this special role in Albania, in line with the above principles, ICMP published in March 2021 a report on "Albania, missing persons from the communist era – a needs assessment".⁸⁷ In addition to the descriptive part of the legislation and the relevant executive bodies, the ICMP has also brought out the issues encountered. As a result, it has reported that "*There is no evidence that the Task Force⁸⁸ has ever requested a coordinated investigation with District Prosecution Offices, which are the solely competent ones to conduct an investigation and order the exhumation of gravesites. The competencies of the Task Force were transferred to the Institute for the*

⁸⁶ Summary of Article 3 of the Agreement.

⁸⁷ For more information, please visit: <https://www.icmp.int/wp-content/uploads/2021/03/icmp-gr-ëb-152-6-alb-W-doc-albania-missing-persons-from-the-communist-era-a-needs-assesment.pdf>.

⁸⁸ This is the Task Force for the Recovery and Identification of Human Remains of the Communist Victims, established in 2010 by the Albanian authorities.

*Integration of the Formerly Politically Persecuted in 2014, and the Task Force ceased its operations*⁸⁹ Despite the existence of basic legislation, the increasing level of co-operation between public institutions or other organizations is essential in the improvement of results. The same conclusion was further reached in the report, which states that *“The ISCC does not keep separate data on missing persons and has no official cooperation on the issue of missing persons with the IIPPP, which is located within the same premises.”*⁹⁰

Similarly, the report also focuses on the limited financial sources of several competent authorities for the information and rehabilitation of the families of enforced disappearance victims. The report states that, at the Institute for the Integration and Rehabilitation of Formerly Politically Persecuted, *“the Section for Finding the Missing Persons from Communist Crimes lacks sufficient financial means to fulfil its original mandate to recover and identify human remains.”*⁹¹

Another issue reported is the lack of modernization of archived information. According to the report, all data is kept in hard copy, and equipment in the possession of the ISCC is out of date. The ISCC requested assistance in data digitization so that data can be made available to the public.⁹²

1. Criminal Code of the Republic of Albania on enforced disappearance

The Criminal Code of the Republic of Albania⁹³ addresses issues related to the enforced disappearance, both directly and indirectly. First, in the framework of the general principles set out in the first part of this code, it is worth emphasizing, in view of this study, that this criminal legislation is in charge of protecting the individual’s dignity, human rights and freedoms.⁹⁴ The code also highlights that one of the principles it is based on is that of humanism.⁹⁵

Further on, the Criminal Code addresses more specifically (inter alia) the crimes related to enforced disappearance. It classifies the latter as “Crimes against Humanity”. Such a stance adheres to the provisions of the Statute of International Criminal Court (which was signed by Republic of Albania on 18.07.1998⁹⁶ and provides for the enforced disappearance as a crime against humanity by sanctioning the obligation of States to conduct effective investigations on disappeared persons) and Article 5 of the International Convention for the Protection of All Persons from Enforced Disappearance.⁹⁷

89 ICMP Report, “Albania, missing persons from the communist era – A needs assessment”, 02.03.2021, page 7.

90 Ibid, page 9.

91 ICMP Report, “Albania, missing persons from the communist era – A needs assessment”, 02.03.2021, page 9.

92 Ibid, page 9.

93 Law no. 7895, dated 27.01.1995, “Criminal Code of the Republic of Albania” (as amended).

94 Article 1/b of the Criminal Code.

95 Article 1/c of the Criminal Code.

96 For more information, please see the Statute of the International Criminal Court at: <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>

97 As discussed earlier in this study.

Based on the above, the Criminal Code of the Republic of Albania addresses enforced disappearance under the section of crimes against humanity and provides that:

“Murder, enforced disappearance, extermination, enslaving, internment and expulsion and any other kind of human torture or violence committed according to a concrete premeditated plan or systematically, against a group of the civil population for political, ideological, racial, ethnical and religious motives, shall be punishable to not less than fifteen years of or life imprisonment.”⁹⁸

It also tackles exactly the criminal offense of **enforced disappearance** in a solely dedicated article which provides that:

“Enforced disappearance through arrest, detention, abduction or any other form of deprivation of liberty of the person by public officials or persons acting upon their authorisation, support or approval, followed by the non-acceptance of the deprivation of liberty or by concealment of the fate or whereabouts of the person, by denying the assistance and necessary protection in compliance with the law, shall constitute criminal offence and it shall be punishable by imprisonment from seven to fifteen years.”⁹⁹

One of the most critical issues that remains under the focus of discussions related to the enforced disappearance provisions of the existing Criminal Code of the Republic of Albania, is the **timely effect** of this Code pertaining to disappearances during the Communist era. The Code became effective upon its adoption by the Assembly of the Republic of Albania on 27.01.1995, i.e., many years after the fall of the communist system in Albania. The Code itself provides that no one shall be sentenced for an offence, which, according to the law at the time it was committed, did not constitute a criminal offence and may not be convicted of an offense which, under the law of the time it was committed, did not constitute a criminal offence.¹⁰⁰ For this reason, to understand whether its provisions may apply even in the case of disappearances that occurred during the Communist era, it is essential to determine the extension in time of this criminal offence.

Referring to the United Nations Declaration for the Protection of All Persons from Enforced Disappearance, its Article 17(1) provides that acts constituting enforced disappearance shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared, and these facts remain unclarified. Subsequently, enforced disappearance is addressed as a **continuing** criminal offence which does not end with the loss of the victim’s contacts with family members, but extends in time until the facts of the disappearance are clarified. Even when it may be concluded that the disappeared

98 Article 74 of the Criminal Code.

99 Article 109/c, paragraph 1 of the Criminal Code.

100 Article 3(1) of the Criminal Code.

person was in fact subjected to an arbitrary execution, for example by locating human remains and identifying personal belongings, as long as the whereabouts of that person are not located, or the remains have not been found and identified, the situation is that of an enforced disappearance.¹⁰¹

In addition, albeit criminal offences are subject to the statute of limitation after some period from the commission of the criminal offence,¹⁰² the Criminal Code dedicates an article to the fact that **crimes against humanity cannot be subject to the statute of limitations**. As mentioned at the onset of this subchapter, enforced disappearance is a crime that falls under the category of crimes against humanity. Therefore, Article 66 of the Criminal Code concerning the statute of limitations for this criminal offence does not apply in this case.

2. Criminal Procedure Code of the Republic of Albania concerning enforced disappearance

The Criminal Procedure Code of the Republic of Albania¹⁰³ does not dedicate special procedures to the criminal offence of enforced disappearance, but lays down the main principles and rules that must guide (inter alia) the investigations into this criminal offence. Hence, in the context of the general provisions, this Code underlines the fact that the criminal procedure law must ensure a fair, equal and due legal process, **protect the individual rights and freedoms and legitimate interests of citizens**, and contribute to strengthening the legal order and implementing the Constitution and the laws of the state.¹⁰⁴ In the same section, the Criminal Procedure Code tackles the treatment of victims of a criminal offence, underlining that the public bodies must guarantee the human dignity of the victims of criminal offences and protect them against revictimization in the exercise of their rights provided for by this Code.¹⁰⁵

Analysis of this Code is particularly important in the context of procedures followed by the competent bodies indicated in this Code for the investigations into the cases of enforced disappearance during the communist era. First, this Code attributes a significant role to the **prosecutor in initiating investigations**. The prosecutor conducts criminal prosecution and brings charges in court on behalf of the state, runs and checks the preliminary investigations and the judicial police activity, carries out any investigation step he/she deems necessary, takes measures for the execution of criminal decisions and oversees their execution, and performs the functions of judicial cooperation with foreign authorities according to the rules prescribed in the Criminal Procedure Code.¹⁰⁶ Besides, **judicial police** plays an

101 Guide on the rights of family members of the persons disappeared during the communist period, Authority for Information on Former State Security Files, page 15.

102 See Article 66 of the Criminal Code for more information on the statute of limitations depending on the social risk posed by the criminal offence.

103 Article no. 7905, dated 21.3.1995, "Criminal Procedure Code of the Republic of Albania", as amended.

104 Article 1 of the Criminal Procedure Code.

105 Article 9(1) of the Criminal Procedure Code.

106 Article 24(1) of the Criminal Procedure Code.

important role in this context, because it must even ex officio obtain information on criminal offences, prevent the criminal offence from triggering further implications, conduct investigations and collect all that serves the compliance with the criminal law. Similarly, the **courts** have a crucial role to play in rendering justice to the victims of enforced disappearance and/or their relatives. The court decides whether a defendant is guilty of the criminal offence of enforced disappearance based on the evidence and information presented to it by the prosecution office.

3. Law “On compensation of the former Politically Convicted by the Communist Regime”

37

The law “On compensation of the former Politically Convicted by the Communist Regime”¹⁰⁷ focuses on the rehabilitation of victims (and their family members) of unfair political convictions rendered during Communism in Albania. This law stands in line with the ECHR approach, particularly the provisions of Article 13 of the Convention on the right to effective remedy. This law seeks to ensure that the Albanian state gives **financial compensation** to the still-living former politically convicted by the Communist regime, to the family members of executed victims and persons interned or deported to camps, as a commitment of the democratic state to punish the crimes of the totalitarian Communist regime and guarantee a better life for them.¹⁰⁸ In the case of reparation for the family members of victims, the compensation is considered a non-pecuniary personal right.¹⁰⁹

Eligibility requirements for the compensation are listed in Article 4 of this law. It provides that the convicted person (or his/her family members) must meet the following requirements in order to be eligible for compensation:

- be convicted to death sentence, deprivation of liberty, internment or deportation or be isolated in the investigative office or a psychiatric medical institution, because of a final court decision, administrative act or order of the investigative office, rendered during the period from 30.11.1944 to 1.10.1991;
- deprivation of liberty, isolation in the investigative office or a psychiatric medical institution must be because of a final court decision or order of the investigative office, as laid down in Article 5 of this law;
- served the unfair criminal sentence fully or partially;
- gained innocence under Law no. 7514, dated 30.9.1991, “On innocence, amnesty and rehabilitation of the former politically convicted and persecuted”, as amended;
- according to the final court decision, he/she must not have committed any

107 Law no. 9831, dated 12.11.2007, as amended.

108 Article 2 of the Law “On compensation of the former politically convicted by the communist regime”.

109 Articles 6 and 7 of the Law “On compensation of the former politically convicted by the communist regime”.

acts that are harmful or life-threatening to other citizens during the period from 30.11.1944 until 01.10.1991.

In light of the above, this law is applicable not only to victims of enforced disappearance during Communism, but to **all the politically convicted**. In most cases, the victims of enforced disappearance are part of a larger group of the politically convicted. They were usually persons convicted to imprisonment, internment or deportation for political reasons. On the other hand, families of victims of enforced disappearance - against whom there is no decision for death sentence, deprivation of liberty, internment, etc., - have to cope with additional difficulties in proving the disappearance based on documentation, leading to impediments in the exercise of their right to compensation or, in the worst case, they remain out of the remit of this law. This problem has been recognised and reported even by national and international bodies. According to the “Guide on the rights of family members of the persons disappeared during the communist period”, it is reported that compensation is limited only to persons who possess documents proving their status (or their family members) as politically persecuted persons. This leaves many families of victims of enforced disappearance outside the scope of the law.¹¹⁰

An important provision of this law is the definition of the “family circle” legitimated to demand compensation. Article 8 sanctions as follows:

*“For the purpose of this law, family members shall mean – regardless of other legal regulations – **ascendants, descendants, spouse, siblings of the former politically convicted person, as well as child/children of the siblings**. First-grade family members under the Civil Code exclude the other family members”.*

According to this law, financial compensation **does not preclude any other simultaneous or subsequent legal or administrative measures** in favour of the politically convicted and persecuted, which seek to reinstate justice and social dignity of this category or favourable conditions for their reintegration into society.¹¹¹ This stands in line with the provisions of Article 13 (ECHR) for an effective remedy and with the ECtHR interpretation of this Article in the context of enforced disappearance. In its judgements, the ECtHR has been clear in mentioning that, in addition to the payment of compensation, where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible, and including effective access for the relatives to the investigatory procedure, must be guaranteed.

¹¹⁰ Guide on the rights of family members of the persons disappeared during the Communist period, Authority for Information on Former State Security Files, page 18.

¹¹¹ Article 2 of the Law “On compensation of the former politically convicted by the communist regime”.

4. Law “On the right to information on documents of the former State Security of the People’s Socialist Republic of Albania”

The law “On the right to information on documents of the former State Security of the People’s Socialist Republic of Albania”¹¹² defines the rules and procedures to enable any interested person/entity to exercise their right to information on the **documents of the former State Security**. These documents belong to the period from 29 November 1994 until 2 July 1991, when the National Intelligence Service was established, and are available in the archive network of the Republic of Albania, and involve political criminal offences¹¹³ regardless of whether the competent Communist authorities have rendered or not a conviction sentence.¹¹⁴ This law addresses a wide scope of issues not limited only to the enforced disappearance of persons during that period. It is important for this study, because for the first time it provided the definition of “missing person” in the Albanian legislation:

“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.”¹¹⁵

Additionally, this law guarantees the right to information, transparency, and access to documents to discover the fate of missing persons during the Communist era in Albania.

Rules and procedures defined in this law provide for: the collection, administration, processing and use of documents of former State Security at the Ministry of Internal Affairs of the People’s Socialist Republic of Albania; the organization and functioning of the Authority for Information on Former State Security Files (AIDSSH); provision of information requested by state institutions and non-state entities for the purpose of this law; and obligations of public authorities and archives to provide access to documents in their possession.¹¹⁶ The Law pays particular importance to regulating the organization and functioning of the AIDSSH, but this will be elaborated in a dedicated section of this study.

112 Law no. 45, dated 30.4.2015, “On the right to information on documents of the former State Security of the People’s Socialist Republic of Albania”, see link. <https://qbz.gov.al/share/hOmphM9RT-vidcs13OuCluw>

113 Referring to the definition in the Law no. 7514, dated 30.9.1991, “On innocence, amnesty and rehabilitation of the former politically convicted and persecuted”, as amended.

114 Article 2 of the Law “On the right to information on documents of former State Security of the People’s Socialist Republic of Albania”.

115 Article 3(8) of the Law “On the right to information on documents of former State Security of the People’s Socialist Republic of Albania”.

116 Article 1 of the Law “On the right to information on documents of former State Security of the People’s Socialist Republic of Albania”.

According to this law, **any person** has the right to request and obtain information from AIDSSH on documents that contain information about him/her. The Authority responds within a reasonable deadline, depending on the complexity and the difficulty of providing the information in each case.¹¹⁷ The detailed rules on these deadlines are set out in the regulation on the organization and functioning of the Authority. So, the complete procedure for the examination and the Authority's decision on a request presented by constitutional bodies and public authorities lasts 30 (thirty) days. For the examination of individual requests, the complete procedure, including the decision, lasts up to 6 (six) months. Requests from researchers/media must be processed and decided upon within a deadline of 6 (six) months.¹¹⁸

Guaranteeing the right to information is one of the basic principles in the implementation of this law and is prescribed in Article 20. It relates to the applicant's right to have access to documents provided that he/she is in the capacity of an affected person, third party, collaborator or favoured person of the former State Security, or a representative by power-of-attorney thereto. This right includes the access and observation of original documents or copies of them. However, the Authority may fully or partially limit the right to information where the information poses a real threat to national security. In case the documents or their copies contain personal information on other persons affected – besides the applicant – or third parties, these original documents may be accessed only with the consent of these affected persons or third parties; it is impossible to share information on the affected or third parties, or it is possible only by unjustified attempts and there is no reason to assume that the other affected persons or third parties have a legitimate interest in retaining this secret information.

The Law addresses **specifically the right to information for the family members of the dead or missing persons**, in Articles 22 and 22/1. The right to information on the existence of the former State Security documents on the dead persons or those reported missing, and the access to documents is recognized also to their relatives by this priority order:

- a. Spouses;
- b. Children;
- c. Nephews/nieces, when the persons mentioned in letters 'a' and 'b' have passed away or are reported missing.
- ç. Parents, when persons mentioned in letters <a>, and <c> have passed away or are reported missing;
- d. Siblings, when persons mentioned in letters 'a', 'b', 'c' and 'ç' have passed away or are reported missing;
- dh. Children of siblings, when persons of the upper line have passed away or are reported missing.

117 Article 5 of the Law "On the right to information on documents of former State Security of the People's Socialist Republic of Albania".

118 Article 38 of the Regulation on the organization and functioning of AIDSSH.

Family relatives are provided information upon request and after proving their kinship. The aim is to preserve the rights and personality of the dead and missing persons, particularly by shedding light on the allegations of collaboration with the former State Security and on the fate of dead and missing persons.¹¹⁹

The law pays importance also to the **cooperation among state institutions to recover the remains of the missing or executed persons** and take **measures to preserve the gravesites**. The Authority cooperates with central and local state institutions in the process of identification and recovery of persons disappeared or executed during communism, and in taking measures to adequately protect and preserve the current or potential location of gravesites.¹²⁰

1. Albanian institutions that play a role in addressing enforced disappearance during the Communist era in Albania

a. Institutions with general powers

Forced disappearance is a criminal offence considered to be in continuous commission until the missing person is fully accounted for. Consequently, all public authorities that address criminal offences in general play a crucial role in resolving issues of enforced disappearance. The Law no. 83/2018, “On the ratification of the Cooperation Agreement between the Council of Ministers of the Republic of Albania and the International Commission on Missing Persons (ICMP)”¹²¹ provides that ‘other institutions’ for the purpose of implementation of the Agreement shall mean:

- **National, central, local** and other authorities under the relevant applicable legislation in the Republic of Albania;
- General Directorate of Archives;
- General Prosecution Office;
- Institute of Legal Medicine;
- Ministry of Health and Social Protection;
- Ministry of Justice, etc.¹²²

i. Prosecution Offices

In light of the above, a particular role is played by the **prosecution offices**, which, in line with the Criminal Procedure Code of the Republic of Albania, conduct criminal

¹¹⁹ Article 22 of the Law “On the right to information on documents of former State Security of the People’s Socialist Republic of Albania”.

¹²⁰ Article 22(1) of the Law “On the right to information on documents of former State Security of the People’s Socialist Republic of Albania”.

¹²¹ For more information on the Agreement between the Council of Ministers of the Republic of Albania and the International Commission on Missing Persons (ICMP), please read the chapter with the same title in this study.

¹²² Article 2 of the Law no. 83/2018, “On the ratification of the Cooperation Agreement between the Council of Ministers and the International Commission on Missing Persons (ICMP)”.

prosecution and bring charges in court on behalf of the state, run and check the preliminary investigations and the judicial police activity, carry out themselves any investigation step deemed necessary by them, etc. Besides courts, even the prosecution offices may order exhumation, in which case they notify one family member of the deceased to participate in the process, unless such participation may harm the purpose of the examination.¹²³ A prosecutor may request expert reports from the Institute of Legal Medicine.¹²⁴ Also, upon the consent of the defendant or other persons, the prosecutor may request obtainment of biological samples to determine the DNA profile; the same provision applies also to medical procedures.¹²⁵

However, it is worth noting that the engagement of the prosecution office in finding the remains of victims of enforced disappearance has not always enjoyed special attention. The 2021 ICMP Report draws attention on the fact that *“to date only one excavation has been ordered by the responsible prosecutor’s office. The Saranda District Prosecutor ordered an exhumation based on information provided by a family member related to the former prison camp in the village of Borsh in the District of Saranda. The human remains of one individual, believed to be one of the missing from the communist era, were exhumed in October 2019”*.¹²⁶ According to the same report, the lack of affirmative actions on the part of prosecution offices in this matter relates to reasons such as: reduced number of prosecutors due to dismissals from the vetting process, lack of financial resources to cover costs arising from engaging technical experts from the Institute of Legal Medicine,¹²⁷ etc.

ii. Courts

Courts are particularly important bodies in this regard as they play a key role in ruling about the guilt or not of the suspects of these criminal offences;¹²⁸ in ordering the exhumation of the human remains;¹²⁹ in requesting expert reports from the Institute of Legal Medicine;¹³⁰ etc. Even the non-criminal courts are involved in the process of ensuring the rights of victims of enforced disappearance and their family members. The special legislation on the right to access the documents of the former State Security provides in several articles the possibility of challenging the Authority’s decisions with the administrative court.¹³¹

123 Article 200 of the Criminal Procedure Code.

124 Article 1(9) of the Decision No. 680, dated 02.09.2020, “On the organization and functioning of the Forensic Institute”.

125 Article 200/a of the Criminal Procedure Code.

126 ICMP report, “Albania, missing persons from the communist area: A Needs Assessment”, 02.03.2021, page 12.

127 For more information, see ICMP report, “Albania, missing persons from the communist area: A Needs Assessment”, 02.03.2021, page 12.

128 Guide on the rights of family members of the persons disappeared during the communist period, Authority for Information on Former State Security Files, page 7.

129 Article 200 of the Criminal Procedure Code.

130 Article 1(9) of the Decision no. 680, dated 02.09.2020, “On the organization and functioning of the Institute of Legal Medicine”.

131 For example, Articles 5, 40 and 41 of the Law “On the right to information on documents of former State Security of the People’s Socialist Republic of Albania”.

iii. The Institute of Legal Medicine

The Institute of Legal Medicine (ILM) is a body of particular interest in this study. The Decision no. 680, dated 02.09.2020, “On the organization and functioning of the Institute of Legal Medicine” defines its powers. It is this public institution that carries out the expert reports requested by the courts and prosecution office. The ILM has an important role in the identification of the remains of missing persons, because it is entitled to take samples and conduct forensics in order to draw an accurate conclusion of the time, circumstances of the murder of the victim, and other information, such as age, gender, body size and the identity of the victim in the event of a DNA analysis.¹³² However, the above decision points to the principles and does not give details on technical issues as to how the ILM must implement its duties. Regulation on the organization and functioning of the Institute of Legal Medicine¹³³ details a bit more the technical specifications of the ILM work related to the exhumation procedure, by defining a 3-week deadline for the completion of the forensic examination of the exhumed corpses or bone remains.¹³⁴ However, even this Regulation does not provide specific details on how to handle cases where human remains thought to belong to victims of forced disappearance are found.

According to the ICMP 2021 report, the ILM does not employ forensic archaeologists that are required for the excavation and recovery of human remains from mass graves,¹³⁵ and this might potentially harm the data and information that could be obtained *in situ* by these experts. The same report underlines in its conclusions that the ILM lacks sufficient facilities for the storage and examination of human remains recovered through investigations into missing persons cases.¹³⁶

b. Institutions with special powers

i. The Authority for Information on Former State Security Files

The Authority for Information on Former State Security Files (AIDSSH) is an independent public legal body responsible for the implementation of the Law no. 45, dated 30.4.2015, “On the right to information on documents of former State Security of the People’s Socialist Republic of Albania“. AIDSSH is a collegial body consisting of five members elected by the Parliament. Its duties include collection, administration, processing and using documents of the former State Security and giving information related to them. The AIDSSH has its seat in Tirana and is financed by the state budget and other lawful sources. It is fully independent in decision-making and in rolling out its functions.¹³⁷ By the recent amendments to the

132 Guide on the rights of family members of the persons disappeared during the communist period, Authority for Information on Former State Security Files, page 8.

133 Approved by Order no. 6745, dated 04.11.2003, of the Minister of Justice; amendments approved by Order no. 7194/1, dated 24.01.2006, of the Minister of Justice.

134 Article 59 of the Regulation on the organization and functioning of the Institute of Legal Medicine.

135 ICMP report, “Albania, missing persons from the communist area: A Needs Assessment”, 02.03.2021, page 11.

136 *Ibid*, page 15.

137 Summarized from Articles 1 and 2 of the Law no. 45, dated 30.4.2015, On the right to information on documents of former State Security of the People’s Socialist Republic of Albania”.

organic law “On the right to information on documents of the former State Security in the PSRA”, the AIDSSH upgraded its role to that of coordinating all other state institutions for the location, identification and recovery of the remains of missing persons from the Communist era.¹³⁸

This Authority has **important responsibilities** closely related to ensuring the right to information and collection of evidence for the family members of victims of enforced disappearance. These responsibilities include: collecting documents from the former State Security for the purpose of and according to procedures laid down in the law; evaluating, listing, identifying, preserving and administering the documents in line with the rules and principles of the applicable legislation on archives; co-operating and coordinating efforts with the public authorities and archive bodies for the purpose of the implementation of the law; **giving information and sending notices** on the documents and ensuring their examination and hand-over to applicants; supporting scientific research during the history revision of the activity of the former State Security by **guaranteeing the examination of documents** and handing over copies of documents; **informing individuals**, constitutional institutions, public authorities and other interested stakeholders, in compliance with the law.¹³⁹

The law pays particular importance to the definition of rules governing the collection, return, archiving, etc. of documents of the former State Security. However, for the purposes of this study, the role of this Authority will be analysed under the lens of the **right of entities to information and access to documents**. To this matter is dedicated a particular and detailed chapter in the law. The Authority guarantees the right to information for the interested stakeholders. The applicant is granted the right to access documents when having any of the following qualities:

- affected person;
- third person;
- collaborator or favoured person by the former State Security or a representative by power-of-attorney thereof.¹⁴⁰

In order to exert this right, the interested persons submit a **written request and ID** to the Authority to have information on the documents of the former State Security. Where the applicant believes that the application must be handled with priority, he must justify this need and urgency in the application. The Authority recognises urgency where the requested information is needed for the purposes of rehabilitation, compensation, prevention of privacy violation or moral harm, or proving the fact that the person has not been a collaborator of the former State Security. The Authority gives written information, unless another form is required.¹⁴¹

138 Guide on the rights of family members of the persons disappeared during the communist period, Authority for Information on Former State Security Files, page 8.

139 Article 10 of the Law no. 45, dated 30.4.2015, “On the right to information on documents of former State Security of the People’s Socialist Republic of Albania”.

140 Article 20 of the Law no. 45, dated 30.4.2015, “On the right to information on documents of former State Security of the People’s Socialist Republic of Albania.”

141 Article 19 of the Law no. 45, dated 30.4.2015, “On the right to information on documents of former State Security of the People’s Socialist Republic of Albania.”

Articles 22 and 22/1 of this law specifically refer to the right of family members to information on their dead or disappeared family members. The right to information on the existence of former State Security documents on the dead persons or those reported missing, and the access to documents is also recognized to their relatives by this priority order:

- e. Spouses;
- f. Children;
- g. Nephews/nieces, when the persons mentioned in letters “a” and “b” have passed away or are reported missing.
- ç. Parents, when persons mentioned in letters “a”, “b” and “c” have passed away or are reported missing;
- h. Siblings, when persons mentioned in letters “a”, “b”, “c” and “ç” have passed away or are reported missing;
- dh. Children of siblings, when persons of the upper line have passed away or are reported missing.¹⁴²

Family relatives are provided information upon request and after proving their kinship. The aim is to preserve the rights and personality of the dead and missing persons, particularly by shedding light on the allegations of collaboration with the former State Security and on the fate of dead and missing persons.

In the context of cooperation for the identification and recovery of the remains of missing and executed persons, and measures for the preservation of gravesites, AIDSSH cooperates with the central and local state institutions in the process of identification and recovery of the people who disappeared and were executed during communism, and takes measures to protect and properly preserve the current or future sites identified as gravesites.¹⁴³ More detailed rules on this cooperation are laid down in the bilateral or multilateral agreements with institutions, and further details of these principles are set out in a decision of the Council of Ministers. However, little progress has been marked in this direction. Secondary legislation in this regard has been incomplete and marred with ambiguities over the application in practice of the principles in Article 22/1. Even the ICMP concludes in its 2021 Report for Albania that *in order for the Authority to fulfil its role in line with amendments to Law 45/2015, the Office of the Prime Minister should draft without delay the necessary secondary legislation for the effective functioning of the new department on missing persons within the Authority.*¹⁴⁴

However, the law provides for limitations to the right to access these documents. For example, the use of documents containing personal data is allowed by the Authority

142 Article 22 of the Law no. 45, dated 30.4.2015, “On the right to information on documents of former State Security of the People’s Socialist Republic of Albania.”

143 Article 22/1 of the Law no. 45, dated 30.4.2015, “On the right to information on documents of former State Security of the People’s Socialist Republic of Albania.”

144 ICMP report, Albania, missing persons from the communist area: A Needs Assessment”, 02.03.2021, page 16.

only for the purposes provided in the law. Some purposes relevant to the scope of this study include:

- rehabilitation of the affected, dead or missing persons;
- reparations in compliance with the applicable legislation;
- protection of the right to privacy and family life;
- clarification of the fate of missing and disappeared persons and deaths in unclear circumstances, etc.¹⁴⁵

If the Authority refuses to respond to a request for information, the applicant has the right to challenge the refusal by filing a complaint with the competent administrative court.¹⁴⁶

ii The Institute for the Integration of Persecuted Persons

The Institute for the Integration of Persecuted Persons (IIP) is a state institution under the Ministry responsible for social welfare¹⁴⁷ and seeks to take all measures and follow all cases involving the integration in society of the politically persecuted by the communist regime. The IPP organization and functioning is regulated by the Law "On the Institute for the Integration of the Persecuted".¹⁴⁸ It stipulates that the IIP shall process and handle fundamental cases involving persecuted persons, in cooperation with the associations of persecuted by concluding agreements for this purpose.¹⁴⁹

The framework law underlying the IPP activity is the Law "On the compensation of the former politically persecuted by the communist regime".¹⁵⁰ As mentioned in the subchapter dedicated to this law, it applies to all the politically convicted and not only to the family members of the victims of enforced disappearance. Usually, the latter were persons convicted to imprisonment, internment or deportation on political grounds. On the other hand, the family members of the victims of enforced disappearance for whom there is no decision for capital punishment, deprivation of freedom, internment, etc., have to cope with more difficulties in proving the disappearance through documentation and in exercising their right to compensation.

The Institute for the Integration of the Persecuted Persons cooperates with the ICMP in finding the victims of enforced disappearances during the Communist regime in Albania.

145 Article 28 of the Law no. 45, dated 30.4.2015, "On the right to information on documents of former State Security of the People's Socialist Republic of Albania."

146 Article 41 of the Law no. 45, dated 30.4.2015, "On the right to information on documents of former State Security of the People's Socialist Republic of Albania."

147 Currently the Ministry of Health and Social Protection.

148 Law no. 8246, dated 1.10.1997, "On the Institute for the Integration of Persecuted Persons".

149 Article 2 of the Law no. 8246, dated 1.10.1997, "On the Institute for the Integration of Persecuted Persons".

150 Elaborated in a dedicated subchapter in this study.

iii. The Institute for Studies of Communist Crimes and Consequences

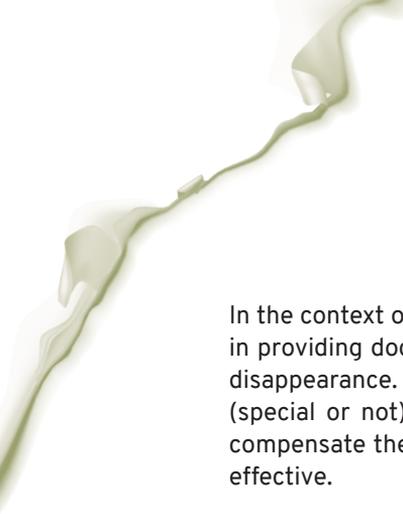
The Institute for Studies of Communist Crimes and Consequences is an independent public central institution and enjoys legal personality. It is established under the Law “On the Institute for Studies of Communist Crimes and Consequences in Albania”.¹⁵¹ This law defines, inter alia, the set of requirements for the collection, administration and preservation in the Institute’s archive of the documents and materials that testify of the communist crimes in Albania.¹⁵²

This Institute does not only deal with victims of enforced disappearance during the communist era in Albania, but it has some important duties that serve the victims of enforced disappearance and their family members. Some duties of this Institute that are relevant to the scope of this study include:

- Analyse, study and document the crimes committed by the communist dictatorship authorities and the consequences during and after the communism era;
- Identify secret or open secondary legislation prepared or approved by the state and constitutional institutions, authorities and bodies that served as a legal framework for the organization and functioning of the entire apparatus of the communist system;
- Study and evaluate the set-up, institutional organization and anti-democratic and criminal activity of the state authorities, particularly those of the former State Security;
- Study and evaluate the criminal activity of the Communist Party of Albania and, later on, the Party of Labour of Albania and all other organizations established in support of its ideology;
- Analyse the reasons and modalities of the installation of the communist regime, and documents that prove the involvement of Albanian and foreign persons who supported the establishment of this regime, and those who resisted it;
- Collect information, documents and testimonies to shed light on the structures and mechanisms of the State Security, the forms of persecution and resistance against them, and any activity that led to the violation of the fundamental human rights and freedoms during the Communist regime;
- Process in electronic format all the documentation on the crimes committed by the Communist regime in Albania;
- Cooperate with research, cultural, educational and other institutions in sharing information and experience on the scope of work of the Institute; etc.

¹⁵¹ Law no. 10 242, dated 25.2.2010, “On the Institute for Studies of Communist Crimes and Consequences in Albania”.

¹⁵² Article 2 of the Law no. 10 242, dated 25.2.2010, “On the Institute for Studies of Communist Crimes and Consequences in Albania”.



In the context of the above duties, this Institute has the potential to play a key role in providing documentation and information to the families of victims of enforced disappearance. Additionally, the cooperation of this Institute with the above bodies (special or not), whose goal is to discover the fate of the missing persons and compensate their family members, is important in making these procedures more effective.

III. Conclusions

In the international realm, the domestic legal framework addressing the issues related to the victims of enforced disappearance is complete and without gaps or contradictions to the various international instruments dedicated to them. In addition, the European Court of Human Rights has given a valuable contribution in the interpretation of the Articles 2, 3, 5 and 13 of the ECHR in the context of enforced disappearance, by defining key principles such as:

- Presumption of the violation of Article 2 of the ECHR in the event the victim has been last seen in life-threatening circumstances and the state is unable to provide information on the victim's whereabouts.
- Application of (violation of) Article 3 of the ECHR not only in protection of the direct victim of enforced disappearance, but also in protection of their family members;
- Application of Article 5 of the ECHR in any case of enforced disappearance;
- Application of Article 13 of the ECHR in the context of just satisfaction warranting not only pecuniary compensation, but also the obligation on the State Party to prove all the necessary information to the families of victims of enforced disappearance.

Further, the UN Convention for the Protection of All Persons from Enforced Disappearance, albeit not legally binding, provides a complete definition of “forced disappearance”. In addition, this Declaration defines three-fold liability on the states /authorities involved in acts of enforced disappearance; criminal liability, civil liability and international liability. In the spirit of the above Declaration, the International Convention for the Protection of All Persons from Enforced Disappearance reflects the same principle and builds on the steps taken by the Declaration by being binding on its signatory parties. Both these instruments stipulate that enforced disappearance is a crime against humanity and there is an absolute prohibition against the commission of such a crime.

The ICMP stands out among the various international organizations that implement the international instruments, because its goal is to ensure cooperation between the governments and other stakeholders in finding the missing people from conflicts, human rights abuses, disasters, organized crime, irregular migration and other reasons.

In the domestic realm, Albania went through 45 years of Communist regime and needs a detailed, effective and swift regulation on discovering the fate of the victims of enforced disappearance as well as information and compensation for family members of victims, etc. An official definition of the term “enforced disappearance” was introduced late (considering the moment when Communism collapsed in Albania and the sad practice of enforced disappearances during Communism) in the

Law no. 45, dated 30.4.2015, “On the right to information on the documents of the former State Security of the People’s Socialist Republic of Albania”.

Albeit not explicitly providing for the terms “enforced disappearance” or “missing person”, the Constitution of the Republic of Albania sets out several principles, analysed in this paper, that condemn acts such as enforced disappearance. As a signatory state of the international conventions mentioned above, Albania has the obligation to respect their provisions. Besides, the Council of Ministers has also signed a cooperation agreement with the ICMP, by which Albania is bound to protect the interests of the families of victims of enforced disappearance. Furthermore, the agreement details the powers and cooperation of the ICMP office in Albania with the Albanian government. In the context of this agreement, the ICMP published a report in 2021, specifically a needs assessment for Albania in the context of persons disappeared during the Communism, in which the ICMP highlighted the main issues, such as the lack of cooperation among Albanian authorities in the exhumation, archiving, or coordinated investigation of the enforced disappearances during Communism, the limited financial resources of some authorities tasked with the information and rehabilitation of the families of victims of enforced disappearance, the lack of modernization of information archiving/filing, etc.

The Criminal Code of the Republic of Albania categorizes the “enforced disappearance” under the section of crimes against humanity. Although this Code came into force after the fall of communism, it is important to note that it qualifies ‘enforced disappearance’ as a continuous criminal offence – in compliance with the international convention – which does not end when the victim loses contacts with his/her family members, but extends in time until the circumstances of the disappearance are clarified. For this reason, the current Criminal Code is applicable also to disappearances occurred during the communism era in Albania. On the other hand, the Criminal Procedure Code of the Republic of Albania entrusts mainly the prosecution office with the obligation to initiate investigations (including the crime of enforced disappearance), but it also gives an important role to the Judicial Police and Courts.

This study analysed several laws that play a crucial role in addressing the issue of victims of enforced disappearance and their family members. However, some of these laws encounter challenges and problems in practice. For example, the Law “On the compensation of the formerly politically convicted by the Communist regime” focuses on the rehabilitation of the victims (or their family members) of the unjust political sentences rendered during Communism in Albania. However, it poses additional limitations on the family members of the victims of enforced disappearance (not the political convicts in general), which have been reported by national and international organizations. So, reports indicate that compensation is limited only to persons who possess documents that prove their status (or their family members) as politically persecuted persons, leaving many families of these victims outside the scope of this law. The Law “On the right to information on documents of the former State Security of the People’s Socialist Republic of Albania” pays particular importance to the cooperation among state institutions in recovering the remains of disappeared and executed persons, as well as taking

measures to preserve the gravesites. However, according to the ICMP 2021 report, such cooperation has not been at the required level.

In the end, this study probes into the main Albanian institutions that address the consequences of the enforced disappearance crime during the Communist era. Some issues noted or reported about these institutions may be summarized as follows: According to the ICMP 2021 Report, the engagement of the prosecution service in finding the remains of victims of enforced disappearance has not always enjoyed special attention; the General Rules of Procedure of the Institute of Legal Medicine do not provide for specific details on how to address cases of remains of persons believed to be victims of enforced disappearance; the Institute of Legal Medicine does not work with forensic archaeologists needed for the excavations and recovery of human remains from mass graves. In addition, the Authority for Information on Former State Security Files (AIDSSH) is a special body tasked with addressing issues of enforced disappearance during Communism in Albania, but it lacks secondary legislation that would allow for the effective operation of the newly established department on missing persons.

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**A sociological analysis on
the political persecution
and disappearance
of persons under the
communist regime**

Teuta Starova

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DISAPPEARANCE OF PERSONS UNDER THE
COMMUNIST REGIME - COLLECTION OF STUDIES

Introduction

In many studies by Albanian and foreign authors, Albania has been described as a former communist country, which had the most brutal dictatorial regime, and even after thirty years of transition, there is still much to be done in restoring justice for the victims of that dictatorship, or in the field of transitional justice.

The main objective remains the full investigation of human rights violations during the communist period, as one of the key mechanisms of transitional justice in Albania. This study represents an attempt to analyse and present information, and to research and reflect on the facts of persecutions carried out in Albania by the communist regime.

Particular attention is paid to addressing the issue of people disappeared during the communist regime and the political persecution of women, including other women who, albeit not directly persecuted, suffered the brutalities of political persecution on themselves and their families. One of the major difficulties of this study was the lacking information that affects the attempt to conduct a thorough analysis. However, best efforts were made to collect the information that allows us to analyse from a gender perspective the cases of persecuted women of Tirana Region.

The key aim of the study is to go beyond the concrete research of the facts, drawing some conclusions regarding the causes that impeded a full-fledged transitional justice in Albania and the role of the political factor.

The study material relies mainly on archive files on persecuted people, testimonies of representatives of persecuted families, the Authority for Information on Former State Security Files (AIDSSH) publications, memoirs, Internet resources, and other secondary sources.

The whole paper is guided and based on the theoretical foundations and practical experience of transitional justice, a relatively new field of study of about thirty years. The methodological framework of this paper consists of qualitative research through special studies in the field of transitional justice.

I. Initial attempts to launch transitional justice in post-communist Albania

Historical and life experience has shown that public opinion in all post-dictatorship societies has had to deal with important questions about the past regime and its stand to it.

Questions have been and are being asked in post-communist Albania, such as: Should the crimes and criminals of the dictatorship period be properly convicted? How should the nature of communist crimes be determined if they were committed based on the law? Who were the real criminals of the communist regime: political leaders, or investigators and judges? Are the top political leaders of the communist dictatorship accountable? What is the criminal accountability of the collaborators of the former communist State Security for the murders, tortures, and other crimes committed? How should justice be served for crimes committed under a dictatorship? Should victims and their families be compensated and rehabilitated? What should be done to inform the public opinion, and above all, the younger generation, of the truth about dictatorship? Can a democratic society be built without doing justice on the old communist regime? Is there a danger that rendering of justice for communist crimes will lead to social disruption and undermine social peace?

The answer to such questions and the analytical discussion of similar problems can be found extensively in the new field of study, transitional justice, and its case law. However, it is important to analyse and reflect on some of the problems posed above.

How should the nature of communist crimes be determined if they were committed based on the law?

The communist regime was overthrown by a popular revolution that did not caution to abide by the applicable laws back then, entirely disregarding them as laws established through violence, demagoguery, and voting processes devoid of freedom of choice for the people. Seen in this light, those laws (such as that on punishing anti-communist agitation and propaganda) could not serve as the basis of just and irrefutable punishments, but only as a means of defending that regime. Some of the violations of those laws that demonstrated opposition to the communist policy can be regarded as the beginning of the popular revolution that would later overthrow the communist regime.

Consequently, we can respond to the question “Who were the real criminals of the communist regime: political leaders, or investigators and judges?” by saying that the real criminals were, above all, the top political leaders of the communist regime. This does not exclude from responsibility the investigators and judges, because many of the trials were based on false investigations and facts, or on no facts at all.

The existence of a substantial number of disappeared persons during the communist regime is an even stronger proof of this. Of course, for investigators and judges, accountability must be sought and held concretely based on the accusatory facts.

Therefore, even the question “Can a democratic society be built without doing justice on the old communist regime?” implies a negative answer. Albania has not fully done justice on the old communist regime and, as a result, its transition is lingering longer than in other former communist countries. The political discourse between the left wing and the right wing is very fierce and many people feel frustrated by democracy, especially the former politically persecuted.

In their book “Emergence of Transitional Justice as a Professional International Practice”, the authors/experts of transitional justice, Lefranc and Vairel, write: “Transitional justice [...] has recently become among the most recommended means of building peace in a country having experienced a civil war or violent state repression. [...] Transitional justice, however diverse may be its components, gives a new definition of justice: the rehabilitation of victims, partly through reparations, is generally favoured upon judgment of the perpetrators.”¹

In the same book, they further write: “The model of transitional justice has thus progressively become a tool constituting and expanding an international job market, extending it beyond the international promotion of human rights. For example, training sessions organized by the International Center for Transitional Justice (ICTJ) function as a space toward which ‘agents of the international’ converge, preparing a passage from the governmental toward the inter-governmental just as from the inter-governmental toward the non-governmental (and inversely). [...] The intervention of the ICTJ in more than thirty countries in a brief period of time is explained by the talent deployed by members of the organization in order to arouse the interest of varied local elites in transitional justice ‘best practices’.”²

Speaking about the need for transitional justice action in Albania, the Albanian scholar Altin Gjeta states that: “Transitional justice is shaped as an activity and research tool that focuses on how societies deal with the legacy of past human rights violations, massive brutalities, or other forms of serious social trauma, intended to create a more fair, democratic and peaceful future”.³

Based on the studies and practical experience of many post-dictatorship circumstances, starting with the Nuremberg trials that convicted Nazi war perpetrators, Transitional Justice has elaborated and supported many of its mechanisms that are generally reparations for the people who suffered human rights violations under dictatorship, regular court hearings on human rights violations under dictatorship, setting up truth commissions on the dictatorial past, lustration or ban from public office of persons who committed human rights violations in the former dictatorial society, property compensation and restitution, access

1 Lefranc, Sandrine and Vairel, Frederic, “The Emergence of Transitional Justice as a Professional International Practice”, Internet, link.springer.com/chapter/10.1007/978-90-6704-930-6_14, Abstract.

2 Lefranc, Sandrine and Vairel, Frederic, “The Emergence of Transitional Justice as a Professional International Practice”, Internet, link.springer.com/chapter/10.1007/978-90-6704-930-6_14, pg. 246

3 Gjeta, Altin, “Transition without justice in post-communist Albania: Its implications to collective memory building and democracy promotion”, OSCE, Justice and Transformation in Albania, 2020, pg. 8

to secret files of human rights violations, installing monuments and museums, commemorative activities, publication of books and documents on crimes under dictatorship, the proclamation of the past totalitarian period as illegal, seeking public apology, etc.

Several important international bodies have been established in support of the practical implementation of transitional justice in post-dictatorial countries. We are mentioning some of them.

The International Center for Transitional Justice (ICTJ), founded in 2001 and based in New York, is a global non-profit organization handling serious human rights violations across the world. It also cooperates with Albania in pursuing the investigation and accountability for communist crimes.

In the international arena, there is also the International Commission on Missing Persons (ICMP), established at the initiative of President Bill Clinton in 1996. It cooperates with governments to find people missing as a result of conflicts, human rights violations, organized violence, etc. ICMP initially met with the Albanian government in 2010 and managed to sign a cooperation agreement in 2018.

There are also two UN bodies under the Office of the High Commissioner on Human Rights (OHCHR), established in 1993: WGEID (Working Group on Enforced or Involuntary Disappearances) and CED (Committee on Enforced Disappearances).

In Albania, as in all former communist countries, the first attempts to pave the legal way for transitional justice began immediately after the establishment of democracy.

Following these democratic changes in Albania in the early 1990s, the Albanian parliament passed three important laws. In 1991, it passed the Law “On the Innocence, Amnesty and Rehabilitation of Former Politically Convicted and Persecuted”. In 1995, two other important laws were passed, called the “Law on Genocide and crimes against humanity committed in Albania during the communist regime for political, ideological and religious reasons” and the “Law on the vetting of officials and other persons related to the protection of democratic state” (the so-called Law on Verifications).

The “Law on Lustration”, adopted in 2008 provided that all people of the old communist regime were banned from public office, but it was repealed by the Constitutional Court in 2010. This decision created problems to the implementation of transitional justice in Albania. Equally important was the law “On the Compensation of Former Politically Convicted by the Communist Regime”, adopted in 2007, amended and improved several times afterwards. Particularly important for the persons disappeared during the communist regime was the amendment introduced to Article 74 of the Criminal Code (2013), which defines enforced disappearance among the crimes against humanity and serves as a basis for the searching of disappeared persons during the communist era.

Shortly afterwards, in 2010, the Institute of the Former Politically Persecuted was established. Scholar Sokol Lleshi says: “The establishment of the Institute was officially supported by the Democratic Party, a centre-right political party [the first opposition party in Albania, note of author T. Starova]. It was hoped that that Institute

would have, legally and practically, all the symbolic power of a state institute with unlimited access to the archives of the communist secret police. From the point of view of official institutional features and symbolic power, the Institute would have the same achievements as the other similar institutions. Founded in 2010 and housed in the same building that had housed the representative of Fascist Italy in Tirana, the Institute focused on gathering evidence of the politically persecuted, presenting graphic reconstructions of concentration camps, and publishing a database on victims”.⁴

The post-communist period saw the establishment of many NGOs of former politically persecuted that would deal with the multitude of human rights violations during the communist dictatorship.

On 30 March 2015, the Authority for Information on Former State Security Files (AIDSSH) was established as an independent public institution that would focus on the tasks of collecting, storing and processing the former State Security documents of the communist era. This institution was intended as a mechanism to facilitate the challenging work of transitional justice in Albania. During the few years of its existence, this institution made significant efforts to raise awareness on transitional justice issues in Albania through publications, conferences, and dissemination of information requested by the families of former politically persecuted.

However, there is still much to be done for transitional justice in Albania. As scholar Altin Gjeta puts it, “Transitional justice has been largely overlooked in post-communist Albania, partly due to a lack of human resources, funding, and research interest in the issue. Most research has been done by foreign scholars. [...] There is a general agreement among scholars that the Albanian authorities have failed to address human rights violations by the communist state.”⁵

At the Scientific Conference organized by AIDSSH in May 2019, the Director of this institution, Gentiana Sula, stated: “The usual approach to certain behaviours, crimes, acts of violence, ill-treatment or support of the regime is relativized through expressions like ‘that was the time back then’, ‘that was the law’, ‘everything was done in accordance with the law’, resulting in accepting attitudes in the face of a state that appears to have been well-organized with just laws”⁶

This is an incredibly sad fact for Albania, but it is entirely true even today. The administration of justice for the perpetrators of the communist persecution has been left in oblivion, except for some farce trials against the former communist elite where the cause of punishment was simply personal economic abuse, or as it is commonly said ironically in public opinion ‘the wasteful consumption of a certain amount of coffee’.

4 Lleshi, Sokol, *European Politics and Society*, ISSN: 2374-5118 (Print) 2374-5126 (Online)

Journal homepage: <https://www.tandfonline.com/loi/rpep21>

5 Gjeta, Altin, “Transition without justice in post-communist Albania: Its implications to collective memory building and democracy promotion”, OSCE, *Justice and Transformation in Albania*, 2020, pg. 6

6 Sula, Gentiana, AIDSSH, “Profile të ‘Armikut të Popullit’ në diktaturë”, Tiranë, bot. 2021, pg. 6

II. Tragic dimensions of human rights violations in communist Albania and persons disappeared during the regime

The scale of communist crimes in Albania is very painful. There are at least four facts that make those crimes extreme compared to other former communist countries: the targeting of the intellectual elite, the brutality of persecution and crime against women, the seizure of private property and assets, and the considerable number of disappeared persons.

As author Fatbardha Saraçi states in her book *The ordeals of women in communist prisons*, “[...] around 10% of those executed by firing squad in Albania by the communist dictatorship were women [457]. Out of 308 persons who lost their mental balance, some were girls and women. 7,367 girls and women were politically convicted and 10,792 were interned.”⁷ Compared to the population, the scale of the communist crimes was enormous.

Most of the people persecuted and disappeared by the communist regime were educated people and intellectuals in various fields. Some of them were killed immediately after the end of World War II and the liberation of Albania, without any charges or trial, simply as alleged collaborators with the occupiers. Others were killed in entirely fabricated trials, like the group of 16 opposition MPs in 1947 (Shefqet Beja, Riza Alizoti, Sulo Klosi, Selaudin Toto, Salim Kokalari, Irfan Majuni, Enver Sazani, etc.), the 10 engineers engaged in drying the Maliqi swamp executed in 1946 (Abdyl Sharra, Kujtim Beqiri, Zyraka Mano, Pandeli Zografi, Vasil Mano, Jani Vasili, etc.), the 22 intellectuals executed in 1951 for alleged plot to place a bomb at the Soviet Embassy in Tirana (Sabiha Kasimati, Tefik Shehu, Hekuran Troka, Haki Kodra, Ali Qoraliu, Jonuz Kaceli, Gafur Jegeni, Qemal Kasoruho, Reiz Selfo, Gon Temali, Mehmet Shkupti, etc.), and many others politically persecuted and convicted during the existence of the communist regime, like Gjergj Kokoshi, Pjetër Arbnori, Qenan Dibra, Irfan Hysenbegasi, Thoma Orogollai, etc..

All their personal stories of political persecution were largely fabricated and very tragic, but the major truth is that they were heralds of the savage communist dictatorship that was being installed in Albania. Meanwhile, the political persecution of persons kept under surveillance by the secret collaborators of the State Security - for whom secret files were compiled - reaches a much higher figure. Among those files we single out persecuted and executed women, such as the prominent intellectual Sabiha Kasimati, Zyraka Mano (shot while pregnant with the rest of Maliqi group), Elisabeta Spiragu, Mergjuze Cafaj, Mime Hamzaj, Katerina Nik Bibaj, Erifili Bezhani, Musine Kokalari, Drita Kosturi, Raile Luzi, Frida Sadedini, etc.

The following are some little-known facts from the stories of the inhuman persecution of women.

The tragic fate of lawyer Erifili Bezhani⁸ is an example of how Hoxha's dictatorial regime persecuted a large number of intellectuals to extinction. An excellent law graduate in France, Bezhani returned to Albania in 1943. After the war, she told her relatives about the communist terror that *"it is a scary reprisal, far from the example of European countries, so it has to be stopped"*. She was arrested for her political opinions and sentenced to 20 years in prison. After her release in 1958, she was condemned to working as a street sweeper in Tirana, doing only night shifts. After this humiliating job, she fell ill and died during a hospital surgery in February 1959.

There is also the painful story of Marie Tuci,⁹ the only woman among the 38 martyrs of the Catholic Church, who was killed by barbaric physical and psychological torture in October 1950. She was arrested and suffered her tragic fate at the age of 22, when she was a teacher in Mirdita, only because she spoke out against the humiliation of the Catholic Church by the communists.

Several thousand other women who refused to divorce their husbands to make ends meet for themselves and their families experienced savage suffering along with their families in internment camps. As the author Saraçi puts it again in her book about those women, "They became heroines, being chased for years, traveling in cold or hot weather, on foot or on trucks loaded with wood, sleeping on the streets, because the house-doors of the residents near the prisons and labour camps were not opened for them, from fear of the State Security."¹⁰

Written documents and accounts of the relatives of the former persecuted show a large number of disappeared persons during the regime. A Study Report conducted by the ICMP experts and supported by the EU in 2018-2020 states that: "It is estimated that around 6,000 persons went missing under the communist regime in Albania in the period between 1944 and 1991. According to official data, 5,501 persons convicted for political reasons were executed during this period. Their bodies were never returned to their families. Official data also indicates that an additional 987 political prisoners died from various causes in prisons and detention centres in Albania. The whereabouts of their mortal remains are unknown to surviving relatives."¹¹

Based on the extensive literature on transitional justice and numerous documents on communist persecution in Albania, the lawless disappearance of persecuted people or the disappearance of the bodies of those shot by the Albanian communist regime makes one think that it followed in the footsteps of the legacy of political terror that originated from the Jacobin dictatorship of France, or the communist dictatorship of the proletariat of Lenin and Stalin in the Soviet Union. Like any dictatorship, the Albanian communist regime was aware that if political executions were infrequent, persecuted people would pose a permanent threat, through the expression of their

8 <https://kujto.al/fati-tragjik-i-erifili-bezhanit-avokatja-e-pare-shqiptare-qe-vuajti-burgun-e-burrelit-dhe-perfundoi-si-fshesaxhije/>

9 <https://kujto.al/mesuesja-qe-vdiq-nga-torturat-si-e-percmoi-kryehetuesin-e-tmerrshem/>

10 Saraçi (Mulleti), Fatbardha, "Kalvari i grave në burgjet e komunizmit", pg. 191.

11 ICMP Report, Press Release, 2 March 2021

critical views on the communist regime and the lack of freedom and a normal life for the people. Also, if the bodies of people shot for political reasons were to be buried in a normal way, they could become inspiring symbols of disappointment and hatred towards the communist regime. The disappearance of the bodies of the executed politically persecuted created a strong psychological pressure on their families and the society as a whole, implying that their crimes had been so serious as to be denied a grave and the posthumous honours that were part of ordinary human traditions of all times and of all peoples.

The blatant and inhuman human rights violations in Albania included property plunder through the seizure of assets, houses, money or other valuable items.

At least two forms of political persecution can be clearly observed during the communist dictatorship, in line with two historical periods. From 1944 to the mid-1950s, more public and savage forms of political persecution were practiced, perhaps also due to the fact that there were still illusions among intellectuals that the new regime would be a type of Western democracy, and for this reason, they were outspoken about the shortcomings of the regime. It is well known that Sabiha Kasimati once openly and ironically told dictator Enver Hoxha that “by killing all intellectuals, he would have to build the country only with shoemakers and tinsmiths”.

Another significant case is that of the intellectual and patriotic teacher Edip Tërshana who openly stood against the dictator’s policy. In a letter found in his pocket before being executed on 18 January 1948, he wrote to Enver Hoxha, accusing him of betraying Albania and Kosovo* in collusion with the Yugoslavs. In that letter he says, “I am against the executions of people with or without trials... This is treason ... I am against this power, because it is speculative and robs the people by law, and sells the goods seized from traders at a higher price than theirs, throwing on the street many families of traders labelled as speculators. I am against the call ‘We are the children of Stalin’... I am against it, because there is no freedom of speech and free press. There is only terror...”¹²

The next period, from the mid-1950s until the 1990s, displayed other equally cruel but more hidden forms of political persecution. During this period, Hoxha’s dictatorship launched persecution among the communist leadership and his collaborators, after the Party Conference of April 1956 in Tirana, where members voiced strong criticism against the cult of the individual - directed at the dictator. During this period, the covert surveillance of people of intellectual descent and rich families expanded exponentially.

In this period the communist regime tried to keep alive and amplify the sense of fear for anyone who could think or talk about the shortcomings of that regime. There was even an unwritten policy on the number of punishments that had to be imposed on potential opponents of the regime. Quite interesting in this context is an episode told by a young graduate employed as an investigator in Korça by the early 1980s,

* All references to Kosovo, whether to the territory, institutions or population, should be understood in full compliance with United Nations Security Council Resolution 1244.
12 "Rajoni" magazine, <https://gazetarajoni.com/shqipshqiptari-i-vetëm-ne-planet-qe-guxoi-dhe-i-tha-te-verteten-e-nver-h-oxhes-po-vr-et-popullin-po-i-kthen-ne-skill-ever/>, 28 October 2021.

who had some dose of liberalism due to his age and background. But, after one year on the job, he still had not brought any facts about the activity of the “enemies of the class”. Given that he was looking bad and incompetent, his boss, seeking to save him from criticism, told him: “If you remain dry, with no facts to show, then go to a grocery store where some Soviet women married to Albanians go shopping and, since they always complain, you can note down their words in a denunciation file. That way you will be okay with the job.”¹³

Another episode told by a former prisoner shows even more clearly that there was a certain policy of the communist regime on the number of sentences to be imposed, simply as a means of strong psychological pressure on the people. It is confessed by an elderly prisoner put behind bars on entirely fabricated reasons. In his wise manner, he made it known to all, even to the prison guards, that he had been convicted on false charges. Thus, whenever the word ‘investigator’ came up in a conversation, he deliberately distorted it by saying ‘instigator’. The implication for the smart ones was clear: the investigator is the one who writes what he wants in the formal accusation, while the absent-minded guards corrected him by telling him that he should say ‘investigator’ and not ‘instigator’.¹⁴

Another typical example of the persecution of women is the Standard Form 2/A (the highest category of political persecution by the State Security) on Tefta Koço Tase. In 1975, she was interned to Grabian village in Lushnja, and in 1979 she was processed (surveillance by security agents) as a propagandist on behalf of the Italians, claiming that Albania was in a poor economic situation and that the Italian radio stations had much better programmes than the Albanian ones. The file shows how different agents with nicknames like “Lily”, “Hope”, “Volga”, “Lindita”, “Mountain”, etc., gathered information on Tefta to unmask her before the people in 1979; a few months later, she was arrested and convicted to 8 years in prison. Persecution persisted even while in prison. Through provocations from various informants inside the prison, they filled her file with various information, such as: Tefta prefers the Yugoslav television programmes, she appreciates the figure of Tito, she said that Albanian 50-year-old women look older than their foreign peers, she said that prison food is so bad that even a dog would refuse to eat it, or that Tefta did not trust the Albanian press, etc. Even after her release from prison in 1982 and her resettlement in Grabian, Tefta was persecuted through covert surveillance by State Security informants who obtained information about her through their friendship with her brothers. Her file was archived only on 11 June 1991, after the democratic changes.

We find comparable stories of other women in Tirana region, such as Laura Gjeto Keqi, Fatbardha Qorri, Emine Muharrem Shima, Fatime Dega, Asamble Hatibi, Fatime Hoxha, Fatime Reka, Rukije Pame and Xhuljeta Cuka, amongst others.

There are many such tragic cases and let us mention just a few.¹⁵

The location of the graves of several women persecuted and executed by the

13 From a direct talk with the former investigator Mr. P. Lamaj.

14 From a direct talk with the former prisoner I. Farka

15 <http://evenwallshaveears.org/story/shoresa-ballolli-merdani-3/>

communist regime is still unknown. For all of Albania, there are about 22 missing women persecuted by the communist regime, but this is still not a final figure.

These are the women from Tirana region who disappeared during the communist regime for political reasons, and who still do not have a resting place:

Liri Besim Gega [Ndreu] (born on 17 February 1917 in Gjirokastra, convicted by trial and executed on 23 September 1956).

Hanife Ramadan Karkuli (born in 1902 in Çamëria, convicted by trial for her activity during the war and executed on 25 June 1945).

Hatlije Beqir Tafani (born in 1913 in Tirana, died in investigation offices on 16 September 1945 before standing trial).

Taho Sejko was kidnapped on 28 July 1960 by three State Security agents and was killed without trial on 24 February 1962 – as told by his son Hektor Sejko – and the whereabouts of his remains are still unknown.

Galip Hatibi was kidnapped by the State Security when he was 26 years old. After being tortured, he was doused in gasoline and burned alive – as told by his son Durim Hatibi – and the whereabouts of his remains are still unknown.

Dom Engjëll Kovaçi, a priest, was arrested for a second time and accused of having killed someone inside the church – as told by his sister Angjelina Preka (Kovaçi). He was executed by firing squad and his remains have not been found.

The religious communities in Albania did not escape the savage persecution by the communist dictatorship. The Catholic Clergy, in particular, endured brutal reprisals. A short extract from Father Zef Pllumi's book would suffice to comprehend the dimensions of the tragedy inflicted on Albanians by the communist dictatorship: "The titanic so-called proletariat violence exerted day and night, restlessly and everywhere, with no distinction between villages and cities, associated with the parrot-like shouted slogans and inhuman tortures, lies and fabrications by servile or paid persons: after all those bloody executions, imprisonments and violent mass displacements, they managed to subdue the free people of Albania and thus partisan violence managed to form the government."¹⁶

III. Political persecution of women under the communist regime

Following is the case of persecuted and political prisoner Asamble Rexhep Hatibi from Tirana.¹⁷

¹⁶ Pllumi, At Zef, "Rrno vetëm për me tregue", Printing House "55", 2006 edition, pg. 35.

¹⁷ All the information presented in this section relies on the Intelligence File by the agent a.k.a. "Witch", File 11554-A, Binder 1, No. 1334.

Born in 1924 to a family of traders, Asamble Hatibi graduated from the Tirana Women's Institute and actively engaged against the Italian fascist invaders in Albania, even being arrested and convicted by them. She spoke several languages fluently and was well-cultured thanks to her incessant readings and broad interests. After working for several years at the Ministry of Agriculture and the High Institute of Agriculture, she was purged as an ordinary worker in the Handicraft Enterprise "Migjeni".

Through various State Security secret agents, and especially the agent "Arrow", whom Ms. Hatibi thought to be her friend, suspicions had aroused that she was conducting agitation and propaganda activities against the "party and the people's power". According to the extensive information provided by the "Arrow", Ms. Hatibi thought that "Koçi Xoxe and the First Secretary [Enver Hoxha, author's note] were the same, they had worked together, but when Hoxha saw that Xoxe enjoyed more support and threatened to replace him, he attacked Xoxe"... "every decade there is a campaign to kill the opponents... ", "...she considers the leader to be a murderer, criminal, guilty, collaborator of the enemies of the party, murderer of Musine Kokalari... the economic situation of the country is such that one has to wait in line to buy cucumbers"... etc., etc. Following a lot of such information from the agent "Arrow" and other agents, as the one with the pseudonym "Arbëri", who was instructed to monitor and provoke Ms. Hatibi, and after insistent surveillance of her apartment and the conversations that took place there, she was finally arrested in October 1978 for "keen and hostile agitation and propaganda activities against the party and the people's power". After that, a meticulous plan was put into motion to complete her "hostile" file before sending it to court. The investigation office gave instructions to study the hostile materials on her husband Galip Hatibi, convicted as an agent of the Americans, study the calligraphy of Mrs. Hatibi on suspicion that she had sent an anonymous letter to the party leadership, check the correspondence she had with her relatives in Turkey and Yugoslavia, check and seize the books that Mrs. Hatibi had at home, conduct intensive investigation actions on Mrs. Hatibi to discover her connections with people abroad and find the inspirers of her propaganda, find the source of information that underlay her opinions, find hostile elements among her friends, find her assets abroad, especially process her in the isolation room (which meant forcing her to confess something), preserve the secrecy of agent "Arrow", survey her son Durim Hatibi, and explore the possibility of recruiting as secret agents those who had talked to Ms. Hatibi, etc.

Following this intensive investigative activity, the file was sent to Tirana Court on 17 March 1979 on charges of hostile agitation and propaganda based on Article 55 of the Criminal Code. The subsequent court decision stated that her hostile activity had begun in 1964, and Ms. Hatibi was sentenced to 7 years in prison.

Such extensive information about a single person suffices to understand quite clearly the giant state mechanism set in motion to protect the regime from the dangerous ideas of many people.

Ms. Hatibi was released under an amnesty in 1982, but her case was closed only in 1991. During those eight years, she continued to be under State Security surveillance.

It should be noted that during the intensive investigation process of Ms. Hatibi, two people were recruited as secret agents through psychological pressure on them. Meanwhile, another person committed suicide only to not become a State Security secret agent [we are not giving their names, but they are in the file; author's note].

Today, many years later, we all know that Ms. Hatibi and all the people who were politically persecuted and disappeared during the communist regime were only telling the truth in their conversations, but it contradicted the great lie of the communist regime, which was protected by “law” and law enforcement authorities.

IV. Legal framework and official practical efforts to search for and find disappeared persons under the communist regime

With the establishment of democracy in Albania in 1992, important steps were taken to bring justice to the thousands of victims of communist crimes and their families, along with their rehabilitation and economic reparation. Finding the remains and graves of persons executed during the communist dictatorship was part of this very essential process for the new democratic Albanian state.

In relation to persons disappeared as a result of political violence, there is relevant international legislation, such as the International Convention for the Protection of All Persons from Enforced Disappearance. The first two paragraphs of Article 1 stipulate that: “1. No one shall be subjected to enforced disappearance. 2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance.”¹⁸

Albania also assumed legal obligations to administer justice to people who went missing during the communist era and their families.

The crime of enforced disappearance is a crime against humanity, according to the Statute of the International Criminal Court (Rome Statute), which Albania signed on 18 July 1998 and deposited its instrument of ratification on 31 January 2003. This legal instrument sets out the obligations of states to conduct effective investigations into missing persons' cases.¹⁹ Thus, Albanian families have a long-standing legal right to demand investigations into their disappeared relatives during the communist dictatorship and to be assisted by the State.

Later, at the Peace Forum in Paris on 12 November 2018, the International Commission on Missing Persons [ICMP] revised the ICMP Declaration on the Role

¹⁸ Authority for Information on Former State Security Files [AIDSSH], “Guide”, 2021 edition, pg. 9.
¹⁹ Authority for Information on Former State Security Files [AIDSSH], “Guide”, 2021 edition, pg. 48.

of the State in Addressing the Issue of Missing Persons... in order to support the universal implementation of the principles of the Declaration in all circumstances where persons disappear...”.²⁰

Also, in the same ICMP Study Report 2018-2020 funded by the EU, the expert Matthew Holliday, team leader of this ICMP programme for the Balkans stated that “The report’s recommendations seek to ensure missing persons cases are investigated effectively and the rights of families of the missing to truth, justice and reparations are upheld. The Albanian authorities have a legal obligation to account for persons missing from the communist era – state responsibility and state action are essential.”²¹

In Albania, the institutions that have the legal obligation to deal with missing persons are the Police, the Prosecution Service, the Courts, the AIDSSH, local government bodies, the Institute of Legal Medicine and some specialised civil society organizations.

Despite the existence of a clear national and international legal framework and all the mechanisms for Albania’s practical advancement in transitional justice [Constitution of the Republic of Albania, Articles 3, 21, 25, 27; Criminal Code of the Republic of Albania, Article 74, 109/c; Law No. 45/2015 “On the Right to Information on State Security Files”; Article 3 (8)] and particularly for the missing persons cases, the achievements leave much room for significant criticism.

Scholar Sokol Lleshi writes that “The initial efforts to establish a reconciliation process by considering citizens both accomplices and victims of the previous regime proved unfruitful. The process of probing into the communist dictatorship’s past and introducing legal changes towards a liberal political order in the mid-1990s was politicized and discontinued after the 1997 state crisis. The initial mechanisms of dealing with the communist past did not allow the possibility of access to the secret police archives. A constant dimension of dealing with the past has been the legal recognition and acceptance of the suffering of the politically persecuted, including an ongoing process of financial reparations.”²²

Even in 2019, the AIDSSH Guide states that “Despite the fact that legal and institutional steps were launched as early as 1991 to guarantee the rights of the victims of communism and their families, there is still much to be done. Finding, identifying and recovering the bodies of missing persons during the communist period has been and continues to be a great challenge , with very few bodies discovered and identified so far, only through *ad hoc* efforts by the families of the missing.”²³

The AIDSSH public documents clearly indicated in 2019 that “Rehabilitation of the victims of communist crimes, re-dimensioning of the innocent’s reputation, honouring their sacrifice and restoring their human dignity is a major step that must

20 Authority for Information on Former State Security Files [AIDSSH], “Guide”, 2021 edition, pg. 49.

21 ICMP Report, Press Release, 2 March, 2021.

22 Lleshi, Sokol, European Politics and Society, ISSN: 2374-5118 (Print) 2374-5126 (Online)
Journal homepage: <https://www.tandfonline.com/loi/rpep21>

23 Authority for Information on Former State Security Files [AIDSSH], “Guide”, pg. 10.

be taken as soon as possible.”²⁴

As complex and difficult as the issue of searching for and locating persons who went missing under the Albanian communist dictatorship, the lagging behind, delays and failures are the direct responsibility of the Albanian governments and the relevant transitional justice institutions.

In addition, AIDSSH’s conclusion is very disturbing as it states that “the immense communist propaganda, the concealment of information, the preservation of the secret, the impossibility to know the entire reality of the state violence under the ‘dictatorship of the proletariat’ have created great illusions on that part of society that did not suffer in prisons or internments. The persisting silence during the years of democracy and the unclarified extent of that violence has left a huge gap that is triggering regressive processes such as renewed nostalgia for the ‘bright’ socialist past, honouring of the dictatorship, the dictator and the persons who served them, etc.”²⁵

We find the same concern reiterated in other AIDSSH documents: “The communist crimes have remained for a very long time, about 28 years of democracy, outside the public attention and far from any reflective approach... Social disinterest and sometimes rejection of the bitter truth of communist crimes is a real concern in Albania.”²⁶

The scholar Jonida Jani writes that “Despite being one of the first countries in the Balkans to launch transitional justice reforms, Albania has failed in dealing with the past. [...] Transitional justice is seen as a tool towards democratization, and political culture as a factor that accounts for the failure of transitional justice measures.”²⁷

The lack of institutional will in tackling the issue of searching and finding the persons who went missing during the Albanian communist dictatorship is evident, perhaps even the neglect to do so, which is rooted in the lingering mentality of the former communist regime. Other factors, such as expertise and logistics, needed to address the issue of missing persons, may play a role, but they are all too secondary to the lack of official institutional will.

V. Reasons of delays in the search and location of missing persons

In their article about the practical experience of transitional justice in Albania, Robert C. Austin and Jonathan Ellison state that “Having experienced possibly the

24 Authority for Information on Former State Security Files [AIDSSH], “Platform of testimonials” (oral testimonies), brochure, 2019 edition.

25 Authority for Information on Former State Security Files [AIDSSH], “Instalacioni artistik”, broshurë, bot. 2019.

26 Authority for Information on Former State Security Files [AIDSSH], “Kthimi në Vendkujtesë”, broshurë, bot. 2019.

27 Jani, Jonida, “Transitional Justice in Albania: Can a non-democratic community reckon with its past?”, OSCE, Justice and Change in Albania, 2020 edition.

harshest form of communism in Europe, one would think that Albania had the most compelling reasons to undergo sustained transitional justice. One need not look much past the biographies of Albania's transition leaders to confirm that Albania did little vis-à-vis with the past. What Albania offered is simply political vengeance... Albania's post-communist justice is about the selective destruction of the past, not an attempt to deal with it... From 1991 to 1997, when a few attempts were made, the process was disorganized, politicized and unsuccessful... There were huge purges of the public administration in the aftermath of the victory of the anti-communist Democratic Party in March 1992 and there were again huge purges of the public sector after the Socialist Party (former communists) won the elections in 1997. This cannot be considered lustration as it is entirely consistent with Albania's twentieth century political culture, which has always left open the door to be a hero one day and a traitor the next. This process was heavily influenced by political vengeance."²⁸

From another perspective, Gjergj and Mirela Sinani state that "Even 30 years after Albania embraced the democratic system, our state institutions, which claim to be democratic, continue to display a serious lack of attention, consideration or support for scientific research in truth-seeking about the communist crime against the Albanian people. We note that as soon as facts about the communist crimes resurface and once an ordinary discourse is raised to understand a certain situation, a whole propaganda army is mobilized against it under the disguise of objective criticism. Indeed, this is a traditional method used during the dictatorship to discourage dignified research-driven scholars and this is one of the reasons why very few researchers stick to this field of research... We note a meagre state interest in listening to and understanding the discovered facts, let alone making them available to the public opinion."²⁹

Before analysing the causes that have hindered the practical establishment of transitional justice in Albania, it is necessary to acknowledge that the process was made very difficult due to many reasons. Some of them are related to the problematic situation of the former State Security files, the lack of experience and expertise in the field of transitional justice, the lack of inter-institutional coordination in searching and locating the victims of communist crimes, the lack of information of the Albanian public about the need to establish transitional justice, the special self-defence interests of the perpetrators of the communist genocide and their families, the old mentality on historical events rooted in the public opinion from communism-time textbooks and official propaganda, the weak support to scholars and people interested in searching for the communist crimes, etc.

However, the main reason this process stalled cannot be pinned entirely on the difficulties it faced, but rather on the lacking political will of the post-communist leadership. This lacking political will is openly acknowledged by all Albanian and foreign scholars, and AIDSSH too.

28 Robert C. Austin and Jonathan Ellison, "Transitional Justice in Eastern Europe and the Former Soviet Union", ed. Lavinia Stan, Routledge, 2009, pg. 176.

29 AIDSSH, "Profile të 'Armikut të popullit' në diktaturë, ["Profiles of the 'enemy of the people' under the dictatorship"], pg. 156-157.

Let us briefly mention some generally known facts.

Top former communist leaders of the late 1980s were convicted only on charges of personal economic misconduct and their sentences were ridiculous, and some ended in pardons after the left-wing took power in 1997. They faced no charges or sentences for acting against the national interests in the economy, in international relations, or in the disruption of the common social cohesion of the Albanians by sowing discord through the war of classes. The Albanian Parliament never passed a law condemning the communist crimes, despite numerous parliamentary debates and public discussions in the media. None of the communist-era investigators and judges have been tried or convicted of involvement in the torture, murder or other crimes of the communist dictatorship.

The lacking political will of the post-communist political elite may attract much analysis and reflections, and may be seen as the main factor why transitional justice lagged behind. However, there are other contributing factors. The Albanian political elite must be analysed under two points of view: the left-wing politics and the right-wing politics.

The authors Austin and Ellison make accurate and interesting reasoning on this mentality trend of the new post-communist political elite in Albania. They write: "In the first place, Albania had no dissident movement. Albania was only developing a dissident movement when collapse finally came. The anti-communist leaders and reformist-minded communists that emerged in 1990 and 1991 all had relatively solid communist credentials. Like in Romania, we see elite reproduction, not elite replacement. That said, very few were willing to dig too deeply into the past and even fewer had any reason to call for a complete opening of the police files. However, they all had to work extra hard to prove their anti-communist credentials. The result was a highly politicized quest for justice."³⁰

For this reason, the Albanian post-communist left-wing parties either kept silent about the communist crimes, or tried to bypass or reduce such crimes using phrases like "that was the time and law back then", etc. In holding these views, they were probably influenced by a not-so-open pragmatism that implied that the complicated issues of the former politically persecuted were temporary and would naturally wane off together with the persecuted generation in the course of human life and forgetfulness. The left-wing stand also relied on its interest for power that made it unwilling to lose votes from traditional supporters. For this reason, once in power by late 1990, the left-wing granted several amnesties to those few old communist elite leaders who received light sentences from transitional justice.

The post-communist right-wing displayed its lacking political will in another form. Perhaps for lack of experience and knowledge in the transitional justice area, it initially expressed its public idea that all Albanians were "jointly perpetrators and victims" of the past communist regime, which caused disappointment among the politically persecuted and their families. In later years, the right-wing government adopted the above-mentioned laws related to the transitional justice and initiated

30 Robert C. Austin and Jonathan Ellison, "Transitional Justice in Eastern Europe and the Former Soviet Union", ed. Lavinia Stan, Routledge, 2009, pg. 180.

the rehabilitation and compensation for the politically persecuted, but the process moved very sluggishly and was marred by clientelist interests of the politics. There was even no attempt to condemn the politically-driven genocide of the communist dictatorship, while trials against the old communist leaders held them accountable under economic charges only, as explained above. As Imholtz underlined, “Nobody doubted that Hoxha family lived off well and enjoyed the goods that other Albanians did not have, but making these charges the sole scope of criminal proceedings seemed to attenuate the most serious abuses of the Hoxha regime”. The decision to make economic crimes the center-piece of post-communist justice was based on the simple fact that it was easy and it was more or less all the new leaders had on them... one can say with certainty that the decision to move against the old elite based on economic crimes was a catastrophic blunder for two reasons: first, it alienated ordinary people who expected that communists would face justice; and second, it became nearly impossible after that to engage people when serious political charges were finally laid later.”³¹ Albanian right-wing governments have been reluctant to address this issue by ensuring cross-agency coordination and allocating adequate funds. This reluctance was probably influenced by the fact that Albania has a small population where kinship and friendly relations are everywhere, independent of political affiliations, thus further slowing the motivating drive behind delivering transitional justice. Another factor that shrank the political will of the right-wing parties to deal with the communist crimes was their many politically-motivated dismissals from the state administration once they came into power in 1992 that was reflected in the following 1992 local elections, in which the right-wing lost many voters. Later, this had even more bearing on slowing down the right-wing efforts in favour of the transitional justice process.

It was precisely these general circumstances related to the insufficient process of establishing transitional justice in Albania that have strongly influenced as a major cause in keeping this serious issue unresolved, both in terms of justice and human redemption for the politically persecuted people who disappeared during the communist regime. It continues to be a very troubling problem even today, after thirty years of a pluralist democratic society, manifesting itself in a slowdown in the search, finding and identification of the victims of the genocide of the communist dictatorship.

Perhaps it should be added that the international pressure on the Albanian authorities should have been stronger, especially by the Council of Europe, but also by other relevant international institutions, so that they could engage properly in their practical efforts to achieve transitional justice.

Consequently, “Albania’s incapacity to implement comprehensive transitional justice measures has maintained, if not amplified, the polarization of Albanian society over the totalitarian past.”³²

31 Robert C. Austin and Jonathan Ellison, “Transitional Justice in Eastern Europe and the Former Soviet Union”, ed. Lavinia Stan, Routledge, 2009, f. 182.

32 Gjeta, Altin, “Transition without justice in post-communist Albania: Its implications to collective memory building and democracy promotion”, OSCE, Justice and Transformation in Albania, 2020 edition, pg. 17

VI. Major future challenges

Recently, Frédérique Hanotier, Human Rights Officer at the EU Delegation to Albania, commended the ICMP report on missing persons under the communist era in Albania saying, “The EU is strongly committed to supporting transitional justice in Albania, and in particular the Authority [AIDSSH, author’s note, T. Starova] through ICMP. Raising public awareness about reconciliation and addressing the issue of persons missing from the communist era is of the utmost importance.”³³

Based on this research and the extensive literature and documents reviewed, we believe that Albania probably needs to finally address some major challenges in the field of transitional justice:

- Condemn by law all the communist crimes and their perpetrators, through the adoption of a law by extensive cross-party consensus.
- Set up an inter-institutional co-ordination structure to follow up on the resolution of all the transitional justice issues.
- Review and improve the law on access to former State Security files to eliminate any impediments or untruths related to them.
- Promote and support scholars to engage in research on the former State Security files and shed light on the untold truths about violations committed and plotted by the communist regime.³⁴
- Launch a significant undertaking to revise the history textbooks so that younger generations comprehend and do not forget the tragic truth of the communist dictatorship.
- Provide state support to historians in shedding light on important historical events and figures in the Albanian history that have been overlooked or misjudged, or hindered by the communist dictatorship.
- Build an important monument dedicated to the victims of the communist dictatorship to serve as a meaningful act of historical collective memory for the Albanian people and, especially, for the younger generations.

³³ ICMP Report, Press Release, 2 March, 2021.

³⁴ Authority for Information on Former State Security Files [AIDSSH], “Kërkimi shkencor”, [“Research”], brochure, 2019 edition.

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