



ALBANIA, MISSING PERSONS FROM THE COMMUNIST ERA: A NEEDS ASSESSMENT

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ACRONYMS

Authority Albania	Albanian Authority for Access to Information on Former State Security Files Republic of Albania
Agreement	Cooperation Agreement between the Council of Ministers of the Republic of Albania and the International Commission on Missing Persons
BIH	Bosnia and Herzegovina
CC	Criminal Code of the Republic of Albania
CPC	Criminal Procedure Code
CSOs	Civil Society Organizations
DNA	Deoxyribonucleic acid
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
ICMP	International Commission on Missing Persons
ICMP Treaty	Agreement on the Status and Functions of the International Commission on Missing Persons
ILM	Institute of Legal Medicine of the Republic of Albania
IIPPP	Institute for the Integration of Politically Persecuted Persons
ISCC	Institute for the Studies of the Communist Crimes and Consequences in Albania
MFA	Ministry of Foreign Affairs of the Republic of Albania
MIA	Ministry of Internal Affairs of the Republic of Albania
MoJ	Ministry of Justice of the Republic of Albania
MYSW	Ministry of Youth and Social Welfare of Republic of Albania
NN	Nomen Nescio (No Name)
PM	Post-mortem
SIDA	Swedish International Development Cooperation Agency

I. THE INTERNATIONAL COMMISSION ON MISSING PERSONS (ICMP)

1. The International Commission on Missing Persons (ICMP) works with governments, civil society organizations (CSOs), justice institutions, international organizations and others throughout the world to address the issue of people who have gone missing as a result of armed conflict, human rights abuses, disasters, organized crime and other causes. As the only international organization that is exclusively dedicated to this issue, ICMP works with governments to develop their institutional capacity to address the issue of missing persons efficiently and impartially. ICMP is also engaged in developing civil society capacity, promoting legislation, fostering social and political advocacy, and developing and providing technical expertise to locate and identify the missing.
2. ICMP assists the process of justice by ensuring that governments adhere to a rule-of-law approach to investigating disappearances. Through its technical assistance, ICMP directly supports fieldwork and DNA based human identification processes. It has been involved in the excavation of more than 3,000 mass and clandestine gravesites globally and has spearheaded the application of advanced forensic techniques to locate and recover missing persons. It operates the world's leading high-throughput DNA human identification facility. To date, close to 20,000 missing persons from around the world have been located and identified with ICMP's assistance. ICMP spearheaded the effort to account for the missing from the conflicts in the former Yugoslavia that has led to the unprecedented achievement of accounting for more than 27,000 (70 percent) of the 40,000 persons reported missing as a result of the conflict.
3. On 15 December 2014, the 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 (ICMP Treaty)* granting ICMP a new legal status. The ICMP Treaty constituted ICMP as a treaty-based international organization with its own system of governance and international capacities. It 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 Treaty stipulated that ICMP would establish its Headquarters in The Hague, a move that was completed in 2017.
4. 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. 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.

II. INTRODUCTION

5. States bear a responsibility for ensuring lasting peace, reconciliation and social cohesion. Accounting for missing persons, establishing the circumstances of their disappearance and protecting persons against going missing or disappearing is an integral element in securing this objective.
6. 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 centers in Albania. The whereabouts of their mortal remains is

unknown to surviving relatives.

7. 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 (Cooperation Agreement)* 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 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.
8. States bear a responsibility to lead effective inquiries to account for the missing and to establish the circumstances of their disappearance. For example, Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), to which Albania is a party, provides for the protection by law of the right to life, and creates a procedural obligation to carry out investigations. The essential purpose of an investigation under Article 2, as under corresponding human rights instruments in other parts of the world, is to secure the effective implementation of the domestic laws safeguarding the right to life, and to ensure accountability.
9. It is important to note that persons going missing or disappearing is a distinct phenomenon, characterized by an ongoing situation of uncertainty and unaccountability and that this situation is very often drawn out over time. Failure to account for the whereabouts and fate of the missing person gives rise to a continuing situation. In such cases, the procedural obligation will, potentially, persist as long as the person is unaccounted for or adequate measures have been taken to investigate the disappearance. Accordingly, persons who go missing or are victims of enforced disappearance, even decades ago, are entitled to protection under the law, and their relatives and others close to a missing or disappeared person have a continuing right to an effective inquiry or investigation.
10. This report aims to benchmark current efforts in Albania to account for persons missing from the communist era against generally recognized principles underpinning effective inquiries or investigations. Further, the report provides recommendations on potential steps to enhance these efforts by closing gaps in upholding the rights of the families of persons missing from the communist era to truth, justice and reparations.

III. DOMESTIC LEGAL AND INSTITUTIONAL PROVISIONS TO ACCOUNT FOR PERSONS MISSING FROM THE COMMUNIST ERA

3.1. Domestic legal instruments

11. Between September 1991 and November 2007, the Albanian government adopted a series of laws aimed at providing redress to the victims of the communist regime and members of their families through financial compensation and other reparatory measures.
 - a. **Law on Compensation of the Formerly Politically Persecuted Persons**
The Law on Compensation of the Formerly Politically Persecuted Persons was adopted by the Albanian parliament on 15 July 2004 with 70 votes in favor, two against and one

abstention. According to the law, formerly politically persecuted Albanians were to be compensated over a 10 to 15-year period, through monthly payments varying in amount depending on the type of persecution and suffered consequences.

However, the compensation is reportedly limited to persons in possession of documentation verifying their (or their family members') status as politically persecuted persons. This leaves many families of victims of enforced disappearance outside the scope of law. By 2012, only one tranche was actually paid to those who were entitled to compensation. The Law on the Compensation of Former Political Prisoners, dated 12 December 2007 as amended, sets forth the conditions for obtaining financial compensation for victims of political persecution under the communist regime who were the subject of unjust penalties, such as imprisonment or compulsory medical measures. The law provides compensation for families of the victims, as well as financial compensation for persons formerly interned or deported.

b. Rehabilitation measures

The Law on Innocence, Amnesty and Rehabilitation of Former Politically Persecuted Persons of 30 September 1991 and the Law on the Status of Formerly Sentenced and Prosecuted by the Communist Regime of July 1993, amended in December 1993, deals with financial and non-material rehabilitation of formerly politically persecuted persons. In particular, politically persecuted persons are exonerated and a series of measures seeks to redress harm suffered, such as recognizing time served in prison or in exile for retirement purposes and permitting the return to places of residence, as well as making available employment-related training programs. In addition, these laws make available compensation for economic losses suffered as a result of political persecution.

c. Criminal accountability

The Criminal Code of the Republic of Albania (CC), 1995 as amended in 2015, contains specific provisions on enforced disappearances, as an autonomous crime under articles 74 and 109c, in line the United Nations Declaration on the Protection of All Persons from Enforced Disappearances. According to the CC, these crimes are punishable by appropriate penalties that take into account their extreme seriousness. Other legal provisions arising from the Convention, include penalties for unlawful deprivation of freedom, abduction and torture, and penalties for cruel, inhuman and derogatory treatment.

The Criminal Procedure Code (CPC) of the Republic of Albania (passed in 1995 and amended in 2015) prescribes steps prohibiting torture, inhuman or degrading treatment and punishment of suspects, defendants or other participants in proceedings, as well as the humane treatment and moral rehabilitation of detainees/prisoners.

d. Other legislative measures

In 2006, the Albanian Parliament adopted the Resolution on Condemning the Crimes of Communism in Albania, calling for measures to account for persons missing as a result of the communist regime. It states that the Albanian Parliament "supports the design of a National Strategy for eliminating the consequences of the semi centennial dictatorship in Albania, and invites the state institutions to fulfill their obligations with regard to the status for the integration, education, employment, housing and restitution/compensation of politically persecuted people as fast as possible, and the allocation of a fund for the discovery of the disappeared and executed people for

political reasons with or without trial.”¹

3.2. Institutions and Agencies

3.2.1. Task Force for Recovery and Identification of Human Remains of the Communist victims

12. The discovery of the mass grave at Dajti in 2010 and the exhumation of human remains from the site in 2010 spurred the Albanian authorities to establish that same year a Task Force for Recovery and Identification of Human Remains of the Communist Victims. The Task Force was led by the Ministry of Internal Affairs of the Republic of Albania (MIA), and included representatives of the Ministry of Youth and Social Welfare of Republic of Albania (MYSW) and the Ministry of Justice of Republic of Albania (MoJ). There is no evidence that the Task Force ever requested an investigation or coordinated with District Prosecutor’s Offices, which are solely competent to conduct an investigation and order the exhumation of gravesites. The competencies of the Task Force were transferred to the Institute for the Integration of the Formerly Politically Persecuted in 2014, and the Task Force ceased its operations.

3.2.2. The Institute for Integration of the Formerly Politically Persecuted (IIPP)

13. The Institute for Integration of the Formerly Politically Persecuted (IIPP) is an Albanian state-funded institution operating under the auspices of the Ministry of Health and Social Protection. Its mandate is to draft policies and programs for the integration of the formerly politically persecuted under the communist regime in line with entitlements awarded to victims and their families under Law no. 7514 Law On Innocence, Amnesty and Rehabilitation of Former Politically Persecuted Persons (of 30.09.1991) and subsequently Law no. 7748, dated 29.07.1993), Law On the Status of Formerly Sentenced and Prosecuted by the Communist Regime as well as Law no. 9831, Law on Compensation of the Formerly Politically Persecuted Persons (dated 12 November 2007).

14. The IIPP consists of four Sections: a Section for Legality and Status of formerly Politically Persecuted Persons, a Section for Human Resources and Finance, a Section for Social Matters and Project Coordination, and a Section for Finding the Missing from Communist Crimes, the latter established in 2015. In its terms of reference, the Section for Finding the Missing from Communist Crimes is mandated to conduct the following activities:

- Monitoring and verifying the process of searching for and exhuming the victims of the former politically persecuted by cooperating with other responsible institutions;
- Collecting evidence from survivors of the communist dictatorship regarding executions with or without trial, killed in dictatorship prisons, killed in interrogation or in psychiatric hospitals, buried in collective graves or killed at the border in an attempt to escape during the period 29 November 1944 – 1 October 1991;
- Creating a database of the missing, executed and dead in communist prisons, internment camps and torture centers, and cooperating with central and local departments for this purpose;
- Coordinating with central and local law enforcement agencies, institutions that have archives for finding the missing;

¹ Article 15 of the Resolution on the “Condemnation of crimes committed during the communist regime in Albania”, October, 2006

- Coordinating and cooperating with foreign specialized institutions in order to obtain technical and legal assistance for the process of exhumation and identification of human remains; and
 - Coordinating and applying for grants in various projects in foreign agencies and donors for the absorption of financial funds for the process of exhumation and identification of communist victims.
15. To date, the activities of the Section for Finding the Missing from Communist Crimes have focused on the collection of data on missing persons from the communist era, their living relatives and testimonies on events resulting in the disappearance of Albanian citizens between 29 November 1944 and 1 October 1991.
 16. The IIPP collects data primarily from witnesses and through analysis of available documentation (e.g. cemetery records, prison camps and other places of imprisonment, etc.). Witness statements have included data on person(s) who went missing as a consequence of political persecution and, sometimes, on circumstances of disappearance and/or place of execution. The IIPP also maps places of imprisonment and potential places of executions/burials.
 17. Data collection from witnesses has been done with their written consent, and provides for the IIPP to share this data with other institutions. The IIPP has not yet searched archives held by other institutions and has not established formal collaboration on exchange of data with any of them due to the lack of a legal basis for such cooperation. Because of this, requests for data from other institutions have to be submitted individually; the response usually comes after the legal deadline of 15 days.
 18. The department for missing persons cooperates with the Ministry of Health and Social Protection and the Ministry of Finance on verification of collected data from witnesses. It is unclear how this process is conducted as there is no formal joint body tasked with the verification of data and the contact details for families at the Ministries are mostly outdated. Data on family members who applied for financial compensation at the Ministry of Finance is not directly accessible to the department's staff, so it cannot be easily connected to a reported missing person. The Ministry of Finance has responded to several requests from the IIPP for contact details of the survivors. However, the exchange has been slow, ad hoc and dependent on the time that staff at the Ministry could spare to search for data required by the IIPP.
 19. The IIPP reports that it has obtained access to files of 5,501 persons who were executed under the communist regime following court proceedings and sentencing. All cases are documented and accompanied with the application from the family members who receive financial compensation. In addition, the IIPP is in possession of the records of another 987 political prisoners who died from various causes in prisons and detention centers in Albania. This number does not include the names of other executed individuals whose families were not able to report the case due to legal limitations, and cases where there are no surviving relatives or the relatives emigrated after 1991. This number was verified through comparison with court decisions, witness statements and lists of executions. Because of this, the IIPP reports the number of persons who went missing following executions with or without a court order, or death caused by detention in camps across Albania, is much higher than the initially estimated 6,000.
 20. The archive in the IIPP is kept in hard copy with basic data from missing persons dossiers in Excel files. The Institute has requested assistance from the Government to digitize its data since its current human and technical capacities are insufficient for this task. Of equal concern, the IIPP data is incomplete, e.g. files of persons who died in prisons do not contain the name of the

prison where the person died or if the human remains were excavated and repatriated to the family.

21. In 2018, the IIPP signed a Memorandum of Understanding with the Authority on Access to Information of the Former State Security Files. The Memorandum of Understanding (MoU) makes provision for the sharing of data between the two institutions and the implementation of joint activities. Since 2018, the Authority has shared information on some 52 missing persons cases reported to the Authority with the IIPP.
22. In 2018 and 2019 the IIPP requested an augmented budget for the work of the Section for Finding the Missing from Communist Crimes so as to increase the number of staff working on missing persons and secure necessary equipment for their work, which has not been approved yet. As a result, the Section for Finding the Missing from Communist Crimes lacks sufficient financial means to fulfill its original mandate to recover and identify human remains.

3.2.3. The Institute for the Studies of Communist Crimes and Consequences in Albania (ISCC)

23. The Institute for the Studies of Communist Crimes in Albania (IRCC) was established by the Albanian Parliament in February 2010 (Decision no. 10242 of 25 February 2010) as an independent state academic institution tasked with studying, documenting and evaluating the scope of the communist regime's crimes in Albania. The ISCC employs eight professional members of staff and seven support staff who work on collecting oral testimonies of survivors of political persecution, memoirs, publications, press articles, etc. The ISCC categorizes the data it has collected by District of event and then by event.
24. Currently, the ISCC is working on the preparation of the sixth edition of the Anthology of Communist Crimes, which contains names of all politically persecuted persons in alphabetical order, systematized testimonies, documentation from archives and personal dossiers. In addition to this project, the ISCC intends to create a database of verified data on all politically persecuted persons in Albania. The ISCC requests information from various institutions in possession of archive materials of interest to the ISCC. The ISCC reports that many of them are reluctant to share documents.
25. 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 publicly available. The ISCC does not keep separate data on missing persons and has no formal cooperation on the issue of missing persons with the IIPPP, which is situated in the same premises.

3.2.4. Authority on Access to Information of the Former State Security Service

26. The Authority on Access to Information of the Former State Security Service (the Authority) is a legal, public and independent institution responsible for implementing the Law on the Collection, Processing and Use of the Documents of the former State Security and information related to it. This Law applies to documents of the former State Security of the MIA for the period 29 November 1944 to 2 July 1991, which are available to all archives of the archive network of the Republic of Albania, and associated with political offenses defined under the Law on Innocence, Amnesty and Rehabilitation of Former Politically Persecuted Persons.
27. The Authority was established after the Albanian parliament passed a law in May 2015 to open up the communist-era secret police files, declassify information and provide those who were

victims of the regime, or their relatives, with access to their files. The Authority is also authorized to run background checks on public officials and party leaders to determine if they were police collaborators under the communist regime.

28. The Authority began its work in 2016 and by September 2017, it had responded to more than 600 requests. Most of the files are only available to the targets of the covert surveillance and their families, and not to the wider public. The Authority has collected and is currently inventorying more than 13 million pages containing information about persons who were under covert surveillance. The institution is understaffed and seeks training opportunities on systematization, categorization, research and analyses of documents and data in its possession. In May 2017, the Authority adopted secondary legislation on protection, safeguarding, storing and processing personal data by the Authority in line with the Law on Protection of Personal Data and the Law on Right on Information.
29. Digitization and cataloguing of documentation stored in the archive of the Authority is a priority. Additionally, protection of sensitive personal information and the creation of a policy document for accessing documentation is needed. In 2019, the Authority received funds from SIDA for digitization of documents in its possession. In addition, the Government secured more personnel and an appropriate building for the Authority.
30. To ensure a continuous flow of information and coordination of activities, in 2018 and 2019 the Authority signed MoUs with various state institutions: the State Archive, the Archive of the MIA, the Archive of the Intelligence Service, the National Museum, the Faculty of History and Philology, the Institute for the Research of Communist Crimes in Albania, and the Institute for the Integration of the Formerly Politically Persecuted. The MoUs define information sharing related to access to the archives, memorialization, investigation and identification of missing persons during the communist era, and other issues of joint interest to the signatories.
31. In May 2020 the leadership of the Authority presented arguments to the Parliamentary Committee on Legal Issues, Public Administration and Human Rights to streamline the process of accounting for missing persons cases from the communist era by mandating a robust coordinating body, and increasing the engagement of prosecutors in the process by attaching them to the Authority. In its 2019 annual report submitted to the Parliament in May 2020, the Authority reported that work is ongoing to amend the Functional Law, in light of the Polish model, to expand the field of activity of the Authority in order to cover the issues of Collective Memory and Missing Persons during the Dictatorship.
32. In July 2020, the Albanian Parliament adopted amendments to Law 45/2015 (On the Right to Information about the former State Security Documents of the Socialist People's Republic of Albania), giving the Authority a more prominent, coordinating role in the process. Article 22/1 states: "The Authority cooperates with central and local state institutions in the process of identifying and recovery of the remains of those who disappeared or were executed during the communist era, as well as for taking measures to protect and preserve, in the best way appropriate, sites that are currently or will be identified as burial sites. Rules of cooperation between the Authority and central and local institutions for the identification and recovery of remains of the missing during the communist era are provided in bilateral or multilateral agreements concluded for this purpose".
33. Significantly, amendments to Law 45/2015 for the first time provide a definition of a missing person in Albanian legislation. Article 4 states "a missing person is a person arrested, imprisoned, abducted or deprived of his/her liberty in any other form by state agents or by other

persons or groups of persons, who have acted with the authorization, support or approval of the state, followed by denial of acceptance of deprivation of liberty or concealment of the fate of the missing person or the place where he/she is located, detaching him/her from the protection of the law.” Whereas previously missing persons from the communist era were legally defined as “politically persecuted”, the amendments to law 45/2015 demonstrate an important recognition of the issue of persons missing for involuntary reasons by the Albanian parliament.

3.2.5. Institute for Legal Medicine (ILM)

34. The Albanian Institute for Legal Medicine (ILM), located in Tirana, was established by a Decision of the Council of Ministers of the Republic of Albania (Decision No.120 of 27 February 2003), as a state institution operating under the jurisdiction of the MoJ. The ILM provides forensic expertise services to institutions and individuals in the Republic of Albania. Such expertise includes forensic, pathological, toxicological, biological and other types of expertise in line with the CC and CPC.
35. The ILM performs forensic medical examinations at the request of the parties in civil proceedings, the subjects of criminal proceedings and other legal persons. The ILM is funded from the MoJ budget and by charging for services performed for third parties (up to 30 percent of the total budget). The ILM has in its structure, not yet accredited, a department for legal-medical examination and a toxicology department. Legal medicine staff include seven pathologists (legal medicine experts), one forensic anthropologist and an additional six pathologists assigned to courts in Durres, Vlora, Shkoder and Korce. Five assistants are paid by the Ministry of Health. The ILM does not employ forensic archaeologists that are required for the excavation and recovery of human remains from mass graves.
36. Data held at the ILM is kept both in hard copy and electronic versions (Access database). Currently the ILM is working with the Directorate for Security of Confidential Information on regulations for data protection. The ILM has at its disposal one mortuary facility with two examination tables at its premises in Tirana and an additional 12 examination tables in hospitals throughout Albania. The morgue in Tirana has the capacity to hold approximately 40 sets of mortal remains, or a maximum of 100 sets if skeletonized.
37. Other than one van for the transport of staff and mortal remains, the ILM has no other available vehicles. For any type of field work on a larger scale, such as the excavation of mass or multiple graves, additional equipment such as tents, examination tables, mobile x-rays, containers, small backhoes, water pumps, etc. must be acquired or loaned from the Ministry of Defense, public utility companies, private companies etc. Court plots for the burial of unidentified (NN) bodies are available, as needed, in every municipality.

3.2.6. Prosecutor’s Offices

38. Excavations and forensic examination of recovered human remains to determine cause and manner of death are an essential component of accounting for missing persons in line with human rights guarantees. The CPC of Albania mandates the prosecutor to conduct and control preliminary investigations and the judicial police activity and to conduct every investigatory action he evaluates as necessary (Article 24), which includes ordering the exhumation of human remains in order to enable the examination of the human remains by the prosecutor in the presence of a forensic doctor (Article 200). In line with the CPC, the only competent institutions that can affect an excavation in line with rule-of-law standards are therefore the District Prosecutors’ Offices.

39. 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. The Prosecutor sent a request to the DNA laboratory of the Institute of Scientific Police for DNA testing. However, the DNA laboratory of the Institute of Scientific Police reported that it was unable to process the post-mortem (PM) DNA sample taken from the remains due to a lack of technical capacities.
40. The ICMP project entitled *Resolving the Issue of Missing Persons from the Communist Era in Albania*, developed in cooperation between ICMP and the IIPP, and funded by the European Union, aimed inter alia to excavate two known mass gravesites from the communist era at the Dajti and Ballsh locations. The project also included the forensic examination of the recovered human remains to help determine the cause and manner of death, and the identification of the victims through DNA analysis. ICMP in cooperation with the IIPP submitted the first request for the excavations at the two sites in September 2018. To date, orders for excavation of the sites have not been issued.
41. There are a number of reasons for the lack of affirmative, ex officio action on the part of the prosecutors' offices. The vetting process within the justice system, adopted by the Albanian Parliament in July 2016, resulted in the dismissal of around 60 percent of judges and prosecutors and left these positions vacant. Prosecutors' offices have not issued orders for excavation, citing a lack of financial resources to cover costs that would arise from engaging technical experts of the Institute of Legal Medicine. Concern has been voiced that the financial obstacle did not apply to the European Union-funded ICMP/IIPP initiative, and the reason for the lack of ex officio action by the prosecutor's office therefore remains unknown.

3.3. Civil Society

42. In Albania, there are no CSOs that focus solely on the missing persons issue. CSOs organized around victims' rights concentrate mainly on compensation and property issues. There are no prominent divisions among CSOs along ethnic or religious lines. Rather, the main point of division is political and CSOs are often interpreted as being either pro-communist or socialist, or pro-democratic.²
43. Many CSOs concerned with victims' rights are in possession of some relevant records, such as lists of missing persons drawn up from testimonies of victims or their families. These are incomplete and have not been consolidated or verified against other records, whether held by CSOs or Albanian government institutions.
44. Registered Albanian CSOs dealing with victims' rights are funded by the state, based on Law number 7598 adopted on 1 September 1992 on the Establishment of the Special Fund for the Formerly Convicted and Persecuted. Albanian public companies pay 1 percent of their revenues into a fund managed by the IIPPP. The Fund is distributed based on Council of the Ministers Decision 392, dated 12 August 1999. According to that Decision, 50 percent of the Fund is distributed for the economic and material needs of the families of the formerly persecuted, the urgent needs of the families and their integration. The other 50 percent is distributed to CSOs of the formerly persecuted persons proportionately to the number of members of each CSO. The

² Since the fall of communism, Albania has developed a two-party system dominated by the Democratic Party (Right wing) and the Socialist Party (Left wing).

disbursement of the funds is carried out on the basis of CSO project proposals.

45. CSOs such as the Albanian Rehabilitation Centre for Torture and Trauma, the Institute for Democracy, Media and Culture, the Anti-Communist Association of the Politically Persecuted, and the Dictatorship Remembrance non-governmental organizations aim to expand their activities expressly to address missing persons issues. They wish in particular to be involved in memorialization activities and the exchange of data with state authorities so that accurate records on missing persons can be created for historical and practical purposes.
46. In the absence of systematic official investigations, some family members of those who were politically persecuted, forcibly disappeared or extrajudicially executed have sought to locate remains themselves. As a result, families have conducted excavations without professional technical assistance and in contravention of the law. It should be noted here that under Article 2 of the ECHR investigations into alleged breaches may not be left to next of kin of victims (see ECtHR *Al-Skeini and Others v. United Kingdom*, §165), but must be carried out by the authorities *ex officio*.

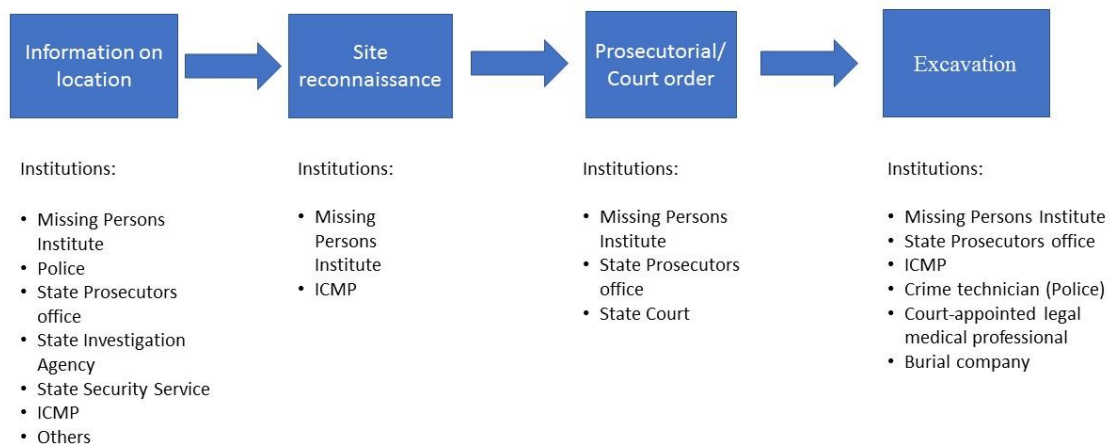
IV. EVALUATION

47. An effective investigation is measured by four standards: independence, adequacy, promptness, and public scrutiny. These standards have been established through Human Rights jurisprudence, in particular by the ECtHR in cases pertaining to violation of Article 2 of the ECHR. They are also applied by the Inter-American Court of Human Rights, for instance, and by domestic courts of democratic countries.
48. In order to be effective an investigation must be:
 - Adequate: it must be capable of establishing the facts. The authorities must take whatever reasonable steps they can to secure the evidence concerning the incident, including, inter alia, eyewitness testimony, forensic evidence and where appropriate, an autopsy that provides a complete and accurate record of injury and an objective analysis of the clinical findings, including the cause and manner of death and the circumstances of persons going missing or disappearing. In this connection, an effective investigation can require the exhumation of the bodies of the deceased, as well as forensic analysis;³
 - Prompt: it must proceed with reasonable speed. A prompt response by the authorities is generally regarded as essential in maintaining public confidence in their adherence to the rule-of-law;
 - Transparent: public scrutiny of the investigation or its results must be facilitated in order to secure accountability in practice as well as in theory. The victim's next of kin must be involved to the extent necessary to safeguard his or her legitimate interests;
 - Official: it must be conducted *ex officio* by state entities, as opposed to CSOs, for instance. Investigations can be conducted through prosecutors' offices, government commissions on missing persons, and inter-ministerial search units, or similar, as established by state authorities and mandated to conduct investigations that meet the aforementioned standards severally or jointly.
49. It is usual practice and necessary that judicial institutions and law enforcement investigate serious human rights violations, such as violations of the right to life. However, in many

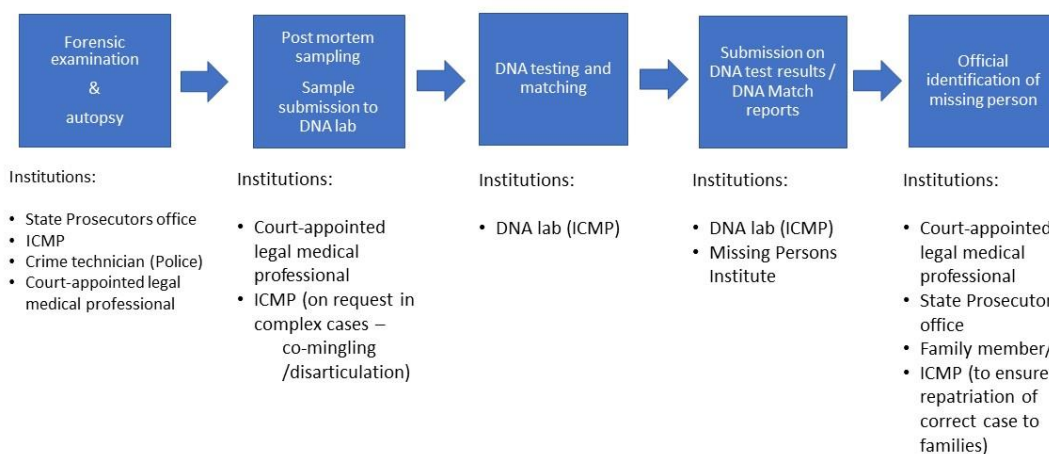
³ See Guide to Article 2 of the Convention – Right to Life. Eu

situations, investigations concerning large numbers of missing persons involve different authorities including quasi-judicial bodies such as an ombudsman, administrative authorities or official commissions. This often results in complex processes including numerous institutions. Illustrating such a complex process, the two tables below show the inter-institutional process adopted by Bosnia and Herzegovina (BIH) following the 1992-1996 conflict. The first table shows which institutions are involved at certain stages until the excavation takes place. The second table shows which institutions are involved at certain stages from the point of excavation until official identification.

Inter-institutional cooperation: pre-recovery



Inter-institutional cooperation: post-recovery



50. Although Albania does not have a direct equivalent of the Missing Persons Institute, the role of that institution could be assumed by either the IIPP or the Authority, with amendments made to either of their mandates. In the BIH example the court-appointed legal medical professional is analogous to the Albania ILM, while the role of the Prosecutor's Office of BIH has its Albanian

counterpart in the Albania State Prosecutor's Office. ICMP assists throughout the process in terms of provision of information on potential locations of gravesites, visual reconnaissance of such sites, excavation, forensic examination of recovered human remains and DNA testing.

51. As indicated above, currently in Albania legislative instruments and corresponding state institutions pertaining to victims of the communist regime are largely focused on property issues and financial compensation of victims of the communist regime and their families. Although there is no dedicated piece of legislation that deals with the issue of missing and safeguarding the rights of their families, amendments to Law 45/2015 are an important step forward in mandating the Authority to lead on the issue of missing persons from the communist era, and not least legally defining missing persons from the communist era.
52. Albania has established several institutions operating within the existing domestic legal framework, with similar mandates that overlap to a certain degree. Often these institutions compete with each other for resources. With the exception of the Authority, which has signed several MoUs with other state institutions, there is little cooperation and coordination of activities among such institutions, resulting in limited progress in addressing the missing persons issue.
53. The fact that the Albanian parliament has given greater to prominence to the Authority to coordinate the investigation and identification of missing persons is welcome and reflects renewed political will on the part of Albania to more seriously address the issue of persons missing from the communist era.
54. Investigative efforts can only be adequate if relevant data, personal information and evidence is processed in a systematic and comprehensive manner. Existing data on missing persons, places of imprisonment, potential locations of executions and burials of victims and location of families of the missing is still unnecessarily scattered and incomplete. Contact details of families, even those receiving compensation from the state, should be updated. Sensitive personal and other data that has been collected, should be given effective protection. Institutions storing such data should improve their rules and procedures for data accessing, editing and sharing.
55. Effective missing persons processes benefit from the participation of several state institutions, such as those discussed above. However, they cannot succeed without the participation of the Prosecutor to initiate excavations and coordinate the process with other participants (legal medicine experts, police, excavation companies and others). The European Union-funded project of ICMP and the IIPP aimed to redress technical and financial limitations on the Prosecutor's Office to conduct investigations of missing person cases.
56. The ILM lacks sufficient facilities for the storage and examination of human remains recovered through investigations into missing persons cases.
57. Active engagement of civil society organizations, and families of the missing in particular, is essential to create a successful missing persons process and rebuild the trust of society in the state and its institutions. In that regard, ensuring sufficient public scrutiny is fundamental to an effective investigation into missing persons cases. The use of modern forensic methods to identify the missing requires the voluntary participation of relatives in the provision of reference samples to conduct kinship matching of PM samples. Voluntary participation necessitates intensive education programs in the use of DNA in human identification. It also requires the voluntary consent of relatives to provide personal information, including genetic information.

V. RECOMMENDATIONS

58. The Albanian Parliament should adopt legislation that includes provisions which protect the rights of the families of missing persons, irrespective of whether the missing was politically persecuted. The Law should uphold non-material rights of families, such as memorialization of important dates or at locations of importance.
59. The Albanian Government should ensure the Authority is granted the necessary financial and human resources so that it can effectively coordinate activities pertinent to the investigation and identification of all missing persons from the communist era.
60. 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.
61. The secondary legislation should mandate the Authority to establish and maintain a single, harmonized and comprehensive database of missing persons. This would allow the state to provide accurate and reliable information regarding cases of missing persons. Such a database will be crucial in strengthening the state's capacity to locate the missing, and allow families to register missing relatives and to exercise their social and economic rights. In this regard, it is important that all institutions, non-governmental organizations and individuals in possession of information on missing persons supply records in their possession to the Authority that will organize, manage and verify them.
62. The Authority should ensure public scrutiny of its activities, particularly with reference to families of the missing, which will increase their level of trust in its actions.
63. The General Prosecutor's Office should ensure that there are a sufficient number of prosecutors to provide an ex officio response to clandestine gravesites and crime sites from the communist era, in cooperation with relevant existing institutions.
64. The Albanian authorities should allocate sufficient resources to the ILM for the examination and identification of missing persons cases in line with international forensic standards and for the appropriate storage of human remains until their burial.