

Pursuant to Article IV 4a) of the Constitution of Bosnia and Herzegovina, at the session of the House of Representatives held on 12 October 2004 and the session of the House of the Peoples held on 21 October 2004, the Parliamentary Assembly of Bosnia and Herzegovina adopted the:

LAW ON MISSING PERSONS

CHAPTER I - GENERAL PROVISIONS

Article 1. (Subject of the Law)

The Law establishes the principles for improving the tracing process, the definition of a missing person, the method of managing the central records, realization of social and other rights of family members of missing persons, and other issues related to tracing missing persons from/in Bosnia and Herzegovina.

This Law recognises:

- The Convention on the Prevention and Punishment of the Crime of Genocide (1948),
- The Geneva Conventions I - IV on Protection of War Victims (1949),
- Additional Protocols I-II (1977),
- The European Convention on the Protection of Human Rights and Fundamental Freedoms (1950) and 13 Additional Protocols
- The General Framework Agreement for Peace in BiH (Annex 7, Articles III and V)
- The Convention on the Rights of the Child (1989)
- The International Covenant on Civil and Political Rights
- The UN Declaration on the Protection of All Persons from Enforced Disappearance (1992)

Article 2 (Definitions)

In the context of this Law:

1. A missing person is a person about whom his family has no information and/or is reported missing on the basis of reliable information as a consequence of the armed conflict that happened on the territory of the former SFRY.

The Law applies to persons who disappeared in the period from 30 April 1991 to 14 February 1996.

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2. A family member of a missing person is a child born in or outside marriage, an adopted child, as well as step-children who were supported by the missing person, spouse or extramarital¹ partner, parents (step-father, step-mother), adoptive parent, a brother or sister who were supported by the missing person
3. Reliable information is information from which it can be credibly concluded that a specific person is missing.
4. Minimum data consists of the name and surname of the person, name of one parent, place and date, or only year, of birth, supposed date and place, or only year, of disappearance and circumstances of disappearance.
5. Verification is the procedure of checking the authenticity of previously submitted tracing requests or new statements, or checking the identity of a missing person against all known official records that were or are kept in Bosnia and Herzegovina.
6. The procedure for rejecting invalid requests is defined as the submission of an official notification containing an explanation of the reasons that led to the inability to verify the tracing request for a missing person by the body competent to verify the tracing requests.
7. An identified missing person is a person for whom, during the process of identification, it has been reliably determined that the mortal remains correspond to the specific person's physical, hereditary, or biological characteristics, or if the missing person appears alive. The process of identification shall be conducted in accordance with the laws applicable in Bosnia and Herzegovina.
8. The relevant institutions for tracing missing persons are those organisations or institutions, local or international, which have a specific mandate or the authority to trace missing persons in/from Bosnia and Herzegovina in accordance with current regulations of Bosnia and Herzegovina and international treaties.
9. The need for financial support is found to exist where a missing person's family member is not benefiting from any rights based on which s/he is supporting him/herself, such as: the rights of social protection, pension-disability insurance, veteran-disability protection, work related income, individual performance of economic or independent activity, and other income that can be considered support under applicable legislation.

¹ "izvanbračni"

CHAPTER II – RESPONSIBILITY OF AUTHORITIES IN BOSNIA AND HERZEGOVINA

Article 3 (The right to know)

Families of missing persons have the right to know the fate of their missing family members and relatives, their place of (temporary) residence, or if dead, the circumstances and cause of death and location of burial, if such location is known, and to receive the mortal remains.

Article 4 (Obligation to provide information)

Pursuant to Article 3 of this Law, the bodies and institutions of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, the Republika Srpska and Brčko District of Bosnia and Herzegovina, that are in charge of defence, justice, internal affairs and other bodies in charge of tracing missing persons, in Bosnia and Herzegovina and other entity, cantonal, and municipal bodies that in accordance with their authority resolve cases related to the disappearance of persons in/from Bosnia and Herzegovina (hereinafter referred to as: the relevant authorities of BiH), are obliged to provide families of the missing and relevant institutions in charge of tracing missing persons with available information and to give all necessary assistance to improve the tracing process and the process of resolving cases of disappearances of persons in/from Bosnia and Herzegovina.

Article 5 (Method of exchange of information)

The relevant authorities in BiH, at all levels, shall, within 30 days from the date of this Law's entry into force, designate relevant institutions and officials that shall cooperate with: relevant institutions and organs in charge of tracing missing persons, family associations and members of families of the missing, and provide assistance in the realization of the rights of family members of missing persons in accordance with this and other applicable laws in Bosnia and Herzegovina.

The relevant authorities in BiH, on the basis of previous and new requests for information, are responsible for: collecting and verifying all relevant information and facts, quoting all sources that have been checked in the process of establishing such information concerning the disappearance of a missing person, and consulting all official documents and materials within their respective institutions and submitting a written notification of the documents consulted and the findings to both the claimant and relevant institutions in charge of tracing missing persons.

The provisions of the Law on Administrative Procedure in Bosnia and Herzegovina ("Official Gazette of BiH", No: 29/02) shall apply to information requests, including the

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provisions on deadlines for lodging a complaint in case of an unsatisfactory answer or initiation of an administrative dispute in the case of “silent administration”².

All new information that can facilitate the tracing or identification of a missing person must be subsequently noted and investigated.

Officials with duties related to the tracing of missing persons cannot carry out this duty if they are members of steering and other boards, or executive bodies, of political parties, or if they are politically engaged representatives, and must not follow political party instructions.

Article 6
(Obligation to exchange and cooperate)

The relevant authorities in BiH are mutually obliged to exchange information pertaining to the tracing process and determining the fate and identity of missing persons.

In order to improve the tracing process, the relevant authorities in BiH shall cooperate particularly, but not solely, with the International Committee of the Red Cross (ICRC), the International Commission on Missing Persons (ICMP), the Missing Persons Institute and the Red Cross Society of BiH, in accordance with their respective mandates.

Article 7
(Missing Persons Institute)

In order to improve the process of tracing missing persons and expedite identifications of mortal remains of missing persons, the Missing Persons Institute of Bosnia and Herzegovina (hereinafter referred to as MPI) shall be established as an independent institution for tracing missing persons in/from Bosnia and Herzegovina.

The co-founder of MPI may be an international organisation.

The method of establishing MPI and assuming the role of co-founder and the definition of its detailed competencies and manner of financing, in accordance with this Law and other laws in BiH, shall be regulated by an agreement on its establishment concluded by the co-founders.

In accordance with this Law and other applicable laws, MPI shall be a legal entity registered as an institution of Bosnia and Herzegovina, to which shall be transferred, in accordance with this Law, the administrative authority to carry out duties related to the process of tracing missing persons and to issue appropriate documents.

² “šutnja administracije”

The working relation³ of MPI employees shall be regulated in accordance with the labour law which is applicable to the Institutions of Bosnia and Herzegovina.

CHAPTER III - MISSING PERSON'S STATUS

Article 8 (Submitting tracing request)

A tracing request for / registration of a missing person (hereinafter referred to as: request) is submitted to MPI in accordance with this Law.

A request for a missing citizen of Bosnia and Herzegovina may be submitted by any family member of the missing person as well as by other persons or institutions, if they can provide the minimum information about the identity of the missing person, as stipulated in Article 2 of this Law.

Requests for tracing foreign citizens, according to this Law, may also be submitted by foreign citizens under the same conditions as citizens of Bosnia and Herzegovina if the missing person:

- a) did not have citizenship of Bosnia and Herzegovina, but had registered (temporary) residence on the territory of Bosnia and Herzegovina;
- b) did not have registered (temporary) residence in the territory of Bosnia and Herzegovina, but the applicant is able to provide reliable information that the person disappeared on the territory of BIH.

All requests pertaining to the disappearance of any persons submitted prior to the enforcement of this Law shall be considered valid and submitted in accordance with the provisions of this Law, provided that they consist of minimum required data.

If the minimum required data has not been provided, the applicant shall be contacted within a reasonable period to provide additional information.

Article 9 (Termination of status)

The status of missing person is terminated on the date of identification, and the process of tracing the missing person is concluded.

In the event that a missing person is proclaimed dead, but the mortal remains have not been found, the process of tracing shall not be terminated.

³ “radni odnos”

CHAPTER IV - RIGHTS OF FAMILY MEMBERS OF MISSING PERSONS

Article 10 (Prohibition of discrimination)

The relevant authorities in BiH shall ensure that the rights of family members of missing persons under this Law and other laws in BiH are realized on equal conditions, regardless of whether a missing person had been a member of the armed forces or a civilian, exclusive of any form of discrimination, including sex, race, skin colour, language, religion, political or other beliefs, national or social origin, inclusion in a national minority group, property status, age, mental or physical disability, status acquired by birth, or any other status.

Article 11 (Right to financial support)

In accordance with this Law, the family members of missing persons, as defined in Article 2, Paragraph 2 of this Law, who were supported by the missing person and who are in need of support⁴, are entitled to monthly financial support⁵ (hereinafter referred to as: financial support).

Article 12 (Criteria for financial support)

Financial support is a personal non-transferable right.

This financial support cannot be received concurrently with support based on other grounds.

In accordance with this Law beneficiaries may choose the more favourable right.

The beneficiary retains the right to choose the more favourable right, even after the identification process has been completed or the missing person proclaimed dead.

The right to financial support commences from the date of the coming into force of this Law.

Individuals who did not submit tracing requests prior to the coming into force of the Law, can claim this right from the date of submission of the request.

⁴ “izdržavanje”

⁵ “potpora”

Article 13
(Determining the amount of financial support)

The base for calculating the amount of monthly financial support is 25% of the average salary paid in Bosnia and Herzegovina during the previous quarter, calculated individually for each beneficiary (hereinafter referred to as: the base amount).

The amount of financial support shall be determined by the following criteria:

- a) each child (marital/extramarital/adopted/step-) shall be entitled to the base amount;
- b) the spouse or extramarital partner shall be entitled to the base amount;
- c) each parent of a missing person shall be entitled to ½ of the base amount;
- d) parents with two or more missing children (including adopted and step-children) shall be entitled to a 15% increase of the base amount of financial support;
- e) adoptive parents realize the right for financial support in the same way as parents under c) and d) and to the exclusion of the biological parents;
- f) the step-parent shares ½ of the base amount with the other parent to whom they are married only if they lived in a common household with the missing person and at the same time the biological parent is entitled to the other half of the base amount of financial support;
- g) a brother and/or sister shall be entitled to ½ of the base amount.

Article 14
(Termination of the right to financial support)

The right to financial support is terminated when:

- a) the child, adopted child, step-child, brother, or sister complete their regular education or enter into marriage;
- b) the spouse enters into marriage or common-law marriage⁶;
- c) the beneficiary dies;
- d) the beneficiary finds employment;
- e) the beneficiary selects another more favourable right.

Article 15
(Establishment of the Fund for Missing Persons)

With the purpose of providing funds and realizing the rights of family members of the missing, the Fund for Support to the Families of Missing Persons of Bosnia and Herzegovina is established (hereinafter: the Fund).

A decision on the establishment of the Fund shall be issued by the Council of Ministers of Bosnia and Herzegovina within 30 days of the date of the coming into force of this Law.

⁶ “bračna ili vanbračna zajednica”

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The headquarters, method funding, governance, and other issues related to the work of the Fund shall be regulated by an Agreement to be signed by the Council of Ministers of Bosnia and Herzegovina, the Government of the Federation of BiH, the Government of the Republika Srpska and the Government of Brčko District of BiH within 30 days of the date of the coming into force of the decision referred to in paragraph 2 of this article.

In addition to budgetary funds, the Fund may be financed through donations, gifts, endowments and other forms of support provided by domestic and/or international juridical or physical persons, in a manner to be precisely defined by the Agreement stipulated in paragraph 3 of this article.

Article 16
(Procedure for regulating the right to financial support)

The request for financial support shall be submitted via the competent authority for social welfare in the municipality of residence (hereinafter: the competent municipal authority) or Brcko District of Bosnia and Herzegovina, who shall in accordance with this Law, within no more than 30 days, process the requests, complete the files and submit them to the Fund for decision and confirmation.

For the purpose of monitoring the implementation of this Law and exchange of information, the summary list of the processed cases shall be forwarded by the competent municipal authorities to the competent entity or cantonal ministry for social welfare.

In accordance with this law, the Fund shall within 30 days of its establishment latest, enact an instruction that will stipulate the form of request and decision and establish a list of appropriate documents to be submitted for the purpose of realization of the right to financial support.

Article 17
(Decision on establishing the right to financial support)

A decision on granting or denying the right to financial support shall be passed by the appropriate authority of the Fund within a time limit not to exceed than 60 days.

The material and procedural provisions of the Law on Administrative Procedure of Bosnia and Herzegovina (“Official Gazette of BiH”, No: 29/02) shall apply to decisions denying or granting financial support, including, but not limited to, provisions on deadlines for lodging a complaint in case of an unsatisfactory answer or initiation of an administrative dispute in case of silent administration.

The dissatisfied party shall lodge a complaint with the Complaints Council of the Council of Ministers of Bosnia and Herzegovina within 15 days of receiving the decision.

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The dissatisfied party may initiate an administrative dispute before the Court of Bosnia and Herzegovina against a second instance decision of the authority referred to in paragraph 3 of this article.

In accordance with the Law on Administrative Procedure of Bosnia and Herzegovina, the dissatisfied party may lodge extraordinary legal remedies before the Appellate Council of the Court of Bosnia and Herzegovina.

Article 18
(Other rights of members of families of the missing)

In the event that the proceedings of proclaiming a missing person dead are not concluded, with respect to the property owned by or in possession of a missing person, a family member of the missing person, or if there are not any, then the actively legitimate person or institution⁷, may claim the right to temporarily dispose⁸ of the property of the missing person in accordance with the legislation in force in BiH.

The necessary/basic cost of burials/funerals of identified and unidentified persons shall be borne by the competent authorities of the Federation of Bosnia and Herzegovina, the Republika Srpska and Brčko District of BiH, as in accordance with applicable regulations.

Children of missing persons shall have priority in the realization of the rights to education and employment, on an equal basis. Adherence to this principle shall be supervised by the competent inspection authorities of the Federation of BiH, the Republika Srpska and Brčko District of BiH.

Supported family members of a missing person who do not realize the right to health protection on any other basis shall be entitled to health protection and other rights concerning health insurance, with the same coverage as employed individuals.

For the purpose of realizing the right to health protection, within 90 days of the date of the coming into force of this Law, the Federation of BiH, the Republika Srpska and Brčko District of BiH shall determine the method of realization of this right in accordance with applicable regulations.

The rights determined in accordance with this Law shall be realized from the date of coming into force of this Law.

Article 19
(Associations of families of missing persons)

In accordance with this law the competent authorities in BiH shall give priority to the processing and considering of requests for financial and technical support submitted by

⁷ “aktivno legitimirana osoba”

⁸ “privremeno upravljanje”

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unions/associations of families of missing persons and shall, according to their financial abilities, provide assistance if the proposed programs or projects meet the criteria for allocation of funds.

Article 20

(Marking the place of burial and exhumation of missing persons)

Families of the missing or their associations may request that locations of burials and exhumations (individual or joint) are marked, regardless of the number of victims, i.e. missing persons.

The locations of burials or exhumations shall be marked only when the competent authority for tracing missing persons issues a certificate that confirms that an exhumation took place or a grave existed in the location proposed for marking.

On the basis of the document from paragraph 2 of this article, the competent municipal authority shall issue adequate permission to allow the erection of a memorial plaque or another appropriate mark.

In accordance with the Law, the design of the mark or memorial plaque, its funding and other issues shall be regulated by a Book of Regulations on Marking Places of Burial and Exhumation of Missing Persons (hereinafter: the Book of Regulations).

The Ministry for Human Rights and Refugees of Bosnia and Herzegovina, in consultation with the relevant ministries of the Federation of BiH, the Republika Srpska and Brčko District of BiH and representatives of family associations of missing persons, shall agree upon a draft Book of Regulations, within 60 days of the date of coming into force of this Law, and shall submit it to the Council of Ministers of Bosnia and Herzegovina for adoption.

CHAPTER V - RECORDS OF MISSING PERSONS

Article 21

(Creation of the Central Records)

The Central Records of Missing Persons in BiH (hereinafter: CEN BiH) shall include all records that were or are kept at local or entity levels, by associations of families of missing persons and other associations of citizens and Tracing Offices of the organizations of the Red Cross in BiH, according to their mandate.

The data on missing persons kept by international organizations working in accordance with their respective mandates, applying the principle of confidentiality, shall be included in the CEN BiH on the basis of an agreement concluded between MPI and the organisation.

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By unifying the records, as stated in paragraphs 1 and 2 of this article, the CEN BiH shall be established and completed.

Within the Missing Persons Institute of Bosnia and Herzegovina, a competent expert authority shall be designated to maintain the CEN BiH and provide measures to secure data, which will be defined in more detail by an agreement on the establishment of MPI.

Article 22
(Collection and usage of data)

CEN BiH is a collection of individual records of missing persons from/in BiH that includes relevant information concerning the identity of a missing person, place and circumstances of disappearance, and other information important for tracing and determining the identity of a missing person.

All data entered into CEN BiH is subject to verification that includes checking the validity of the request and cross-checking with all official records that were or are kept in BiH.

The request for checking the data on a missing person and cross-checking with other official records, with the purpose of verification, has a priority in receiving a response from the competent authority.

Verification and entry of previously collected data on missing persons into CEN BiH should be completed by the competent authority within a year of the date of the establishment of the MPI.

Only a verified request/report can serve as basis for realization of rights based on this Law.

Article 23
(Protection of data)

The data from CEN BiH shall be made available to all levels of authority in compliance with established regulations and standards on data protection.

The regulations/manner of managing the database, entering data, exchange and usage of data, particularly the verification, is regulated in detail by the CEN BiH Book of Regulations (hereinafter: the Book of Regulations on CEN BiH).

The Book of Regulations from paragraph 2 of this article shall be passed by the MPI with the consent of the founders of MPI, within 30 days of the establishment of MPI.

Cooperation with other competent authorities in BiH that have data relevant to tracing missing persons is regulated under a special agreement that defines the mode of cooperation and all other important issues.

Persons who are engaged in managing and handling personal information related to confidential data on biological, hereditary, physical, genetic properties and medical data on a missing person shall have the obligation to keep the information confidential and handle them in accordance with established rules for protection of such information, i.e. in accordance with the Law on Protection of Personal Data (“Official Gazette of BiH”, No: 32/01).

The rules on the protection of data shall be regulated in detail by the Book of Regulations, as referred to in paragraph 2 of this article.

CHAPTER VI – OVERSIGHT

Article 24 (Oversight)

The BiH Ministry for Human Rights and Refugees shall oversee the enforcement of this Law.

The Fund for Missing Persons shall report annually to the House of Representatives and the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina.

CHAPTER VII - PUNITIVE PROVISIONS

Article 25

A fine in an amount between 200.00 KM and 1,000.00 KM shall apply to:

- (1) an official⁹ who blocks access to information to a family member of a missing person or to an institution in charge of tracing missing persons (Article 5),
- (2) an official who, without justified cause, delays or hinders making available the requested information to a family member of a missing person or to an institution in charge of tracing the missing persons (Article 5).
- (3) an official who delivers incorrect or outdated information which hinders or renders impossible the tracing process of a missing person (Article 5).

A fine in an amount between 500.00 KM and 5,000.00 KM shall apply to an institution or competent authority which:

- (1) does not allow access to information to a family member of a missing person or to an institution in charge of tracing missing persons (Article 4),
- (2) enables any form of discrimination against family members of a missing person (Article 10).

⁹ “službenik”

Any violation of this Law, and particularly those violations relevant to abuse, manipulation of data, disclosure of protected data, etc. is subject to sanctions, in accordance with the Criminal Laws, the Laws on Misdemeanours, the Laws on Administration, the Law on Free Access to Information and other laws that are in force in the territory of BiH.

CHAPTER VIII - INTERIM AND FINAL PROVISIONS

Article 26

(Realization of the rights of foreign citizens)

Family members of missing foreign citizens are entitled to realize their rights by virtue of disappearance only in accordance with a bilateral agreement that their countries of origin conclude with Bosnia and Herzegovina.

Article 27

(Entry into the Register of Deaths)

Three years after the date of the coming into force of the Law, persons registered as missing in the period from 30 April 1991 to 14 February 1996 whose disappearance has been verified within the CEN BiH, shall be considered dead and this fact shall be officially entered in the Register of Death.

Based on official information from MPI, the death of a missing person shall be recorded in the Register of Death in the municipality where the person had registered place of residence until the beginning of the war.

As an exception, the family may request this recording to be in the place of residence of the family, citing reasons for such action.

The competent authorities of the Federation of Bosnia and Herzegovina, the Republika Srpska and Brčko District of Bosnia and Herzegovina, as stipulated in paragraph 1 of this article shall, within 90 days of the date of the coming into force of this Law, alter relevant laws in order to enable entering the persons who disappeared in the period defined under this Law in the Register of Death.

Article 28

(Submission of requests until the establishment of MPI)

Until such time as the MPI is established, tracing requests for missing persons shall be submitted to relevant institutions for tracing missing persons, in accordance with their respective jurisdictions and mandates.

Article 29

(Issuance of certificates on the status of a missing person)

Issuance of certificates¹⁰ on the status of a missing person to be used for the purpose of realizing the right to financial support, until such time as the MPI and CEN BiH are established, shall be regulated by a temporary instruction from the Ministry of Human Rights and Refugees.

Article 30

(Prevalence in application)

This Law shall supersede other laws in force in BiH, which shall in no way limit the application of this Law.

Article 31

(Entry into force of the Law)

The Law enters into force eight days after its publication in the “Official Gazette of BiH”.

PS BiH No. 109/04

21 October 2004

Sarajevo

Chairman of the
House of Representatives
of the Parliamentary Assembly of BiH
Martin Raguž

Chairman of the
House of the Peoples
of the Parliamentary Assembly of BiH
Goran Milojević

¹⁰ “potvrda ili uvjerenje”