

# CROATIA

MISSING PERSONS FROM THE  
1991-1995 ARMED CONFLICT:  
A STOCKTAKING



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## About the International Commission on Missing Persons

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The International Commission on Missing Persons (ICMP) is an independent, treaty-based international organization, based in The Hague, with 22 years of experience in 40 countries. The organization is entirely voluntarily funded and receives the majority of its support from governments.

ICMP endeavors to secure the cooperation of governments and other authorities in locating persons missing as a result of conflict, human rights abuses, disasters, organized crime and other causes and to assist them in doing so. ICMP also supports the work of other organizations in their efforts, encourages public involvement in its activities and contributes to the development of appropriate expressions of commemoration and tribute to the missing.

ICMP was created at the 1996 G-7 Summit to address the issue of persons missing as a consequence of the conflicts in the former Yugoslavia. Starting in 2004, it began working globally. In 2014, the Netherlands, the United Kingdom, Belgium, Sweden and Luxembourg signed the *Agreement on the Status and Functions of the International Commission on Missing Persons* (the ICMP Agreement) establishing ICMP as an intergovernmental organization with headquarters in The Hague. ICMP is the only international organization tasked exclusively to work on the issue of missing persons and as such it has helped governments build rule-of-law institutions that successfully and impartially search for and identify missing persons.

ICMP operates five cross-cutting programs: Institution and Civil Society Development, Science and Technology, Data Systems and Data Coordination, Justice Sector Assistance, and the Center for Excellence and Training. These programs are designed to work together and are integrated in ICMP's country/regional programs and thematic activities.

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## Foreword

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A quarter of a century has passed since the 1991-1995 Croatia conflict. In 1991, based on the official data of the responsible authorities (Croatian Red Cross, Medical Corps Headquarters of the Republic of Croatia), there were 18,000 detained and missing persons registered in Croatia. In addition, a further 1,236 cases of persons who went missing in 1995 were registered. Since the end of the conflict, a large number of those who went missing in the course of the conflict have been accounted for. However, the fate of nearly 2,000 people has yet to be resolved.

The Croatian authorities have demonstrated significant political commitment to address the issue of persons missing as a result of the conflict, and importantly the process of search and identification has been guided by an approach based on the rule-of-law that emphasizes the rights of the relatives of the missing to an effective investigation and to justice. The Croatian authorities have regulated the issue of missing persons in particular through a law on veterans, and have established purpose-specific institutions, such as a Directorate and a Commission on Missing Persons to coordinate the search for the missing. In recent years, they have reinvigorated the search for clandestine gravesites through the use of diverse technologies including aerial imagery, drones and ground-penetrating radar, and they have significantly increased the financial and human resources available to the Croatian Commission on Detained and Missing Persons.

Moving forward, Croatia must maintain its commitment to resolving missing persons issues and uphold the principles endorsed in the *Declaration on the Role of the State in Addressing the Issue of Missing Persons as a Consequence of Armed Conflict and Human Rights Abuses* (Missing Persons Declaration).

Over the years, many international and domestic actors have played an important role in addressing missing persons cases from the Croatia conflict. In Croatia, domestic institutions include the Directorate and Commission on Missing Persons, the special war crimes chambers in Zagreb, Split, Osijek and Rijeka, the Zagreb Institute of Forensic Medicine and Criminalistics, and the DNA laboratories in Split and Osijek. International institutions include the Council of Europe (CoE), the European Community Monitoring Mission, the International Committee of the Red Cross (ICRC), the Croatian Red Cross, the International Criminal Tribunal for the former Yugoslavia (ICTY), the Organization for Security and Cooperation in Europe (OSCE), Physicians for Human Rights, and the United Nations (UN) Transitional Authority for Eastern Slavonia, Baranja and Western Sirmium (UNTAES), the UN Special Process on Missing Persons in Former Yugoslavia, and the UN Working Group on Enforced



and Involuntary Disappearance. In addition, the Croatian Helsinki Committee for Human Rights, the Helsinki Committee for Human Rights in Serbia, the Zagreb-based Documenta, and the Belgrade-based Humanitarian Law Center have campaigned steadily for truth and justice for the victims, and the Balkan Investigative Reporting Network (BIRN) has shown an enduring commitment to reporting on the issue.

This Stocktaking Report considers the rights of victims and examines the roles of institutions involved in the process; it analyses how the issue of the missing, including in relation to justice, has been addressed to date, and it examines prospects for resolving as many outstanding cases as possible. It concludes with a series of recommendations to help take this process forward.

*Kathryne Bomberger*  
*ICMP Director-General*

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## Abbreviations

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BIH	Bosnia and Herzegovina
BIRN	Balkan Investigative Reporting Network
CDDM	Croatian Directorate on Detained and Missing
CoE	Council of Europe
DNA	Deoxyribonucleic acid
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
FRY	Federal Republic of Yugoslavia
GEDNAP	German DNA Profiling
ICCPED	International Convention for the Protection of All Persons from Enforced Disappearance
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICTY	International Criminal Tribunal for the former Yugoslavia
INTERPOL	International Criminal Police Organization
IOM	International Organization for Migration
ISO	International Organization for Standardization
JNA	Jugoslovenska narodna armija (Yugoslav National Army)
MPG	Missing Persons Group
MPI	Missing Persons Institute of Bosnia and Herzegovina
NATO	North Atlantic Treaty Organization
NN	<i>Nomen Nescio</i> or No Name
OIC	Online Inquiry Center
OSCE	Organization for Security and Cooperation in Europe
STR DNA	Short Tandem Repeat DNA
UK	United Kingdom
UN	United Nations
UNCAT	United Nations Committee against Torture
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHRC	United Nations Human Rights Council
UNPROFOR	United Nations Protection Force
UNTAES	United National Transitional Administration in Eastern Slavonia, Baranja and Western Sirmium
WGDC	Working Group on Data Collection
WGEID	Working Group on Enforced or Involuntary Disappearances

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## I . INTRODUCTION

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The armed conflict in Croatia that erupted into war in 1991 was one of the first in Europe in the wake of the end of the Cold War. Locating and identifying persons who went missing between 1991 and 1995 has required sustained efforts by the country's institutions, cooperation with the neighboring countries of Bosnia and Herzegovina (BIH) and Serbia, and the support of international institutions, including ICMP.

In Croatia, more than two-thirds of the missing have been accounted for. The Croatian authorities report that they began using DNA technology as early as 1995. DNA-testing was largely used to confirm previous identifications based on the findings of traditional forensic methods. In 1996 the Croatian authorities began the systematic collection of genetic reference samples from families of the missing. Since 2002/2003, together with examination of human remains by traditional forensic methods, examination by DNA testing method has been mandatorily conducted, which is necessary owing to the lapse of time which resulted in difficulties in identification of mortal remains via traditional forensic methods.

Modern scientific methods, such as DNA, provide accurate information about a person's identity, which is critical to a truthful accounting of the circumstances of the disappearance and to the provision of evidence for criminal trial purposes. This is critical in politically charged, post-conflict, human rights scenarios such as post-conflict Croatia. Traditional methods of identification based on visual recognition run a risk of error that can result in misidentifications.

The task of reliably accounting for the missing from the conflict in Croatia has not been completed, as nearly 2,000 missing persons cases remain unresolved more than two decades after the final military operations, and more than 900 cases that have been recovered from clandestine gravesites lie unidentified as NN (*Nomen Nescio* or No Name) cases in Croatian memorial ossuary facilities. Efforts to account for the missing are ongoing with the prospect of more identifications in the coming years, especially if all parties renew efforts to address the issue of NN cases and possible errors that occurred as a result of the use of traditional methods of visual identification.

The issue of missing persons cannot be separated from that of justice. This, in turn, extends beyond punishing individuals responsible for committing crimes to include establishing a record of what did and did not take place and recognizing the loss experienced by surviving family members and providing compensation for them. The emphasis to date in Croatia has been

on criminal legal proceedings. Gravesites have been treated as crime scenes and exhumations carried out under court order by forensic archaeologists. Moreover, evidence gathered has fed into war-crimes trials both at the ICTY and in domestic courts. The ICTY has held some individuals to account for their actions; it has also given victims the opportunity to face their former persecutors in court; and it has helped establish a record of what took place.

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## II. NUMBERS AND DEMOGRAPHIC OF MISSING PERSONS FROM THE CROATIA CONFLICT

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Prior to 1994 most of the registered detained persons were exchanged and the mortal remains of several hundred persons from previously occupied areas of the Republic of Croatia and from BIH were exchanged.

Families of the missing have registered 4,300 applications for search for missing persons with the Croatian authorities. Of these, 3,064 were registered in 1994 relating to missing persons cases from 1991 and 1992. Registration of an additional 1,236 cases relating mostly to the events of 1995 began in 2001. The Croatian Directorate on Detained and Missing (*Uprava za zatočene i nestale* – CDDM) also keeps a record of 849 cases of deceased persons whose human remains are buried in unknown locations. These are considered a distinct category by the Croatian authorities, as they include individuals who are known to be deceased.

Based on the data of the Directorate on Detained and Missing, mortal remains of 5,174 individuals have been recovered from the graves on the territory of Croatia, and human remains of 4,297 individuals have been identified by end of 2019. There are still 877 recovered but unidentified cases.

The number of 4,297 identified missing persons includes 1,968 identified missing persons who were not registered either in 1994 or in 2001.

Four editions of the *Book of Missing Persons on the Territory of the Republic of Croatia*, a list of names of the missing, have been published by the ICRC on the basis of work carried out by the Croatian Red Cross and the CDDM. The first edition of the *Book of Missing Persons on the territory of Croatia* was published in December 2006, while the second was released in January 2010, the third in April 2012, and the fourth in May 2015. The fourth edition of the Book contains separate lists: a list of 1,716 persons who went missing on the territory of Croatia and a list of 422 persons whose death is certain but the location of whose human remains is unknown. The fourth edition gave a total of 2,138 unresolved cases (as of 1 May 2015).

The data of the CDDM pertains to missing nationals and citizens of the Republic of Croatia (jurisdiction principle), while the Book lists cases of all persons, including foreign nationals, who went missing in the territory of the Republic of Croatia (territorial principle).

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### III. INSTITUTIONS IN CROATIA ADDRESSING THE ISSUE OF MISSING PERSONS

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Already at the height of hostilities in 1991, Croatia established a Commission to Search for Persons Missing in War Activities (*Komisija za traženje osoba nestalih u ratnim djelovanjima*). In the intervening period, this Commission has been restructured on various occasions and subordinated to different ministries as a result of government reforms. However, it has maintained continuity of purpose. Today the CDDM, which is a section of the Ministry of Croatian Veterans, is the responsible institution for the search, recovery and identification of missing persons in Croatia.<sup>1</sup>

In terms of institutional framework relevant to the process of accounting for missing persons, the Croatian government has issued several legal acts creating and mandating government bodies to search for the missing at different times.

The Government issued the first such Regulation in December 1991 – the Regulation on the Establishment and Work of the Commission for Tracing Persons Missing in War Events in the Republic of Croatia (*Uredba o osnivanju i radu Komisije za traženje osoba nestalih u ratnim djelovanjima u Republici Hrvatskoj*) – mandating the Commission to collect and manage data about missing civilians and combatants.<sup>2</sup> In 1993, a Regulation of the Government created a Commission for Detained and Missing, which

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- 1 Two commissions were created in 1991: the Commission for the Treatment of Persons Detained in Armed Conflict (*Komisija za postupanje s osobama zarobljenim u oružanim sukobima*) and the Commission to Search for Persons Missing in War Activities (*Komisija za traženje osoba nestalih u ratnim djelovanjima*). The Commissions were amalgamated in 1993 into the Commission for Detained and Missing Persons. In 2000, this became the Office for Detained and Missing (*Ured za zatočene i nestale*). In 2004, the CDDM took over the duties within the Ministry of the Family, Defenders and Inter-Generational Solidarity (*Ministarstvo obitelji, branitelja i međugeneracijske solidarnosti*). In 2005, a Commission of the Croatian Government for Detained and Missing (*Povjerenstvo Vlade Republike Hrvatske za zatočene i nestale*) was created in addition as an interdepartmental, advisory and expert body.
  - 2 Regulation on the Establishment and Work of the Commission for Tracing Persons Missing in War Events in the Republic of Croatia, Official Gazette, No. 72/91.

replaced the Commission for Tracing Persons Missing in War Events in the Republic of Croatia as the body responsible for collecting and managing data about detained and missing persons.<sup>3</sup> It was also mandated to coordinate the exchange of prisoners with the other party to the conflict. In 2000, the Government issued a Regulation that created the Office of the Government of the Republic of Croatia for Detained and Missing.<sup>4</sup> Like its predecessors, the Office was mandated to collect and organize data about the missing, but it was also mandated to maintain complete records, including data about sites of clandestine graves, the recovery of human remains, and the identification of the missing. In addition, it was mandated to exchange information with the authorities in the Federal Republic of Yugoslavia (FRY) and BIH, to organize excavations of clandestine graves, and to organize the identification of human remains.

In 2004, the CDDM within the Ministry of Families, Defenders and Intergenerational Solidarity assumed the functions of the Office of the Government of the Republic of Croatia for Detained and Missing.<sup>5</sup> This Ministry was transformed in 2012 into the Ministry of Defenders, within which the Government established the CDDM.<sup>6</sup> As of 16 October 2016 the official name of the Ministry, which includes the Directorate on Detained and Missing, is the Ministry of Croatian Veterans. The Directorate was mandated to gather and maintain information about missing persons, and exchange information with other states in the region about the missing, as well as to cooperate with the national authorities including the State Attorney General's office, and to coordinate the process of search, excavation, recovery and identification of the missing. In 2005, the Government established a Commission (*Povjerenstvo*) of the Government of the Republic of Croatia for Detained and Missing Persons, which is an advisory and expert cross-sectoral body of the Government of the Republic of Croatia.<sup>7</sup> The CDDM is both an operational and expert body.

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3 Regulation on the Establishment of the Commission for Detained and Missing, Official Gazette, No. 46/93.

4 Regulation on the Establishment of the Office of the Government of the Republic of Croatia for Detained and Missing, Official Gazette, No. 94/00.

5 Regulation on the Internal Organization of the Ministry of Families, Defenders and Intergenerational Solidarity, Official Gazette, No. 38/2004.

6 Regulation on the Internal Organization of the Ministry of Defenders, Official Gazette, No. 28/2012.

7 Decision on the Establishment of the Commission of the Government of the Republic of Croatia for Detained and Missing Persons, Official Gazette, No. 86/2005.

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**TIMELINE OF CROATIAN INSTITUTIONS RESPONSIBLE FOR THE ISSUE OF MISSING PERSONS**


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<b>Time-line</b>	1991-1993	1993-2000	2000-2004	2004-present	2005-present
<b>Institutions</b>	Commission for the Treatment of Persons Detained in Armed Conflict <hr/> Commission to Search for Persons Missing in War Activities	Commission for Detained and Missing Persons	Office for Detained and Missing	CDDM	Commission of the Croatian Government for Detained and Missing

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In the last four years, the Ministry of Croatian Veterans and its Directorate for Detained and Missing have undertaken activities designed to streamline existing human and technical capacities and secure additional ones.

In 2017, the Directorate conducted an internal reorganization, establishing two departments to increase its analytical and technical capacities – the Department for Collecting, Processing and Research of Information on Persons Missing in the Homeland War, and the Department for Examination and Identification of Human Remains and Funeral Services. Both departments employ personnel with experience and expertise in gathering, processing and analyzing data.

Additionally, the Directorate established two branch offices, one in Vukovar covering the Croatian Danube Region, and one in Split covering southern Croatia. As well as carrying out field activities, both branches work on consolidating and analyzing data on missing persons and field data in order to optimize results related to excavations and identifications in the two geographical areas.

The Directorate has also established a Working Group for Collecting Information on Missing Persons and Clandestine Graves, whose members are representatives of state institutions responsible for the collection of information and data, such as the Ministry of Defense, the Ministry of Interior and security agencies.



Special attention has been paid to upgrading the equipment and methodology of work in field activities in order to maximize results. The Directorate has procured and put into service state-of-the-art equipment for field work, including geo-radar, drones, total station, and cadaver dogs.

When it comes to examination and identification of human remains, the Directorate has intensified its cooperation with and support for domestic scientific and medical institutions. At the initiative of the Ministry of Croatian Veterans, the government provided funds for the procurement of essential equipment for DNA-led identification and additional facilities for the DNA Laboratory of the Institute for Forensic Medicine and Criminology in Zagreb. To ensure the transfer of academic knowledge and experience to the young expert staff who will be engaged in exhumations and the examination and identification of missing persons, the Directorate signed a Cooperation Agreement with the University of Zagreb in 2019.

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## IV. ASSOCIATIONS OF FAMILIES OF THE MISSING

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Family associations representing the relatives of the missing in Croatia have been formed in both Croatia and Serbia to lobby authorities to devote necessary resources to address the issue, to find their loved ones and determine their fate.

Currently, the following associations and unions of associations assembling families of missing persons are registered in the Republic of Croatia:

- Association of Families of Detained and Missing Croatian Veterans “Croatian Mother” (*Udruga obitelji zatočenih i nestalih hrvatskih branitelja “Hrvatska majka”*);
- Association of Parents and Families of Detained and Forcefully Abducted Croatian Soldiers “Mothers of Vukovar” (*Udruga roditelja i obitelji zarobljenih i nasilno odvedenih hrvatskih branitelja “Vukovarske majke”*);<sup>8</sup>
- Association of Families of Detained and Forcefully Abducted Homeland War Veterans of the Osijek-Baranja County (*Udruga obitelji nestalih i nasilno odvedenih branitelja Domovinskog rata Osječko-baranjske županije*);
- Association of Families of Detained and Missing Croatian Soldiers of the Varaždin County (*Udruga obitelji zatočenih i nestalih hrvatskih branitelja Varaždinske županije*);
- Association of Families of Detained and Missing Croatian Veterans “Croatian Phoenix” (*Udruga obitelji zatočenih i nestalih hrvatskih branitelja “Hrvatski feniks”*); and
- Association of Families of Detained and Missing Croatian Veterans of the Međimurje County (*Udruga obitelji zatočenih i nestalih hrvatskih branitelja Međimurske županije*).

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<sup>8</sup> The Mothers of Vukovar association was founded in 1993 and has some 220 members. It aims to contribute to finding missing persons last seen prior to the fall of Vukovar in November 1991 and to provide support to the families of the missing.

The listed associations are assembled in the Union of Associations of Families of Captured and Missing Croatian Defenders. In addition, the following associations of families are registered and active in the Republic of Croatia: Association of Children of Killed and Missing Croatian Veterans of the Homeland War (*Udruga djece poginulih i nestalih hrvatskih branitelja Domovinskoga rata*);<sup>9</sup> and Union of Associations of Croatian Civilian Victims of Croatia's Homeland War (*Zajednica Udruga hrvatskih civilnih stradalnika domovinskog rata Hrvatske*).<sup>10</sup>

Also registered in Croatia is the Association of Serb Families of the Killed, Deceased, Missing and Forcefully Abducted and Disabled Persons "Against Oblivion" (*Udruženje srpskih porodica ubijenih, poginulih, nestalih i nasilno odvedenih i invalidnih osoba "Protiv zaborava"*) which brings together families of missing persons of Serb ethnicity.

Registered in Serbia are two family associations that represent Croatian Serbs: the Association of Parents and Families of Detained, Captured and Missing Persons of Serbia and Montenegro (*Udruženje roditelja i porodica*

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9 The Union of Associations of Families of Captured and Missing Croatian Defenders was founded in 1997 and has some 740 members. It contributes to the search for missing persons and supports families of the missing. It coordinates the activities of family members and lobbies for policies to address the issue of missing persons. It was, for example, involved in activities around the Wall of Pain (*Zid boli*) memorial to the missing in Zagreb.

10 The Union of Associations of Croatian Civilian Victims of Croatia's Homeland War was founded in 1995 and comprises 11 county associations registered in Daruvar, Dubrovnik, Karlovac, Osijek, Pakrac, Šibenik, Sisak, Slavonski Brod, Vinkovci, Zadar and Zagreb. These associations represent the families of killed and missing civilians, families of killed children, invalids, invalids who were maimed as children and former inmates of Serb-run detention centers. The Union has successfully lobbied for a monument to all children killed in the war, which will be built in Slavonski Brod. The memorial to the children killed in the Homeland War in the Republic of Croatia "Childhood Interrupted" (*"Prekinuto djetinjstvo"*) was built and officially opened in May 2016. The tender procedure for selection of the conceptual design of the memorial, its construction and the unveiling ceremony was organized and implemented by the Ministry of Croatian Veterans.

*uhapšenih, zarobljenih i nestalih lica Srbije i Crne Gore*);<sup>11</sup> and the Association of Families of the Missing and Killed “Tear” (*Udruženje porodica nestalih i poginulih lica “Suza”*).<sup>12</sup>

Family associations have played an important role in lobbying state authorities to fulfil their obligations to investigate missing persons cases, locate and excavate clandestine graves, and to identify human remains. Given the regional nature of the conflict in the former Yugoslavia, family associations recognized the need to network and lobby on a regional level in order to achieve results in each state established on the territory of the former Yugoslavia. After years of informal cooperation, 16 family associations from BIH, Croatia and Serbia registered the network formally in 2011 in BIH as an association of citizens, irrespective of ethnic or national background. Both as an informal network and now as a registered association, the Regional Coordination of Family Associations of the Missing from former Yugoslavia (the Regional Coordination) has raised public awareness about missing persons issues and improved links between decision-makers and victims’ groups. Since the early 2000s, ICMP has supported the Regional Coordination, providing financial and technical assistance to help ensure sustainability, advance objectives and address organizational needs.

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11 The Association of Parents and Families of Detained, Captured and Missing Persons of Serbia and Montenegro was founded in 1991. With some 50 active members, it represents the families of 390 missing persons and seeks to locate all missing persons from the conflict and provide assistance to the families. The Association’s leadership considers its greatest achievement to be its perseverance despite the many obstacles it has faced, including a lack of information about clandestine gravesites, waning public interest in missing persons and the half-hearted engagement of the authorities.

12 The Association of Families of the Missing and Killed “Tear” was founded in 1996 in Belgrade and has some 6,000 members. It seeks to keep the issue of missing persons on the agenda and lobbies the authorities to continue the search for the missing through exhumations and identifications. The Association is engaged in developing direct exchange of information among families and associations on all missing persons issues; raising public awareness about missing persons; maintaining the memory of missing persons and the dead through commemorations and other forms of memorialization; and helping families to claim what they are entitled to.

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## V. RIGHTS OF VICTIMS

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The need to locate and identify persons unaccounted for as a result of armed conflict or human rights abuses including enforced disappearances, is now well-recognized. The Fourth Geneva Convention, in Article 32, requires that parties to a conflict facilitate enquiries about individuals missing as a result of hostilities and the Protocol Additional to the Geneva Conventions of 1977 “requires each party to the conflict to search for persons who have been reported missing by the adverse party.”<sup>13</sup> These provisions are complementary to the universal guarantees anchored in human rights. Legal instruments such as the European Convention on Human Rights (ECHR) enshrine the state’s obligation to conduct effective investigations regarding missing persons. The European Court of Human Rights (ECtHR) has ruled, for example, that a state’s failure to conduct an effective investigation to clarify the whereabouts and fate of persons who have disappeared in life-threatening circumstances constitutes a continuing violation of the state’s procedural obligation to protect the right to life under Article 2 of the ECHR.<sup>14</sup>

The United Nations Human Rights Council (UNHRC) has stated that the international community should “endeavor to recognize the right of victims of gross violations of human rights, and their families, and society as a whole to know the truth to the fullest extent practicable.”<sup>15</sup> Those whose human rights have been violated are entitled to all possible information regarding the circumstances of this violation and those responsible for it. The UNHRC’s amended Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity of 5 February 2005 reaffirms the inalienable right to know the truth regarding gross human-rights violations. The right to the truth is also asserted in the International Convention for the Protection of All Persons from Enforced Disappearance (ICCPED), which was adopted by the UN General Assembly on 20 December 2006 and entered into force on 23 December 2010.<sup>16</sup>

In this regard, the commentary of the UN Working Group on Enforced or Involuntary Disappearances (WGEID) in its 2010 General Comment on the Right to the Truth in Relation to Enforced Disappearances is also pertinent.

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13 Customary International Humanitarian Law, Rule 117, Accounting for Missing Persons ([www.icrc.org/customary-ih/eng/docs/v1\\_rul\\_rule117](http://www.icrc.org/customary-ih/eng/docs/v1_rul_rule117)).

14 *Cyprus v. Turkey* (Applic. no. 25781/94), ECtHR Judgment (19 May 2001), par. 136.

15 UNHRC, Human Rights Resolution 9/11, *Right to the truth*, 14 September 2008, A/HRC/RES/9/11.

16 Article 24.

The WGEID argued that: “The relatives of the victims should be closely associated with an investigation into a case of enforced disappearance. The refusal to provide information is a limitation on the right to the truth.”<sup>17</sup>

In addition to the right to the truth, the right to justice is critical and a basic demand of families of the missing. States have a duty to prosecute perpetrators of human-rights violations and war crimes. This is linked to the right to a remedy, including the right to an effective investigation, verification of the facts and disclosure of the truth.

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17 UN WGEID, *General Comment on the Right to Truth in Relation to Enforced Disappearances*, 3 August 2010.

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## VI. LEGAL FRAMEWORK

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The Croatian Parliament unanimously adopted the Law on the Missing Persons in the Homeland War on 12 July 2019. Prior to the adoption of the Law on Persons Missing in the Homeland War, there was no single law in the republic of Croatia regulating the rights of persons missing in the Homeland War and their families to find out the fate of their missing relatives and the procedure for their search. The Law takes into account all aspects of the process. It regulates the rights of families, the process of identification, registration of missing persons, and the safekeeping and burial of human remains. It also regulates bilateral cooperation with other states, international organizations and family associations. According to the law, all institutions, individuals and other subjects are legally required to provide information and documents related to the fate of missing persons and locations of clandestine graves, and sanctions are prescribed for those that do not disclose such information. The Law espouses a non-discriminatory approach to missing persons and persons killed during the war whose final burial place is unknown. Missing persons and persons killed during the war whose final burial place is unknown are recognized by the Law if they were citizens of Croatia or with reported place of residence in Croatia. Missing persons status will also be recognized for citizen of another country, providing they were Croatian defenders during the conflict in Croatia. Foreign citizens, that were not Croatian defenders and who went missing on the territory of Croatia are not recognized as missing persons or persons killed during the war whose final resting place is unknown. It is not clear who will be in charge for the search of this category of missing given that only Croatian authorities can conduct search and identification on the territory of Croatia.

In the attempt to cover the legal gap the law deviates from the standard practice of prescribing a court order for every excavation. In cases where the CDDM is unable to demonstrate that persons in unmarked graves are victims of a criminal act (war crime or other) it has the authority to excavate without court order (Article 18, line 3). This affords the CDDM the opportunity of determining if a gravesite is the result of a war crime before the excavation of the site and the autopsy of any human remains recovered, which may actually point to the fact that the persons exhumed were victims of a war crime. Excavating gravesites without a court order has the potential to jeopardize prosecuting war crimes suspects since excavation reports and artifacts recovered from the gravesite may not be submitted as evidence in criminal proceedings at a later stage.

Several other laws have been adopted related to the rights of families of missing persons, among others. In terms of financial benefits Croatia has adopted three laws: the Law on the Rights of Croatian Homeland War Veterans and their Family Members, which defines the rights of the families of Croatian missing war veterans, the Law on the Protection of Military and Civilian War-Disabled Persons and the Law on Civilian War Victims, which regulate the rights of families of missing civilians. These laws prescribe the financial rights of the family members of missing persons in the form of an allowance amounting to disability benefit, pension, etc.<sup>18</sup>

In 2013, Law on the Right to Access Information (Official Gazette 25/13) was adopted governing the right to access to information possessed by, at the disposal of, or under the control of the public authorities. This law gives families of missing persons the opportunity to access public information on missing persons that is held by the state.

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18 Report of the Working Group on Enforced or Involuntary Disappearances, A/HRC/30/38/Add.3, August 2015, par. 59 and 60.



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## VII. SEARCH FOR THE MISSING

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The search for the missing started in 1991, when the Croatian authorities sought to determine the fate of missing persons and coordinate their exchange from detention. They also systematically collected information about missing persons and clandestine mass and individual graves in previously occupied areas of the Republic of Croatia. Information was collected and comprehensive records of missing persons were established. Likewise, based on an agreement with authorities of other countries and members of para-governments in previously occupied areas, there were multiple instances of handing/taking over of human remains. This resulted in the resolution of hundreds of missing person cases.

The process of searching for the missing started in earnest in 1995, after the end of hostilities, and, to date, more than two-thirds of the missing have been located and identified. From 1995, following the military and police operations Flash and Storm, previously occupied areas of the Republic of Croatia became accessible to the Croatian authorities, and reconnaissance and excavations of human remains have been systematically implemented. The first large-scale exhumations of missing from 1991 and 1992 began in 1995 immediately after Operation Storm in the former UN Protected Areas, North, South and West. The first large-scale exhumation in the former UN Protected Area East of missing from 1991 and 1992 began in 1996 when Eastern Slavonia was under UNTAES, with more starting in 1998 after the region had been peacefully reintegrated in Croatia. The first excavations of gravesites of missing persons from 1995 began in 2001. Between 1995 and end of 2019, 5,174 bodies were exhumed and 4,297 identified, as recorded in the table below.<sup>19</sup>

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<sup>19</sup> Information provided in correspondence received from the Directorate for Detained and Missing Persons on 15 April 2018.

TIME/YEAR	EXHUMED	IDENTIFIED
1995-1999	3,190	2,734
2000-2004	920	494
2005-2009	460	423
2010-2014	415	399
2015-2018	148	146
2019	41	101
<b>TOTAL</b>	<b>5,174</b>	<b>4,297<sup>20</sup></b>

### 7.1. Wartime efforts

The Croatian Commission to Search for Persons Missing in War Activities started gathering ante-mortem information on presumed victims to help with their eventual identification during the hostilities.<sup>21</sup> It also began meeting with the Yugoslav State Commission for Humanitarian Issues and Missing Persons (*Savezna komisija za humanitarna pitanja i nestala lica Savezne Republike Jugoslavije*) in December 1991 under the auspices of the ICRC within the framework of what was called the MisCom Dialogue. As part of the MisCom Dialogue, Croatia and the FRY (Serbia and Montenegro) established a Joint Commission to Trace Missing Persons and Mortal Remains on 16 December 1991, which was chaired by the ICRC.<sup>22</sup> Its purpose was to clarify the fate of persons reported missing by their families during the Croatia conflict.<sup>23</sup> The Croatian and Yugoslav Red Cross Societies collected tracing requests for the

20 Information related to the identified human remains of nationals/citizens of the Republic of Croatia exhumed in the area of the Republic of Croatia were shown; the presented information does not include nationals of the Republic of Serbia and BIH whose human remains following preliminary identification were issued to the relevant authorities of those countries (since the CDDM did not make the final identification), or the identified human remains of nationals/citizens of the Republic of Croatia taken over from the Republic of Serbia and BIH.

21 *Addressing the Issue of Persons Who Went Missing during the Homeland War in the Republic of Croatia – a report to the UN on the implementation of the International Covenant on Civil and Political Rights – Additional Information III*, 2015.

22 E/CN.4/1995/37, Report submitted by Mr. Manfred Nowak, member of the Working Group on Enforced or Involuntary Disappearances, pursuant to paragraph 24 of Commission resolution 1994/72, January 1995.

23 *Unknown Fate, Untold Grief*, ICRC Special Report, August 2002, p. 22.

missing and sought to provide families with information.<sup>24</sup>

The Joint Commission was dissolved in early 1994, however, owing to the limited results obtained.<sup>25</sup> Although the ceasefire had more or less held since the Sarajevo Accord came into force in January 1992, which sought to end the Croatia conflict, few of the peace agreements other elements had been implemented. Fighting in neighboring Bosnia and Herzegovina and the frozen Croatia conflict between 1992 and 1995 were not conducive to creating the conditions of trust in which information on the missing could be gathered, graves located and mortal remains exhumed and identified. Indeed, where gravesites were located, the United Nations Protection Force (UNPROFOR) peacekeepers were only able to secure the sites to ensure that they were not tampered with.<sup>26</sup> The medical human-rights group, Physicians for Human Rights, for example, learned in October 1992 of the Ovčara mass grave near Vukovar thanks to the testimony of a survivor, and carried out a preliminary site exploration in December, but were subsequently prevented from working by the local Serb commander.<sup>27</sup>

The governments of Croatia and the FRY (Serbia and Montenegro), nevertheless, decided to deal with the issue of missing persons at the level of a working group that met on 15 February 1995 in Belgrade and on 13 April 1995 in Zagreb. The FRY stopped attending meetings after Operation Storm, and the working group ceased functioning. Before that, however, the Yugoslav authorities provided information according to which 24 persons listed as missing were alive and either living in the FRY or in the UN Protected Areas. They also delivered the mortal remains of 11 persons, of whom seven had been identified.<sup>28</sup>

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24 Ibid.

25 Ibid.

26 E/CN.4/1996/36, Report submitted by Mr. Manfred Nowak, expert member of the Working Group on Enforced or Involuntary Disappearances, responsible for the special process, pursuant to paragraph 4 of Commission resolution 1995/35, March 1996, par. 35.

27 *War Crimes in the Balkans: Medicine under Siege in the former Yugoslavia 1991-1995*, Physicians for Human Rights, 1996, pp. 71-75.

28 *QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES: Special process on missing persons in the territory of the former Yugoslavia*, report submitted by Manfred Nowak, expert member of the Working Group on Enforced or Involuntary Disappearances, to the UN Economic and Social Council Commission on Human Rights (Nowak Report), March 1996, par. 37.

## 7.2. Immediate post-war efforts

Croatia and the FRY signed an agreement on cooperation in locating missing persons on 17 November 1995, during the Dayton peace talks on BiH. Under this agreement, the parties undertook to exchange complete and precise information about missing persons and to set up a joint commission for tracing missing persons that would meet alternately in Zagreb and Belgrade. The first meeting took place in Zagreb on 7 December 1995.<sup>29</sup> Croatia and the FRY renewed their commitment to resolving missing persons issues in April 1996 with the signing of the Protocol on cooperation between the Yugoslav State Commission for Humanitarian Issues and Missing Persons and the Government Commission for Detained and Missing Persons of the Republic of Croatia, which prescribed the release of prisoners of war and detained civilians, the exchange of mortal remains of those killed in the conflict, the exchange of lists of missing persons and detainees and other relevant documentation, the exchange of documentation about the identification of missing persons to date, and the exchange of information on efforts to search for the detained and missing. Since then, Croatia has sought information from Serbia in relation to clandestine mass and individual primary and secondary graves; documentation from Vukovar Hospital and Borovo Commerce, identification protocols in cases where the Yugoslav National Army (*Jugoslovenska narodna armija* – JNA) carried out sanitation operations, and exhumations in Serbia – to little effect.<sup>30</sup>

In the immediate aftermath of Operation Storm, the Croatian authorities moved rapidly to identify suspected gravesites from 1991 and 1992. Fifty-one clandestine graves were located in 1995 and excavations began immediately. International monitors from the European Union (EU) and other international organizations were present during part of the excavations.<sup>31</sup> Since bodies were in an advanced stage of decomposition and those of soldiers were young men dressed in a similar fashion, identification using traditional methods was difficult.<sup>32</sup> After the Military and Police Operations Flash and Storm in 1995, the responsible authorities of the Republic of Croatia carried out humane

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29 Nowak Report, March 1996, par. 48.

30 *Addressing the Issue of Persons Who Went Missing during the Homeland War in the Republic of Croatia* – a report to the UN on the implementation of the International Covenant on Civil and Political Rights – Additional Information III, 2015.

31 No/CN.4/1996/36, report submitted by Manfred Nowak, expert member of the Working Group on Enforced or Involuntary Disappearances, responsible for the special process, pursuant to paragraph 4 of Commission resolution 1995/35, March 1996, par. 36.

32 *Ibid.*

sanitation operations. The located human remains were buried pursuant to the Geneva Conventions and their Additional Protocols, at cemeteries or in the immediate vicinity of cemeteries. Documentation/protocols were prepared in relation to the located human remains and these were presented to all interested families and the burial sites were labelled.

### 7.2.1. Ovčara exhumation

When the city of Vukovar fell in November 1991, the JNA and paramilitary forces captured the hospital. The director of the hospital and the commander of the JNA had agreed to evacuate the Croat patients to Croatianheld territory. Nevertheless, on 20 November 1991, only women, children and the elderly were transported to Croatianheld territory.<sup>33</sup> The same day, 261 captive non-Serb victims were taken away from Vukovar hospital.<sup>34</sup> Hospital records, patient protocols and other documentation were seized by the JNA. The ICTY indicted in November 1995 three JNA officers – Colonel Mile Mrkšić, Captain Miroslav Radić and Major Veselin Šljivančanin – in relation to the massacre of non-Serb captives at the Ovčara site. On 1 September 1996, Physicians for Human Rights began exhuming mortal remains from the Ovčara mass grave it had discovered in October 1992. The exhumations were carried out on behalf of the ICTY in the presence of Croatian observers.<sup>35</sup> It was the largest mass grave from 1991 and 1992 and by 1 October 1996 had yielded 200 sets of remains of people who had been executed shortly after being taken from the Vukovar hospital after the fall of Vukovar.<sup>36</sup> The human remains of 61 persons last seen after the Vukovar hospital was captured are still missing.

The CDDM reports that Serbia has returned only a small part of the documentation that the JNA took from the Vukovar hospital after the fall of the city. In that regard, the CDDM continues to request that Serbia deliver the following documentation: documentation from the Vukovar hospital (patient protocols in particular), and identification protocols on cases where the JNA

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33 No/CN.4/1996/36, report submitted by Manfred Nowak, expert member of the Working Group on Enforced or Involuntary Disappearances, responsible for the special process, pursuant to paragraph 4 of Commission resolution 1995/35, March 1996, par. 27.

34 Ibid, par. 47.

35 Ibid, par. 48.

36 *War Crimes in the Balkans: Medicine under Siege in the former Yugoslavia 1991-1995*, Physicians for Human Rights, 1996, pp. 71-75.

carried out the removal of the dead from the battlefield (*asanacija terena*).<sup>37</sup>

### 7.2.2. Subsequent exhumations

The Croatian authorities have collected data on the locations of mass and individual graves since 1991 from various sources. On the basis of collected and processed data, the Croatian authorities organized investigations and exhumations of remains, carried out in accordance with the Croatian Criminal Procedure Code.<sup>38</sup> Between 1995 and 15 April 2018, 150 mass graves and over 1,300 individual graves were located. According to the CDDM, the remains of 5,133 persons were exhumed until 15 April 2018.

In late 2016, the CDDM began to reinvigorate the process of search for clandestine gravesites with the introduction of a new multidisciplinary approach, which includes the use of aerial imagery, drones, cadaver dogs, and ground-penetrating radar to help locate gravesites. The Croatian authorities provided additional financial and human resources to accelerate the process, including two newly established field offices – Field Office East with its seat in Vukovar and Field Office South with its seat in Split, and expert military personnel from the Croatian Army. The Croatian authorities call this integrated approach the Croatian model for search for missing persons.

### 7.3. Regional cooperation

Since the early 2000s, enhanced regional cooperation has resulted in joint excavation processes in BIH, Croatia and Serbia as part of investigations into missing persons cases from the 1991-1995 Croatia conflict. The Government Commissions on Missing Persons from Croatia and Serbia have participated in joint exhumations in both Croatia and Serbia, while the Government Commission on Missing Persons from Croatia has joined the Missing Persons Institute of Bosnia and Herzegovina (MPI) and its predecessors in joint exhumations on the territory of BIH.

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37 *Addressing the Issue of Persons Who Went Missing during the Homeland War in the Republic of Croatia* – a report to the UN on the implementation of the International Covenant on Civil and Political Rights – Additional Information III, 2015.

38 Croatia, like other countries of the former Yugoslavia, adopted a rule-of-law approach to exhumations and identifications. This means that court orders were issued on the basis of requests by relevant state authorities (Commissions), and all subsequent activities were covered by this official legal act. Locations are treated as crime scenes, and evidence is recorded and gathered by the police for trial purposes.

Bilateral agreements between the states concerned were key to facilitating joint excavations. For example, the excavations in the territory of the Republic of Serbia that started with the excavation of NN mortal remains at the Novi Sad City Cemetery in 2002 are a direct outcome of efforts and requests made by the CDDM over a number of years that ended with a bilateral agreement and the beginning of this process.

ICMP also played an important role in facilitating and coordinating these joint excavations between states, which allowed host states to conduct excavations that were monitored by neighboring states that were also searching for missing persons from the conflict. This process included reconnaissance, probes and excavations of several dozen sites in Bosnia and Herzegovina, Croatia and Serbia. ICMP also supported this process by testing samples from these sites and creating a publication called the Notification List that allowed government authorities and prosecutors to follow the results of ICMP's DNA testing. Between 2001 and 2010, ICMP published several updated editions of the Notification List, which significantly contributed to the transparent sharing of data among the relevant authorities of affected states in the Western Balkans, as well as to regional cooperation and confidence-building. The mechanism of the Notification List was superseded when in 2011 ICMP launched the Online Inquiry Center (OIC), a dedicated online interface for national authorities and families of the missing to access data about missing persons cases that is updated in real time.

In March 1999, ICMP hosted a conference in Amsterdam providing a forum for the relevant government bodies from Bosnia and Herzegovina, Croatia and the FRY to meet to discuss highly complex issues pertaining to missing persons and detainees. Informal closed-door proceedings were held during two plenary sessions in addition to 12 bilateral meetings facilitated by ICMP. At the Amsterdam conference, the Croatian Commission on Missing Persons reached an agreement with the FRY Commission on Missing Persons on the hand-over of personal belongings of individuals excavated and identified in Croatia to their families residing in the FRY. They also agreed to renew a joint effort to clarify the fate of a number of high-profile cases (namely, the JNA pilots whose aircraft were shot down during the war). The Croatian Commission on Missing Persons reached an understanding with the Bosnian authorities on a joint mechanism that would allow each side to monitor the exhumation process on the territory of the other state. The Croatian and Bosnian delegations also agreed to meet shortly after the Amsterdam Conference to formalize details of the mechanism. The Croatian Commission on Missing Persons agreed to take immediate action on the remaining measures to ensure the effective functioning of the Danube Region Sub-Commission on Missing Persons. It also announced the preparation of a

plan of action whose implementation would help clarify the fate of persons missing in connection with the Croatian military operations Flash and Storm. It was not until 2001 that the first exhumations of Serbs who perished in the “Flash” and “Storm” operations took place.

The issue of the missing from the Croatia war has been prioritized in bilateral relations between the Republic of Croatia and the Republic of Serbia from the outset. This represents a continuity and political consensus in Croatia and Serbia to resolve the missing persons issue. Cooperation between Croatia and Serbia has steadily improved over the years, though there have also been setbacks. A lack of disclosure and submission of information about missing persons and locations of mass, individual and secondary graves is often cited as a major impediment to enhancing bilateral cooperation.

In recent years, however, several milestones have helped to reinforce positive trends in the relationship. In November 2009, for example, representatives of the Croatian Government Commission on Detainees and Missing Persons, the Serbian Government Commission on Missing Persons, ICMP and representatives of family associations of missing persons from both Croatia and Serbia met together for the first time.<sup>39</sup> In November 2010, Croatian President Ivo Josipović and Serbian President Boris Tadić met and spoke in favor of resolving the fates of missing persons.

In June 2013, the Croatian Government Commission on Detained and Missing and the Serbian Government Commission on Missing Persons met in Zagreb and agreed, among other things, on which country has jurisdiction for which missing persons cases. Specifically, they agreed that: “Resolving cases of all missing citizens of the Republic of Croatia, regardless of their ethnicity, nationality or religion, is under the jurisdiction of the institutions of the Republic of Croatia, while respecting the justified interest of the Republic of Serbia in the resolution of cases of persons of Serbian nationality, and bearing in mind that families of the missing live/reside on the territory of the Republic of Serbia.”<sup>40</sup> This conclusion reaffirmed the agreement reached between the Croatian Government Commission on Detained and Missing and the Serbian Government Commission on Missing Persons on 1 and 2 February 2006 in Zagreb.

In October 2013, Croatian President Ivo Josipović and Serbian President Tomislav Nikolić met and agreed that resolving this issue was a prerequisite

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39 *Government Commissions on Missing Persons from Croatia and Serbia meet for the first time with Family Associations of missing persons from the Croatia conflicts of the 1990s*, ICMP press release, 12 November 2009.

40 Minutes of 18 June 2013 MisCom bilateral meeting in Zagreb.



for settling relations between the two countries, fully and once and for all.<sup>41</sup> In May 2015, Croatian Foreign Minister Vesna Pusić and Serbian Foreign Minister Ivica Dačić met to discuss, among other things, the need for enhanced cooperation to address the issue of persons missing as a result of the 1991-1995 Croatia conflict. In the wake of that meeting, Pusić said that they had agreed that the two countries should harmonize lists of missing persons in line with international standards, while Dačić announced that Serbia was ready for constructive dialogue on the missing with Croatia.

These positive statements were followed up with a bilateral meeting of the Croatian Government Commission on Detained and Missing with the Serbian Government Commission on Missing Persons in June 2015. At that meeting, the two countries agreed that they were jointly searching for 1,606 missing persons as well as an additional 424 cases classified as “remains being searched for.” The Croatian and Serbian authorities also agreed on gravesites to be excavated in 2015 and that they would meet again within six months to discuss all other open issues. On 20 June 2016, Croatian President Kolinda Grabar-Kitarović and Serbia’s Prime Minister Aleksandar Vučić signed in Subotica, Serbia, a six-point declaration on enhancing relations, affirming, among other things, that the search for missing persons is a priority humanitarian issue and that the greatest efforts will be made to address it.<sup>42</sup>

In the more recent period, meetings between Croatian President Kolinda Grabar-Kitarović and Serbian President Aleksandar Vučić regularly included the topic of missing persons. After the Subotica meeting in 2016, the two presidents met on the margins of Aleksandar Vučić’s presidential inauguration in Belgrade on 23 June 2017. At this bilateral meeting, they once again reiterated the importance of resolving the issue of missing persons as a precondition for improving overall bilateral relations between the two countries. Additionally, during his first state visit to Croatia on 12 February 2018, Mr. Vučić handed over to the Croatian President several files on missing persons from the Croatian municipality of Dvor na Uni, as they jointly pledged to prioritize the issue of missing persons.<sup>43</sup>

Croatian Directorate for Detained and Missing Persons and the Serbian Government Commission on Missing Persons maintained a high level of bilateral contacts in line with the priorities set by the president of the two

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41 *Nikolić, Josipović: A new dimension in Serbia-Croatia relations*, Ministry of Foreign Affairs of the Republic of Serbia, 16 October 2013.

42 *Serbian PM and Croatian president sign declaration*, TANJUG, 20 June 2016.

43 *Vučić Hands Files on Missing Serbs to Croatia*, BALKANINSIGHT, 12 February 2018.

countries. In the most recent bilateral meetings, the two bodies agreed on the need to update the existing legal framework for cooperation between Serbia and Croatia, which dates from 1995 and 1996. On 23 February 2018, they met in Zagreb to follow-up on the talks between the presidents that took place earlier that month. Analyzing information on the cases of missing persons delivered during the official visit of the President of Serbia to Croatia, the two government bodies assessed they were delivered in good faith, but it was confirmed the information was related to the cases of persons already found and identified, whose personal data was very similar to the active cases of missing persons registered with the Croatian Directorate for Detained and Missing Persons.

Also during 2018 both Presidents appointed special presidential envoys for missing persons. In February President Grabar-Kitarović appointed Ivica Vrkić, the current mayor of Osijek, as the presidential commissioner on missing persons from the Homeland War. In August 2018, President Vučić appointed Veran Matić, journalist and the current head of the Enquiry Commission on Murders of Journalists, as his personal envoy on missing persons.<sup>44</sup> The two envoys were to maintain intensive contacts and exchange any information that might lead to the resolution of missing persons cases in Croatia.

In terms of open issues, Croatia made direct reference in its October 2013 submission to the UN Human Rights Committee to two laws in Serbia that it finds objectionable. These are the Law on the Organization and Competences of the Government Authorities in War Crimes Proceedings (*Zakon o organizaciji i nadležnosti državnih organa u postupku za ratne zločine*) and the Amnesty Law (*Zakon o amnestiji*). Croatia considers that by adopting the Law on the Organization and Competences of the Government Authorities in War Crimes Proceedings Serbia has sought to extend the jurisdiction of its national prosecutor to include all states of the former Yugoslavia, including Croatia. It believes that the Amnesty Law needs to cover the period from 1990 to 27 April 1992 in addition to the period from 27 April 1992 to 7 October 2000, as currently drafted.<sup>45</sup> In addition, Croatia objects to elements of Serbia's 2012 Law on Migrations (*Zakon o upravljanju migracijama*), which it believes encourages Serbia to meddle in Croatian affairs. The Law on Migrations is a manifestation of unresolved issues relating to the status of Croatian Serbs, whether they reside in Croatia or in neighboring countries.

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44 *Belgrade Appoints Envoy for Missing Croatian Serbs*, BIRN, 10 August 2018.

45 *Consideration of reports submitted by States parties under article 40 of the Covenant pursuant to the optional reporting procedure: Third periodic reports of States parties due in October 2013: Croatia*, January 2014, par. 154.

Cooperation between Croatia and BiH in the search for missing persons has progressed through several phases and its trajectory has been one of ongoing improvement, as trust has grown between the two states.

During the war in BiH, the State Commission for Exchange of Prisoners of War and Detained Persons of the Republic of Bosnia and Herzegovina, the Central Commission for Exchange of Prisoners and Civilians of the Government of Republika Srpska and the Service for Exchange of Prisoners and other Persons of the Croatian Community of Herceg-Bosna, as well as institutions from Croatia cooperated in the process of search for missing and detained persons. Cooperation was *ad hoc* and uncoordinated. Each institution in BiH worked independently with Croatia's Commission for Detained and Missing Persons. Cooperation was based on needs, relating to the exchange of detainees (soldiers and civilians) and human remains, and political will. There were no signed agreements, protocols, minutes, contracts or other documentation.

In the immediate aftermath of the Bosnian War, cooperation between BiH and Croatia remained limited. It consisted of ad-hoc meetings organized to resolve specific problems in the search process. Trust was lacking. As a result, there was no systemic information exchange on missing persons, including information about potential locations of clandestine gravesites. Cooperation was also undermined by the absence of a single state institution in BiH responsible for the process of search and identification. Cooperation lacked clear program principles and objectives. It was facilitated by bilateral meetings between search institutions from BiH and Croatia's Commission for Detained and Missing Persons through the mechanism of the Working Group on Missing Persons, pursuant to the provisions of the Dayton Peace Accords. The Working Group meetings achieved, however, only modest results, largely because the Working Group comprised the warring parties, not states, which is a prerequisite for an effective post-conflict mechanism to encourage inter-state cooperation to address the issue of missing persons. An important step forward in terms of cooperation between BiH and Croatia was taken at a bilateral meeting in Neum on 18 June 2004, which reaffirmed the agreements made at the ICMP-facilitated Amsterdam meeting of March 1999. The meeting was attended by representatives of Croatia's Directorate for Detained and Missing Persons, the Commission on Missing Persons of the Council of Ministers of Serbia and Montenegro, the Federation Commission on Missing Persons, the Office for Missing and Detained Persons of Republika Srpska and the Ministry for Human Rights and Refugees of BiH. The most important conclusions were the following:

- Agreements on the search for missing persons between states should be signed without delay, if they had not already been signed. This was important because, at the time, Bosnia and Herzegovina had no such agreement with either Croatia or Serbia and Montenegro;
- Procedures should be defined within the aforementioned agreements between states aimed at hastening the exhumation of citizens of the country submitting the request (90 days) and shortening the procedure of repatriation of identified human remains (30 days).

As cooperation progressed, trust also grew between the competent institutions (the MPI since 2008 and the Directorate for Detained and Missing Persons in Croatia). Cooperation evolved from joint exhumations and monitoring and transfer of human remains to exchange of information and materials and joint reconnaissance visits and checks in the field. The Protocol on Cooperation between the Government of the Republic of Croatia and the Council of Ministers of Bosnia and Herzegovina regarding the search for missing persons was signed in 2017.

#### 7.4. Multilateral cooperation

The signing of the *Declaration on the Role of the State in Addressing the Issue of Persons Missing as a Result of Armed Conflict and Human Rights Abuses* in August 2014 demonstrated a renewed commitment by BIH, Croatia, Montenegro and Serbia to addressing the issue of missing persons. Subsequently, in order to operationalize the principles enshrined in the Missing Persons Declaration, protocols of cooperation have been signed between Croatia and Montenegro, BIH and Serbia, and, most recently, between BIH and Croatia in July 2017. These protocols are expected to enhance the efforts of investigation and identification of persons still unaccounted for in all three countries.

Along with another 15 heads of government from countries participating in the Berlin Process, the Croatian Prime Minister signed a Joint Declaration on missing persons during the Western Balkans Summit in London, on 10 July 2018. The Declaration, among other things, reiterates the commitment of the countries from the region, and their Berlin Process partners, to ensure impartial and effective investigations of missing persons cases; resolve as many cases as possible over the next five years; actively engage the families in the process; and refrain from the politicization of the missing persons issue.

On 6 November 2018 at ICMP's headquarters in The Hague, the CDDM as well as the domestic institutions for missing persons issues in BIH, Kosovo, Montenegro and Serbia signed a Framework Plan derived from the

Declaration on Missing Persons signed in London in July 2018, and in so doing formed the Missing Persons Group (MPG) to deliver the plan. The plan sets out actions that the countries will undertake to account for the remaining missing persons – thereby strengthening the rule of law and contributing to reconciliation in the Western Balkans.

The Plan is being implemented by the MPG, which comprises domestic institutions that are responsible for the search and identification of missing persons from BIH, Croatia, Kosovo, Montenegro and Serbia.<sup>46</sup>

At the Western Balkans Berlin Process summit in Poznan in 2019, the MPG reported on progress it has made in implementing the Framework Plan from November 2018 to July 2019. The MPG reported on:

- Steps taken to resolve NN cases, including to jointly review unidentified cases originating from a number of locations and conducting further analysis and additional forensic work on nominated specific cases of joint interest;
- The creation of a unique and landmark Database of active missing persons cases from the former Yugoslavia. The information stored in the Regional Database is available to all relevant institutions responsible for accounting for missing persons from BIH, Croatia, Kosovo, Montenegro and Serbia, increasing the level of transparency and trust;
- The increased engagement of the families of the missing and increased flow of information to family associations in the Western Balkans, about the Berlin Process summit, the Joint Framework Plan, the MPG, through a series of family info-sharing meetings in the region, with the participation of national authorities, providing a platform for families to ask questions and receive answers from those with responsibility for the process in their countries;
- The nomination of 16 specific locations to be reconnoissanced and excavated;
- Increased confidence and trust among the participating members of the MPG in the credibility of each other's efforts to locate and identify missing persons.

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<sup>46</sup> Domestic institutions are: the MPI, the Directorate for Detained and Missing of the Republic of Croatia, the Kosovo Commission on Missing Persons, the Government Commission on Missing Persons of Montenegro, the Government Commission on Missing Persons of the Republic of Serbia.

ICMP facilitates the work of the MPG, and maintains the regional database of missing persons from the conflict. ICMP is also helping to ensure access to DNA testing and matching of biological samples, providing technical assistance in resolving NN cases, supporting excavations, facilitating regular multilateral meetings of the responsible institutions, and ensuring the engagement of families of the missing in the process.

### 7.5. Identification methodology

The methodology used in identifications has evolved greatly since 1995 in the wake of advances in DNA-identification techniques. Between 1995 and 2002/3, the focus was on “traditional” forensic methods, including comparing post-mortem and ante-mortem data, information on the circumstances of disappearance, and documentation obtained through other sources. These traditional identifications often rely on anthropological examination of skeletal remains to establish a biological profile of the individual, where osteometrics<sup>47</sup> and other observed characteristics are compared to reference studies of skeletal characteristics that correlate with such things as age, sex, stature, and, sometimes, life history. Estimates of these parameters are combined and compared to ante-mortem attributes of reported missing persons to find cases of consistency, or to exclude the possibility of identity in cases of incompatibility. Medical or dental records, if available, can also provide strong evidence in ante-mortem/post-mortem comparisons.

In traditional identifications, contextual or other information is often used, including information on such things as place and circumstances of death and/or disappearance. Clothing and other personal effects recovered with the remains, sometimes including identification documents, can be compared to information on missing persons obtained through investigations. Taken together, the evidence in favor of identification can in many cases be compelling. However, in practice, individual cases vary on the scale of certainty and generally lack scientific criteria for defining strength of evidence. As a result, cases with such traditional identifiers are often classed as having “presumptive” hypotheses of identity, or as being “presumptive identifications”. It is difficult to define when presumptive identifications should be regarded as reliable. Pressure from the public and/or institutions to resolve cases can push evidence evaluation to the point where mistakes – misidentifications – are made.

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47 Osteometry is the study and measurement of human (or animal) skeleton, especially in an anthropological or archaeological context.

The early use of DNA, in this type of missing persons identification, was to confirm or refute presumptive identifications, where DNA profiles from remains were compared only to specific families to test pre-determined hypotheses of identification. This permitted identifications to be made, but when DNA results excluded the hypothesis of identification, the DNA data were then of little use in helping to find the correct identification until other investigation-driven hypotheses of identity could be proposed. In the context of thousands of missing persons, an identification approach based on DNA confirmation testing of presumptive identifications proved to be inefficient.

The first occasion on which DNA-identification techniques were used in Croatia was in 1994 in relation to the mortal remains of Croats killed in Kupres in BiH in 1992. The work was carried out by AmeriCares, a medical relief charity. In total, 61 bodies from six clandestine graves were identified at the Department of Pathology and Forensic Medicine, Clinical Hospital in Split, three of which were identified on the basis of an early form of DNA testing.<sup>48</sup> At the time, the Split laboratory was the only one in Croatia equipped to carry out DNA identifications.

Analysis of nuclear Short Tandem Repeat (STR) DNA has become the standard method for achieving certainty in DNA testing for human identification and is used today almost universally in criminal casework. The advantage of using nuclear STRs is that multiple different STR markers are typed simultaneously. These highly variable markers are found in separate locations on different chromosomes and are inherited independently from one another. The probabilities of the genetic types from each locus can be multiplied, which makes it possible to distinguish between individuals with a high degree of certainty.

Rapid progress in identifications in the Western Balkans became possible with the establishment by ICMP of a “DNA-led” approach to identification.<sup>49,50</sup> All families of missing persons were asked to provide genetic reference samples in the form of droplets of blood collected on paper-based cards. DNA profiles from unidentified human remains can be compared by automated methods to all families of the missing, independently of investigation-based

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48 D. Primorac et al., (1996). *Identification of war victims from mass graves in Croatia, Bosnia, and Herzegovina and Croatia by use of standard forensic methods and DNA typing*. *Journal of Forensic Science*, 41:891-894.

49 *Bosnia and Herzegovina Missing Persons from the Armed Conflicts of the 1990s: A Stocktaking*, ICMP, pp. 52-56.

50 T. Parsons et al., (2019). *Large scale DNA identification: the ICMP experience*. (2018). *Forensic Science International: Genetics*. 38:236-244.

hypotheses. The success of this approach is correlated with the extent of representation of the family reference database. Moreover, it accommodates confirmation of presumptive cases, by prioritizing them in the testing queue. In cases where DNA refutes a presumptive hypothesis of identity, the DNA profiles of both the remains and the family go into an active database. There they await matching as soon as corresponding samples are tested, either in the form of new DNA profiles from other remains, or new family reference samples.

In Croatia, three national institutions – the Institute for Forensic Pathology and Criminology of Zagreb’s Medical School; the Clinical Institute for Pathology, Forensic Pathology and Cytology of Split’s Clinical Hospital; and Osijek’s Medical School – have DNA laboratories performing kinship testing, which every year participate in a program of proficiency testing on basic forensic DNA methods provided by the *GEDNAP*<sup>51</sup> group. While each institution is independent, they are linked via a joint database of DNA profiles maintained by the Institute for Forensic Pathology and Criminology of Zagreb’s Medical School. The Zagreb laboratory uses the commercially available DNA View software for DNA comparisons, while the Split and Osijek laboratories have developed their own. The results of DNA testing are passed to the CDDM, which collects and processes information for the purpose of identification, organizes the collection of reference samples and final identifications, and manages documentation in relation to all identified and unidentified remains. Depending on the relatives available for testing and the amount of DNA recovered from the unidentified remains, it is sometimes not possible to reach this threshold even when the correct family is compared.

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51 German DNA Profiling.



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## VIII. COOPERATION WITH ICMP

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ICMP's role in the process of accounting for the missing from the Croatia conflict has been to endeavor to ensure an impartial process based on the principle of non-discrimination and transparency and regardless of their ethnic, national and religious affiliation, their role in hostilities or the circumstances of their disappearance. First through the mechanism of Notification Lists, which included detailed information about the results of DNA analysis on individual missing persons cases, and since 2011 through the sharing of such information by means of its OIC, ICMP has consistently sought to develop transparency tools that are vital to enhancing trust. Further, ICMP has encouraged the Croatian authorities to use modern forensic science, DNA testing and matching based on kinship, as a first step in identifications.

Since 1996, Croatia has cooperated extensively with ICMP to account for missing and disappeared persons. ICMP contributed to Croatia's identification efforts with donations, expertise, support to victims' groups and the monitoring of exhumations. This included donating a fluoroscope in 1999, DNA-processing equipment<sup>52</sup> in 2000 and \$200,000 towards the renovation of a DNA laboratory in Zagreb in 2001, as well as providing training to improve operating techniques in Croatia's three DNA laboratories. In addition, ICMP provided long-term funding of \$12,500 per month to support the work of the DNA laboratories. ICMP supported the work of the associations of families of missing persons by, among other things, facilitating contacts with similar groups elsewhere in the region. And ICMP has over the years supported and monitored excavations of clandestine graves and the recovery of mortal remains in Croatia as it has elsewhere in the Western Balkans.

ICMP opened an office in Zagreb in 2001 and signed an office agreement in September 2002. Then in 2004, the Ministry of the Family, Veterans' Affairs and Intergenerational Solidarity and ICMP signed an agreement on a Joint Project on DNA-led identifications. The Joint Project consisted of two subprojects: the collection of blood samples in Croatia from family members who had not given blood to date; and the exchange of nuclear DNA STR profiles so as to produce DNA reports that would lead to identifications.<sup>53</sup>

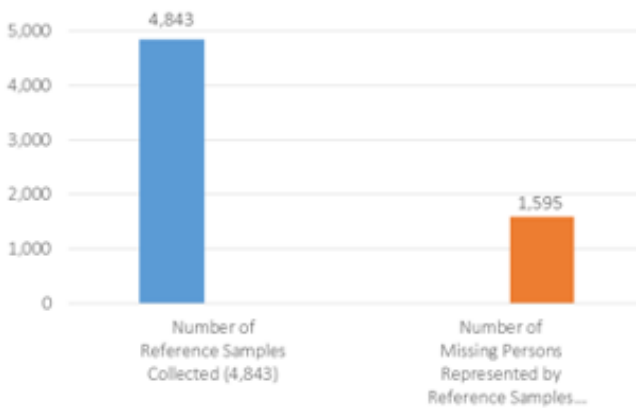
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52 Two ABI DNA sequencers (377 models) and three ABI thermocyclers (9700 s) and a limited quantity of DNA reagents.

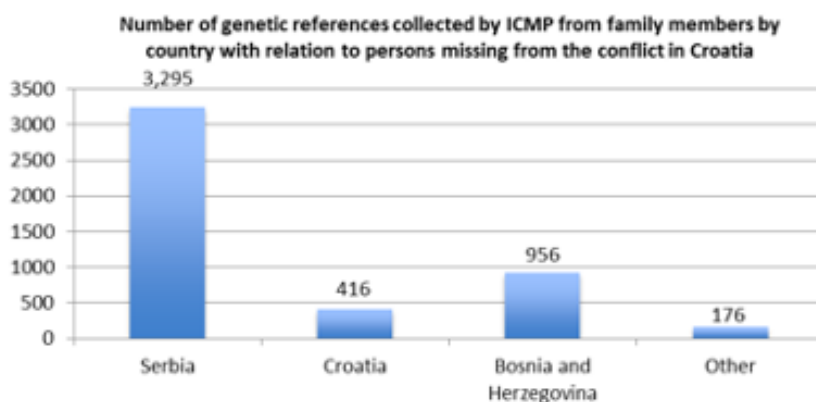
53 Nuclear STR typing is the predominant modern form of DNA testing that provides very high power for identification of individuals by providing data from multiple highly variable regions of DNA, and can be used to identify individuals through comparisons to the STR profiles of their relatives through "kinship matching" with very high certainty.

ICMP also made available its DNA-matching software and provided training in its use. In this way, Croatia benefitted from the same approach to the identification of mortal remains that had helped to transform the process in BiH.

As of the end of August 2020, ICMP had collected 4,843 reference samples from families of the missing. These represent 1,595 persons missing as a result of the 1991-1995 Croatia conflict. Of the 4,843 reference samples, ICMP collected 68 percent – 3,295 reference samples – from families of missing Croatian Serbs living in Serbia. These samples represent 1,232 missing persons. Nine percent of the references collected by ICMP – 416 reference samples – were collected in Croatia from family members who were either Croatian Serbs or Bosnian Croats living in Croatia. The reference samples collected by ICMP in Croatia represent 271 missing persons.



*Chart 1:  
Reference samples collected by ICMP in relation to missing persons in Croatia*



*Chart 2:  
Countries in which ICMP collected reference samples relevant to the Croatia conflict<sup>54</sup>*

In addition to the samples collected by ICMP, Croatia reports that it has collected some 6,100 samples from family members of missing persons.

Within the Joint Project, Croatia and ICMP have been exchanging anonymized family reference DNA profiles, i.e. data excluding information such as the names of missing persons and their family members. If a DNA match is established between family reference and post-mortem DNA profiles by either Croatia or ICMP, technical experts from both groups review the genetic data. Only after completion of the technical review is personal information and genetic data exchanged and a DNA report issued.

ICMP has provided profiles obtained from the 4,659 family reference samples it has collected to the CDDM. These samples represent 1,574 missing persons. The CDDM has provided 3,717 of the unmatched reference profiles it has collected, representing 1,762 missing persons, to ICMP.

As a result of this cooperation, which has enabled comparison of the DNA profiles of reference samples with post-mortem DNA profiles, ICMP has DNA-matched 671 missing persons cases related to the 1991-1995 Croatia conflict.

<sup>54</sup> Data as of August 2020.

Of this number, 551 of the DNA matches relate to human remains recovered in Croatia, and 54 DNA matches relate to human remains recovered in Serbia. The remaining 66 DNA matches relate to missing persons who disappeared in Croatia whose remains were recovered BIH.

Based on the CDDM's data, within the Joint Project on Identifications positive identifications have been established for the remains of 671 exhumed individuals, including:

- 475 cases were DNA matched on post-mortem DNA profiles that ICMP received from Croatia (all were matched by using reference samples that ICMP had collected);
- 196 cases were DNA matched on post-mortem DNA profiles that are in the possession of ICMP:
  - 151 matched by using reference samples collected by ICMP,
  - 45 matched by using reference profiles received from Croatia.

In addition to the 671 missing persons that ICMP DNA-matched through the Joint Project, ICMP also DNA matched as a result of exchange of DNA profiles with Croatia a further 46 missing persons, whose reported place of disappearance was either BIH or Serbia. Of these 46 DNA matches:

- 19 missing persons were DNA matched based on post-mortem DNA profiles in ICMP's possession and reference profiles provided by Croatia;
- 24 missing persons were DNA matched on the basis of post-mortem profiles received from Croatia and reference samples that had been collected by ICMP, and;
- Three missing persons were DNA matched based on post-mortem profiles in ICMP's possession by using a combination of Croatia and ICMP-collected reference profiles.

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## IX. MISIDENTIFICATIONS

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Where identifications are carried out using traditional methods, misidentifications may take place, despite the authorities' best efforts. A significant number of identifications in Croatia were made using traditional methods of visual identification – that is, without the assistance of DNA analysis. It is especially difficult to achieve accurate results by traditional methods when applied to large numbers of mortal remains recovered long after death in complex commingled sites. Traditional methods have a higher likelihood of being correct if employed soon after a person's death, and in particular contexts with smaller numbers of individuals and distinctive circumstantial information. However, even then they are not consistent with best practice in human identification, which generally calls for the application of at least one so-called primary identifier, i.e. DNA, fingerprints or conclusive dental comparison.<sup>55</sup>

The extent of the misidentification problem in Croatia is unclear, but given the large number of traditional identifications, misidentifications should be considered as an issue affecting cases that are yet to be resolved. Misidentifications have a compound effect on efforts to account for all the missing. When a body is misidentified, the family that has incorrectly received the body in many instances will not have provided family DNA reference samples. Therefore, the actual mortal remains of their family member, if located, will remain unidentified; and the family whose missing relative's remains were released incorrectly to another family will not have resolution through a match to reference DNA samples that they have provided. A higher proportion of misidentifications may contribute to an increased number of unidentified mortal remains in mortuaries.

The Croatian authorities consider one of the causes of the NN issue to be *misidentifications* at the time when identifications were made based on traditional forensic methods, though they estimate that this comprises only a small number of cases. In order to resolve misidentification cases the Directorate on Detained and Missing reports that it has:

- Established the Working Group for resolution of complex identification cases (2014);
- Prepared and implemented the Protocol addressing cases of subsequent re-associations, wrong recognitions and

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<sup>55</sup> Internationally recognized primary identifiers are set out in the Interpol Disaster Victim Identification Guide, which can be found at [www.interpol.int/INTERPOL-expertise/Forensics/DVI-Pages/DVI-guide](http://www.interpol.int/INTERPOL-expertise/Forensics/DVI-Pages/DVI-guide).

identifications supported by missing persons family associations (2015); and

- Reviewed all recovered, unidentified human remains in the locations of their temporary storage (2017) with subsequent implementation of recommendations of the review.

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## X. UNIDENTIFIED MORTAL REMAINS

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The Croatian authorities reported 877 missing persons cases classified as unidentified, or NN, as of end of 2019, for which a DNA profile has been obtained in 90 percent of cases, though they do not match any of the 6,100 reference profiles that have been provided by family members who are still searching for their missing relatives.<sup>56</sup> Unidentified mortal remains are stored in one of the two locations established for this purpose, which also serve as memorial sites: Zagreb City Cemetery “Mirogoj” and Osijek Central Cemetery.

The Croatian authorities reported 86 per cent of unidentified mortal remains were recovered from mass and individual graves originating mainly from 1991-1992, while 14 per cent of unidentified mortal remains were exhumed from sanitation operations (grave sites where mortal remains of individuals from military and police Operations Flash and Storm were buried), who after sanitation operations in 1995 were buried pursuant to the Geneva convention.

There are a number of explanations for the lack of resolution of NN cases. These include the following: they may not relate to the 1991-1995 Croatia conflict;<sup>57</sup> or family members may not have provided reference samples to enable a DNA match to post-mortem samples that have been taken and profiled.

The Croatian authorities consider the primary reasons for the lack of identifications to be either a lack of blood samples of relatives (most cases) or the state of the remains due to adverse conditions, or that the DNA is too degraded to produce a DNA profile.<sup>58</sup>

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56 Interview with the Croatian Government Directorate on Detained and Missing on 28 March 2017.

57 The Croatian Government Directorate on Detained and Missing estimates that 20 NN cases pre-date the 1991-1995 conflict, and classifies another four as bio-medical waste, according to data provided on 14 January 2016.

58 This is corroborated by the data on the percentage of the identified, i.e. NN human remains exhumed in 1995 from cemeteries where they had been buried after battle, where identifications were done with mandatory use of DNA-led testing methods.

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## XI. MEMORIALIZATION

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Memorials and commemorations honoring the dead and missing in conflict play an important role in preserving the memory of victims. They may also represent a form of reparation for victims, as symbolic redress for their suffering. However, memory may also be contested. Legal frameworks covering memorials and commemorations often favor some victims over others, reflecting or perpetuating one-sided narratives of the conflict. In Croatia, monuments, museums and other forms of memorialization still tend to be ethnically exclusive, thereby leaving minimal space for developing shared memory or opening up dialogue about memorials and commemorations.

Nevertheless, the Croatian authorities report that locations of mass graves with victims from the Homeland War have been marked irrespective of their ethnicity or religion, and regardless of whether victims were Croatian soldiers or civilians. Such examples of mass gravesites marked with memorial plaques, from which the human remains of other ethnicities were exhumed, include Tordinći (mainly Rusyns), Bogdanovći (a large number of Albanians exhumed and identified), Daljski atar (mainly Hungarians), Golubnjača 1 (Serbs were exhumed and identified).

Memorials in Croatia can be divided into three groups: those erected by the government at sites of clandestine graves; memorials to Croatian soldiers and civilians erected by veterans' associations, family support groups and local government; and memorials to Serb civilians erected by family members, and local communities or associations of citizens.

The 1996 Law on Marking Sites of Mass Graves of Victims of the Homeland War (*Zakon o obilježavanju mjesta masovnih grobnica žrtava iz Domovinskog rata*) regulates the erecting of memorials in memory of dead civilians and soldiers.<sup>59</sup> Under this Law, victims of the Homeland War are defined as "Croatian defenders and civilians who died in mass executions during the Serb-Montenegrin Chetnik aggression and aggression of the Yugoslav Army against the Republic of Croatia".<sup>60</sup> No provision is made for anyone who died in any other way. The Croatian authorities report that a Draft Law on Memorials of the Homeland War is being prepared.

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59 "Odluka o proglašenju Zakona o obilježavanju mjesta masovnih grobnica žrtava iz Domovinskog rata" [Decision on adopting the Law on Marking Sites of Mass Graves of Victims of the Homeland War], Official Gazette, No. 100, 1996.

60 Ibid.



Sites of mass graves are officially marked with an identical, black marble monument that bears the inscription: “In memory of x Croatian defenders and civilians killed (date) in the Greater-Serbian aggression against the Republic of Croatia” (“*U spomen na x Hrvatskih branitelja i civila pogubljenih u velikosrpskoj agresiji na Republiku Hrvatsku*”). The inscription is signed “the Croat people” (“*Hrvatski narod*”). This text excludes sites of graves of victims who did not die during the “Greater-Serbian aggression”, but who died at the hands of the Croatian Army.

The Wall of Pain (*Zid boli*) was erected in Zagreb in 1993 by relatives and friends of the dead and missing. It comprised 13,650 red and black bricks bearing the names of captured, imprisoned and missing Croatian soldiers and civilians. Black bricks represented the dead and red bricks, of which there were 1,168, the captured or missing.<sup>61</sup> The Wall was built in front of the building housing the UNPROFOR to exert pressure on the international community to discover the fate of those who were unaccounted for.<sup>62</sup> On the 18 November anniversary of the fall of Vukovar, government representatives and the President laid wreaths at the Wall of Pain. After the peaceful reintegration of Eastern Slavonia into Croatia in 1998, a proposal was made to move the Wall of Pain to the site of the Ovčara massacre as a permanent reminder of the deaths there.<sup>63</sup> In the event, however, it was moved in 2005 to Zagreb’s Mirogoj Cemetery and integrated in a larger Memorial to Victims, the Missing and Captured Croatian Defenders (*Spomenik žrtvama, nestalim i zarobljenim hrvatskim braniteljima*), also known as the Voice of the Croatian Victim (*Glas hrvatske žrtve*), listing names of the dead and missing.<sup>64</sup>

The missing have been commemorated on 30 August, the International Day of the Disappeared, since 2006, with an event held in a different city each year, usually co-organized by the Association of Families of Captured and Missing Croatian Defenders and the Association of Croatian Civilian Victims of the Homeland War, with the support of the Ministry of War Veterans. In 2015, the event was organized under the auspices of the President of the Republic of Croatia as well.

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61 Višeslav Raos, “The Wall of Pain: A Contested Site of Memory in Contemporary Croatia”, in *Confronting the Past: European Experiences*, Davor Pauković, Vjeran Pavlaković and Višeslav Raos (eds.), Zagreb: Political Science Research Centre, 2012.

62 Ibid, p. 363.

63 “*Spomen obilježje žrtvama Ovčare*” [Memorial to Ovčara Victims], *Vukovarske novine*, 12 March 2003.

64 Križić Roban, Ibid, p. 226.

Few events and memorials have been organized to commemorate Serb civilians who were killed or who went missing during the war. Where this has happened, it has been at the initiative of the local population in places where Serbs constitute a majority, or at the initiative of associations of Serb civilian victims of war and civil-society organizations.

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## XII. Justice

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The issue of missing persons cannot be separated from that of justice. Moreover, the issue of justice extends beyond punishing individuals responsible for committing crimes to include matters such as establishing a record of what did and did not take place and recognizing the loss experienced by surviving family members and providing compensation to them. In practice, the emphasis to date in Croatia has been on legal proceedings. Gravesites have been treated as crime scenes and exhumations carried out through court orders by forensic archeologists. Moreover, evidence gathered has fed into war-crimes trials both at the ICTY and in domestic courts. The ICTY has held some individuals to account for their actions; it has also given victims the opportunity to face their former persecutors in court; and it has helped establish a legal record of what took place. In addition to war-crimes trials, Croatia and Serbia were involved in a long-running case at the International Court of Justice (ICJ) in The Hague in which both sides sued the other for genocide. In February 2015, the ICJ rejected in full both Croatia's suit and Serbia's countersuit for genocide, thus putting an end to a more than 15-year-long dispute between the two countries.

The issue of missing persons has been addressed through the justice system in order to bring those responsible for disappearances to justice. Thus, resolving missing persons cases has been part of the war-crimes trials before the ICTY and also before domestic courts in Croatia.

### 12.1. ICTY judicial processes

ICMP has contributed to the work of international courts such as the ICTY and to the work of domestic judicial institutions. This cooperation has included reporting and providing updates on relevant ICMP forensic work, providing analytical assessments related to specific events or alleged crimes at the request of courts, and providing investigative reports related to individual missing persons, including expert witness statements, testimony and forensic DNA evidence.<sup>65</sup>

In total, 11 of the ICTY's 161 indictments were related to the Croatia conflict. In addition to indicting individuals for specific war crimes, such as the Ovčara massacre, the ICTY developed a doctrine of "joint criminal enterprise" to prosecute the Serbian leadership, the Croatian Serb leadership and the

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<sup>65</sup> Details in *Bosnia and Herzegovina Missing Persons from the Armed Conflicts of the 1990s: A Stocktaking*, ICMP, pp. 106-108.

Croatian leadership.<sup>66</sup> Slobodan Milošević was indicted in May 1999 during the Kosovo War while President of Yugoslavia, initially for war crimes committed in Kosovo. He was extradited to The Hague to stand trial in June 2001, after being overthrown in October 2000. He was eventually charged with crimes against humanity, violating the laws or customs of war, grave breaches of the Geneva Conventions and genocide<sup>67</sup> for his role during the wars in BiH, Croatia and Kosovo, as part of a joint criminal enterprise. The trial started in February 2002 and ended prematurely with his death in March 2006. Others allegedly involved in the same joint criminal enterprise in the Republic of Croatia, who were tried by ICTY include Milan Babić, Milan Martić, Goran Hadžić, Jovica Stanišić, Franko Simatovića aka “Frenki”, Željko Ražnatović aka “Arkan” and Vojislav Šešelj, Serb Radical Party leader, who travelled to The Hague voluntarily in February 2003. The last of these, Vojislav Šešelj, was put on trial for war crimes and crimes against Humanity in November 2007 and it ended on 11 April 2018 with final conviction for Crimes against Humanity.

Croatian Serb leader Milan Babić testified to the extent of Milošević’s involvement in the Croatian War early in the Milošević trial as part of a plea bargain. He also pleaded guilty to one count of crimes against humanity and expressed “shame and remorse” before being sentenced in June 2004 to 13 years in prison. He subsequently committed suicide in the ICTY detention unit in The Hague, having returned there to testify in the trial of fellow Croatian Serb leader Milan Martić. Martić himself was sentenced in June 2007 to 35 years in prison for, among other things, having been part of a joint criminal enterprise and helping to organize an ethnic-cleansing campaign against Croats and non-Serbs in Krajina.<sup>68</sup> Another Croatian Serb leader, Goran Hadžić, was put on trial in October 2014 for war crimes and crimes against humanity for his alleged involvement in the forcible removal and murder of thousands of Croat civilians, including the Ovčara massacre. Hadžić’s trial was suspended in October 2014 as a result of his deteriorating health, he was provisionally released on humanitarian grounds in April 2015 and died in July 2016.

Three Croatian officers who took part in Operation Storm, Ivan Čermak, Ante Gotovina and Mladen Markač – went on trial in March 2008 for their alleged

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66 Joint criminal enterprise is a legal doctrine whereby each member of an organized group may be individually held responsible for crimes committed by the group in the context of a common plan.

67 The genocide charge related to BiH.

68 Others allegedly part of this joint criminal enterprise included Blagoje Adžić, Milan Babić, Radmilo Bogdanović, Veljko Kadijević, Radovan Karadžić, Ratko Mladić, Franko Simatović (aka Croat), Jovica Stanišić and Dragan Vasiljković.

roles in a joint criminal enterprise together with the then Croatian President Franjo Tuđman, former Croatian Defence Minister Gojko Šušak, and former Chiefs of the General Staff of the Croatian Army Janko Bobetko and Zvonimir Červenko, all of whom had died in the intervening period, Čermak was acquitted at the original trial in April 2011, while Gotovina was sentenced to 24 years in prison and Markač to 18 years. In November 2012, however, the ICTY's Appeals Court overturned these verdicts and Gotovina and Markač were released.

The ICTY also tried four Serbs in relation to their roles in the Ovčara massacre: Vukovar Mayor Slavko Dokmanović, Colonel Mile Mrkšić, Major Veselin Šljivančanin and Captain Miroslav Radić. Dokmanović committed suicide in detention days before a verdict was to be announced. In 2007, Mrkšić was convicted and sentenced to 20 years in prison. Šljivančanin was also convicted and sentenced to five years in prison, which was increased to 17 years in the appellate proceedings, which was reduced to ten years upon review, and Radić was acquitted. Jovica Stanišić and Franko Simatović were charged with participation in a joint criminal enterprise the objective of which was the forcible and permanent removal of the majority of non-Serbs from large areas of Croatia and BIH, and the Appeals Chamber ordered a retrial, which is ongoing at the time of writing. JNA commanders Pavle Strugar and Miodrag Jokić were sentenced to seven years each for the shelling of Dubrovnik, a city on the United Nations Educational, Scientific and Cultural Organization's (UNESCO) list of the World Heritage Sites.

## 12.2. Domestic judicial processes

In 2002, the ICTY unveiled a completion strategy that foresaw the end of its work and closure by the end of 2010, pre-supposing detention of the most important indictees, with the last indictments to be issued at the end of 2004.<sup>69</sup> This did not mean that almost everyone who had committed crimes during the Wars of Yugoslavia's dissolution would have been brought to justice, just that the role that the ICTY could usefully play in administering justice would be over. In future, war-crimes trials would continue to take place, but primarily in the region, in BIH, Croatia, Kosovo and Serbia. Indeed, several indictees in custody at the ICTY were repatriated to face trial in the countries in which their alleged crimes had been committed.

War-crimes trials in relation to the 1991-1995 Croatia conflict have taken place in both Croatia and Serbia. In Croatia, there have been notable convictions.

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<sup>69</sup> In June 2013, the ICTY announced that it expected to complete its work in 2016.

These include Croatian General Mirko Norac, who had been repatriated from the ICTY,<sup>70</sup> and Božo Bačelić, a platoon commander in the Croatian Army, who was found guilty of crimes committed during Operation Storm.<sup>71</sup> In addition to trials of both Croats and Serbs in Croatian courts, trials of Serbs have taken place in Serbian courts, including, in particular, trials in relation to the Ovčara massacre. In both instances of Croats being tried in Croatia and Serbs being tried in Serbia, appeals processes have at times dragged hearings out over many years.<sup>72</sup> According to the Humanitarian Law Center, Serbia's War Crimes Prosecutor had charged 150 individuals in Serbia with war crimes, of whom 65 had been sentenced and 32 acquitted by the end of 2013, with the remaining trials ongoing.<sup>73</sup>

Within its efforts in war crimes processing, Croatia in 2011 adopted a specific strategy for investigating and processing war crimes.<sup>74</sup> With the 2011 amendments to the Law on the Application of the Statute of the International Criminal Court and Prosecution of Criminal Offenses against International Law of War and Humanitarian Law (*Zakon o primjeni Statuta Međunarodnog kaznenog suda i progonu za kaznena djela protiv međunarodnog ratnog i humanitarnog prava*), the subject matter and territorial jurisdiction for war crimes processing is vested in the four biggest district courts in Croatia (Osijek,

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70 Norac was originally convicted in March 2003 in a Croatian court for crimes relating to the 1991 Gospić massacre and sentenced to 12 years in prison. He was extradited to The Hague in July 2004 to stand trial at the ICTY on charges relating to the 1993 Medak Pocket offensive. He was repatriated in September 2005 to face trial in a Croatian court and sentenced in May 2008 to an additional seven years, reduced to six years on appeal. The combined sentence was set at 15 years instead of 18 in July 2010.

71 Bačelić was convicted in June 2013 of killing an elderly Serb couple in the village of Prokljan on 11 August 1995 and sentenced to seven years in prison.

72 Former Croatian policeman Mihajlo Hrastov was jailed in May 2015 for four years for killing 13 unarmed prisoners of war in the town of Karlovac after a judicial process that lasted 23 years. Six Serbs convicted and sentenced in December 2005 to 20 years each for their roles in the Ovčara massacre were released from custody in February 2015, pending retrial by the Court of Appeals.

73 See *Analiza procesuiranja ratnih zločina u Srbiji u periodu od 2004. do 2013. godine*, Fond za humanitarno pravo, 1 October 2014, at [www.hlc-rdc.org/?cat=291](http://www.hlc-rdc.org/?cat=291).

74 Report of the Working Group on Enforced or Involuntary Disappearances, A/HRC/30/38/Add.3, August 2015, par. 46.

Rijeka, Split, and Zagreb)<sup>75</sup> and accordingly the district State Attorney's offices with their seats in those cities. Special sections for war crimes within those State Attorney's offices were also established.<sup>76</sup>

In its most recent report, the United Nations Committee against Torture (UNCAT) expressed concern that some individuals may have benefited from amnesties for acts of torture committed during the 1991-1995 Croatia conflict. It also expressed concern over, among other things, "reports that a significant number of prosecutions for war crimes had been conducted *in absentia*, predominantly against defendants of Serb ethnicity, and that the latter had been convicted to much higher sentences than members of the Croatian military under the same charges," and it urged Croatia to "ensure that all persons, including senior police officials, military personnel and political officials, suspected of complicity in and perpetration of war crimes and crimes against humanity are brought to justice."<sup>77</sup>

In response to the UNCAT report, the State Attorney's Office of the Republic of Croatia issued an instruction to all lower-level public attorney's offices in which it requested a review of judgments passed *in absentia* as this was required by the international community from Croatia during the accession negotiations. Accordingly, an appropriate mechanism for a fair review of these judgments was set and all relevant attorney's offices examined those cases where judgments were passed *in absentia*.

At the same time, the Criminal Procedure Act was amended – provisions on reopening of proceedings were amended in a way that the prosecutor may seek the reopening of proceeding in favor of the convicted person in his/her absence if sufficient evidence is collected suggesting that s/he is not guilty. Based on this instruction prosecutors reviewed all cases where judgments were passed *in absentia* and collected new evidence. In cases where these judgments did not meet the standards applicable now and required by the international community from the Republic of Croatia, as well as in all those cases where new information or facts emerged suggesting that the accused were not guilty, motions for reopening were made. During retrials, criminal prosecution of some of those accused of the criminal offence of war crimes was abandoned. In other words, a review was conducted in line with the

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75 Law on Application of the Statute of the International Criminal Court and Prosecution of Criminal Offenses against international law of war and humanitarian law, Official Gazette, No. 175/03 29/04. 55/11, 125/11.

76 Report of the Working Group on Enforced or Involuntary Disappearances, A/HRC/30/38/Add.3, August 2015, par. 47.

77 UNCAT *Concluding observations on the combined fourth and fifth periodic reports of Croatia*, December 2014, par. 11.

determined standards, and prosecution standards for war crimes were harmonized irrespective of who the perpetrators and who the victims were, and during the review investigations against a number of individuals were stopped, and criminal prosecution of some persons for the criminal offence of war crimes was abandoned.

### 12.3. Reparations and financial compensation for families of missing persons

Eligibility for reparations and financial compensation is governed by five laws – the Law on the Protection of Military and Civilian War-Disabled Persons (*Zakon o zaštiti vojnih i civilnih invalida rata*), the Law on the Responsibility for Damages Caused by Acts of Terrorism and Public Demonstrations (*Zakon o odgovornosti za štetu nastalu uslijed terorističkih akata i javnih demonstracija*), and the Law on the Responsibility of the Republic of Croatia for Damage Caused by Members of the Croatian Army and Police Forces during the Homeland War (*Zakon o odgovornosti Republike Hrvatske za štetu uzrokovanu od strane pripadnika hrvatskih oružanih i redarstvenih snaga za vrijeme domovinskog rata*), and the Law on the Rights of Croatian Homeland War Veterans and Their Family Members (*Zakon o hrvatskim braniteljima iz domovinskog rata i članovima njihovih obitelji*) – all of which came into force in 2003 – and the Law on Civilian War Victims (*Zakon o civilnim stradalnicima iz Domovinskog rata*), which came into force in July 2021.<sup>78</sup> There are certain differences in the status and treatment of civilian and military victims of war. According to a 2012 study,<sup>80</sup> 349 beneficiaries received disability allowances as family members of killed civilians and deceased civilian war invalids, including the missing, as of 31 December 2010. As of January 2012, the Croatian state was also paying 11,954 benefits to the families of killed and missing veterans. At the time, the average monthly benefit payment to

78 *Consideration of reports submitted by States parties under article 40 of the Covenant pursuant to the optional reporting procedure: Third periodic reports of States parties due in October 2013: Croatia*, January 2014, par. 160.

79 Families of missing veterans need only submit proof that their relative went missing as a member of the Croatian Army and that they are related. If the missing veteran was married, his wife and children receive the compensation allowance, and his parents receive the disability allowance. If he was unmarried, his parents receive all the benefits.

80 *Transitional Justice in Post-Yugoslav Countries: Report for 2010-2011*, Humanitarian Law Center, Belgrade, December 2012, p. 122.



families of killed and missing veterans was 6,977 Kuna (€922). The highest monthly benefit payment to families of civilians was less than half that.

The families of civilian victims of war have also sought compensation through judicial processes. While many cases have been dismissed on a variety of grounds, including that the (five-year) statute of limitations had passed, courts have also ruled in favor of the plaintiff. In March 2015, for example, the Zagreb Municipal Court ruled that Croatia must pay €78,400 in compensation to the family of a Serb who went missing and was found dead after being seized by Croatian forces in 1991.<sup>81</sup> Croatia adopted a Law on the Rights of Victims of Sexual Violence in the Homeland War (*Zakon o pravima žrtava seksualnog nasilja u domovinskom ratu*) in May 2015, under which rape victims are entitled to a one-off payment and monthly allowance, as well as free counseling, legal and medical aid.<sup>82</sup> In July 2021, the Croatian Parliament adopted the Law on Civilian War Victims, which introduced significant benefits for various categories of civilian victims of war, including families of missing persons. This was a significant step forward to equalize the status of civilian war victims with that of veterans, based on solidarity and equality principles.

#### 12.4. ECtHR processes

The ECtHR initiated communication with the Croatian government in April 2014 in relation to 17 cases submitted by relatives of civilian victims of war. The cases relate to alleged violations of the right to life due to the failure of the state to carry out effective investigations into the killing or disappearance of their relatives. In addition, the matter of dispute in some cases was whether there had also been a violation of the right to a fair trial, the right to an effective remedy, discrimination and erroneous application of Croatia's Law on Amnesty (*Zakon o amnestiji*). The ECtHR rendered two judgments in similar cases in 2011, namely *Jularić vs. Croatia* and *Skendžić and Krznarić vs. Croatia*, finding that Croatia failed to carry out effective investigations into the disappearance and deaths of war-crimes victims in 1991.<sup>83</sup> The ECtHR

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81 Sven Milekić, *Croatia Ordered to Compensate Missing Serb's Family*, BIRN, 17 March 2015.

82 Zoran Radosavljević, *Croatia passes law to compensate war rape victims*, Reuters, 29 May 2015.

83 *Monitoring War Crime Trials Quarterly Report*, Reporting Period: 1 January- 30 April 2014, Documenta – Center for Dealing with the Past, Center for Peace Nonviolence and Human Rights – Osijek, Civic Committee for Human Rights.

directed Croatia to pay €30,000 compensation in the former case and €3,000 costs and expenses in the latter case. The ECtHR established that although the authorities cannot be held accountable before the ECtHR for deaths and enforced disappearances – as they occurred before Croatia joined ECHR – they were, nevertheless obliged to investigate those crimes.<sup>84</sup> In response, the Croatian Government has taken measures to ensure independent investigation in these cases, as well as measures aimed at providing redress to the applicants. In its communication to the Council of Europe Committee of Ministers, dated December 2016, the Croatian government reported that the amounts awarded to the applicants in the Jularić vs. Croatia and Skendžić and Krznarić vs. Croatia cases had been fully paid.<sup>85</sup>

Since January 2011 when the European Court rendered judgment in the case of Skendžić and Krznarić v. Croatia, the European Court has rendered 11 judgements in total finding that there was no violation of Article 2 of the Convention due to ineffective investigations of war crimes related to killings or disappearances during the Homeland War. Those are the following cases:

- 1) Borojević v. Croatia, Judgement of 4 April 2017, Application no. 70273/11;
- 2) Cindrić i Bešlić v. Croatia, Judgement of 6 September 2016, Application no. 72152/13;
- 3) Ćosić v. Croatia, Decision of 14 March 2017, Application no. 68879/14;
- 4) Mileusnić and Mileusnić-Espenheim, Judgement of 19 February 2015, Application no. 66953/09;
- 5) Milić and others v. Croatia, Judgement of 25 January 2017, Application no. 38766/15;
- 6) Nikolić v. Croatia, Judgement of 29 January 2015, Application no. 5096/12;
- 7) Nježić and Štimac, Judgement of 9 April 2015, Application no. 29823/13;
- 8) Obajdin v. Croatia, Judgement of 4 July 2017, Application no. 39468/13;
- 9) Treskavica v. Croatia, Judgement of 12 January 2016, Application no. 32036/13;

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84 In both cases the investigations were found to be ineffective by the European Court because of inexplicable delays and shortcomings in undertaking actions aimed at collection of evidence. In addition, the investigation in the cases of Skendžić and Krznarić and B. and Others was not independent.

85 Communication from Croatia concerning the Skendžić and Krznarić group of cases against Croatia (Application No. 16212/08), December 2016, pp. 14 and 15.

- 10) Trivkanović v. Croatia, Judgement of 6 July 2017, Application no. 12986/13;
- 11) Zdjelar and others v. Croatia, Judgement of 6 July 2017, Application no. 80960/12.

Of 11 listed judgments in three cases (Nikolić v. Croatia, Trivkanović v. Croatia and Ćosić v. Croatia) the bodies of the victims have not yet been located, while in some cases related to investigations after Operation Storm the bodies of victims were identified following exhumations.

In 19 cases where applicants objected against inefficient war crimes investigations, the applications were dismissed as they did not meet admissibility requirements, specifically the requirement that application is to be filed within a period of six months from the date on which the final domestic decision was taken, i.e. from the moment the applicants were aware, or ought to have been aware, of the lack of any effective criminal investigation into the death or disappearance of their close relatives. Most of the cases in which the application was dismissed are related to Operation Storm and its immediate aftermath:

- 1) Babić v. Croatia, Decision of 24 November 2015, Application no. 74338/12;
- 2) Bekić and others v. Croatia, Decision of 30 September 2014, Application no. 67499/12;
- 3) Bogdanović v. Croatia, Decision of 18 March 2014, Application no. 72254/11;
- 4) Gojević-Zrnić and Mančić v. Croatia Decision of 17 March 2015, Application no. 5676/13;
- 5) Grubić v. Croatia, Decision of 9 June 2015, Application no. 56094/12;
- 6) Ivančić and Dželajlija v. Croatia, Decision of 15 March 2016, Application no. 62916/13;
- 7) Ivaneža and others v. Croatia, Decision of 22 November 2016, Application no. 73223/14;
- 8) Kukavica v. Croatia, Decision of 2 June 2015, Application no. 79768/12;
- 9) Lončar v. Croatia, Decision of 23 June 2015, Application no. 12744/13;
- 10) Lovrić and others v. Croatia, Decision of 12 January 2016, Application no. 57849/13;
- 11) Lukić and others. v. Croatia, Decision of 17 May 2016, Applications no. 67464/12 and 70462/12;

- 12) Opačić and Godić v. Croatia, Decision of 26 January 2016, Application no. 38882/13;
- 13) Orić v. Croatia, Decision of 13 May 2014, Application no. 50203/12;
- 14) Radičanin and others v. Croatia, Decision of 19 May 2015, Application no. 75504/12;
- 15) Ribić and others v. Croatia, Decision of 12 January 2016, Application no. 21610/13;
- 16) Savić v. Croatia, Decision of 12 January 2016, Application no. 32023/13;
- 17) Veselinović v. Croatia, Decision of 15 September 2015, Application no. 27115/12;
- 18) Vorkapić v. Croatia, Decision of 13 September 2016, Application no. 29835/13;
- 19) Vuković et al. v. Croatia, Decision of 25 August 2015, Application no. 3430/13.

Compared to the indicated period (after January 2011), the European Court also rendered three judgments in total upholding violation of Article 2 of the Convention because the Republic of Croatia failed to conduct efficient investigations into war crimes, i.e. because it failed to pursue each available trace and to detect perpetrators of the crimes. These are the judgments in the cases Jelić v. Croatia, B. et al. v. Croatia, and M. and others v. Croatia. All these cases pertain to the same investigation i.e. the same criminal proceedings conducted before national authorities regarding the investigations into killings of civilians in 1991 in Sisak.

At the time of writing, all these judgments where the European Court found violations of the Convention regarding inefficiency were in the execution process before the Committee of Ministers of the Council of Europe. Within the execution process of this group of judgments the Republic of Croatia took measures designed to remedy the reason for specific aspects of violations determined by the European Court.

In this regard immediately after Skendžić and Krznarić judgement was rendered, in April 2011 the State Attorney's Office of the Republic of Croatia took a decision entrusting the County Attorney's Office in Rijeka (instead of the Canton Attorney's Office Gospić) to conduct further investigation. This decision also led to the change of jurisdiction within the police, and the investigative actions were continued by the Primorsko-Goranska County Police Administration. In case B. and others v. the Republic of Croatia, after the judgment of ECtHR was rendered, the decision was made that further

police activities should be coordinated by the Police Directorate in Zagreb. These measures were taken in order to ensure the independence of further investigation i.e. actions by relevant authorities.

Generally, (to remove the reasons for the aspect of violations related to the omission in ensuring independence of investigation) the Law on amendments to the Law on Police Tasks and Authorities (Official Journal, 92/14) was passed in 2014 stipulating in a new Article 11e that in case of grounds for suspicion that a criminal offence has been committed by a police officer or another employee of an organizational unit of the Ministry or a person close to them, the criminal investigation cannot be carried out by that organizational unit, but the chief police director will designate another organizational police unit to conduct the investigation. This eliminates any possibility of omissions to ensure independence of investigation in cases with grounds for suspicion of involvement of a police officer in the commission of a crime.

With regard to the public control of war crimes investigations, the 2013 Law on Amendments to the Criminal Procedure Act (Official Journal 145/13) granted equal status to the injured party and the crime victim, which also allowed direct relatives of victims (e.g. applicants in the above-referred cases) to exercise certain rights of active participation in the proceedings, including the investigation phase.

These amendments enabled injured parties to file a complaint due to delay of investigation and non-compliance with set deadlines for its completion. Additionally, injured parties have also been enabled to seek information about investigative actions, with a defined deadline for answers from the relevant state attorney. Having received the answer, injured parties are also entitled to file a complaint to the senior state attorney. The senior state attorney must examine the complaint and, should s/he find that a violation of the injured party's rights has occurred, s/he must inform him/her citing the exact right that has been violated.

Furthermore, in order to ensure public access to the relevant information about the progress in war crimes investigative activities, the State Attorney's Office of the Republic of Croatia on its websites regularly publishes reports on war crimes processing to inform the public. This also facilitates public insight into the work of relevant authorities on the war crimes investigations.

Based on information about these measures to ensure independence of investigation and to provide public control, on 10 March 2017 the Committee of Ministers of the Council of Europe passed a Decision, evaluating the measures positively, to close the examination of these aspects of the execution process. The partial ending of supervision demonstrates that the measures taken by the Republic of Croatia are appropriate to prevent similar

violations of the Convention in future, which is confirmed by the seriousness of approach of the relevant authorities to resolve open issues identified by the European Court decisions.

The supervision of the Committee of Ministers of the Council of Europe will be continued regarding the execution of individual measures (in this regard further progress in individual investigations of specific decisions of the European Court) and general measures in the part related to increased efficiency of war crimes investigations. Significant measures have been undertaken in this area as well, which the Committee of Ministers also positively evaluated.

Accordingly, in its Decision of 10 March 2017 the Committee of Ministers noted that Croatian authorities have invested significant efforts in the on-going investigations in cases subject to the decisions of the European Court from the Skendžić and Krznarić group. With regard to the general measures, the Committee of Ministers especially welcomed the extension of the jurisdiction of the Constitutional Court of the Republic of Croatia which began to examine on the merits the constitutional complaints filed due to an alleged violation of the procedural obligation to conduct efficient investigation of war crimes, and noted with approval the statistical data indicating steady progress in on-going investigations into war crimes.

The Office of the Agent of the Republic of Croatia before the European Court of Human Rights, as the national coordinator of the execution process, continues to cooperate with relevant national authorities (State Attorney's Office, Ministry of the Interior, Ministry of Croatian Veterans) and thus continues to inform the Committee of Ministers of the Council of Europe about execution of this group of judgments at least annually (as defined by the Procedures and Working Methods of the Committee of Ministers in supervision of execution of ECtHR judgments).

### 12.5. ICJ genocide case

In July 1999, Croatia filed a suit at the ICJ in The Hague charging the FRY (Serbia and Montenegro) with genocide in Croatia in 1991 and 1992.<sup>86</sup> In January 2010, Serbia, the legal successor of the Federal Republic of Yugoslavia, filed a counter-suit charging Croatia with genocide in 1995. The case was heard in March and April 2014. And on 3 February 2015, the ICJ ruled that while both sides had committed serious crimes “specific intent to commit genocide” had not been proven and dismissed both cases.<sup>87</sup>

The ICJ genocide case had cast a shadow over Croatian-Serbian relations and prospects of a rapprochement for close to 16 years. In delivering the Court’s reasoning, ICJ President Peter Tomka urged both countries to use the ruling to move on, to find ways to compensate individuals for their suffering and loss of property, and specifically to renew efforts in relation to missing persons.

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86 BIH filed a case at the International Court of Justice in March 1993 against the FRY, arguing that it had “planned, prepared, conspired, promoted, encouraged, aided and abetted and committed” genocide against BIH’s population.

87 See [www.icj-cij.org/docket/files/118/18450.pdf](http://www.icj-cij.org/docket/files/118/18450.pdf).

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## XIII. OUTLOOK

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The ICJ ruling presents an opportunity to open a new chapter in Croatian-Serbian relations and to address outstanding issues from the Croatia conflict, including, in particular, that of missing persons. Moreover, there are many reasons to be cautiously optimistic about the prospects for renewed efforts and significant results. These include the signing in August 2014 of the Missing Persons Declaration by the Presidents of BiH, Croatia, Montenegro and Serbia; the development of a database of active missing persons cases from the former Yugoslavia; efforts by the Croatian authorities to address the issue of unidentified human remains in mortuaries in Croatia and plans to excavate known gravesites; and the fact that Croatia has been an EU member since 1 July 2013 and that Serbia began EU-accession negotiations in 2014. To be sure, obstacles to the positive evolution of the Croatian-Serbian relationship remain and the passage of time inevitably makes it increasingly difficult to gather information on events that took place during the 1991-1995 armed conflict.

### 13.1. The ICMP Agreement

The ICMP Agreement of 2015 constitutes the ICMP as a treaty-based intergovernmental organization with full international legal capacities and international governance structure, including a Board of Commissioners as its principal organ and a Conference of State Parties. The ICMP agreement aims to give the issue of missing persons a permanent place within international cooperation to advance human rights and the rule of law. It confers a global mandate on ICMP in respect of persons missing as a result of armed conflict, human rights abuses, disasters, organized crime and other involuntary causes. At the time of writing, the Agreement had been signed by Belgium, Luxembourg, Cyprus, Chile, and El Salvador, and signed and ratified by the United Kingdom (UK), the Netherlands, Luxembourg, Sweden and Serbia. The United States, Germany, Canada and Switzerland participate in the ICMP Conference of State Parties as observers, as do International Criminal Police Organization (INTERPOL) and the International Organization for Migration (IOM).

The ICMP Conference of State Parties constitutes a platform for strengthening cooperation between and with states affected by the issue of missing persons. In the context of the Croatia conflict, the large number of persons still missing from that conflict, and the need for strengthened cooperation with Serbia to investigate and resolve missing persons cases, accession by



Croatia to the Agreement and its participation in the Conference of State Parties would not only open a new channel of cooperation with Serbia, it would also demonstrate a commitment on the part of Croatia to addressing the issue of missing persons in the region and globally, to strengthening the rule of law and to promoting and protecting the rights of families of missing persons to truth and justice.

### **13.2. Database of active missing persons cases from the former Yugoslavia**

In 2011, ICMP initiated the creation of a database of active missing persons cases from the former Yugoslavia. The database will provide accurate and up-to-date numbers of active missing persons cases in the countries of the former Yugoslavia, allow for the removal of duplicate records kept in various countries and clarify issues of jurisdiction related to the search for and final identification of persons reported missing in more than one country. The countries involved in the initiative are BIH, Croatia, Kosovo, Montenegro and Serbia. The database will help end speculation about the numbers of missing persons and further politicization of the issue, and it will increase transparency in the opening and closing of cases.

The database will facilitate a process harmonizing the lists of missing persons held by countries with data held by ICMP on missing persons cases, for which ICMP has also received blood reference samples from family members, but which do not appear on the national lists. Similarly, the database will provide a platform through which states can electronically review, verify and reach agreement on missing persons cases that are subject to query by one state or another.

In January 2017, the Ministry of Croatian Defenders and ICMP signed an agreement on the participation of Croatia in the database project. ICMP had already concluded agreements with BIH, Kosovo and Montenegro on their participation in the project. Croatia's decision to participate was a major step forward in terms of strengthening regional cooperation to account for around 12,000 persons who are still missing from the region.

### **13.3. EU potential**

Croatia became a member of the EU on 1 July 2013 and Serbia began accession talks with the EU in January 2014. The EU could, therefore, present a framework to help resolve outstanding issues between Croatia and Serbia. In addition, the prospect of joining the EU could provide a powerful incentive

to address the issue of missing persons. In the absence of a constructive mechanism for cooperation, however, Croatia has used its position as an EU member to threaten to block Serbia's EU path until it provides information on missing persons, among other things. On 1 September 2014, for example, Croatia's Veterans' Minister Predrag Matic warned Belgrade (as well as Sarajevo and Podgorica) that Zagreb would block the country's EU accession if it were unwilling to provide more information about missing Croats.<sup>88</sup> Croatia also used its influence in the European Parliament in March 2015 to have a resolution adopted demanding changes to Serbia's 2010 Law on Organization and Competence of State Authorities in War Crimes Proceedings.<sup>89</sup> The existing legislation, discussed above, enables Serbia to prosecute war crimes committed on the territory of Croatia, which Croatia wishes to change. Moreover, Croatia blocked the opening of EU accession chapters 23 and 24, covering the rule of law, the judiciary and human rights, with Serbia in April 2016, demanding full respect for minority rights, full cooperation with the ICTY and annulment of Articles 2 and 3 of the Law on Organization and Competence of State Authorities in War Crimes Proceedings.<sup>90</sup>

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88 Josip Ivanović, *Croatia Threatens Serbia's EU Path over Wartime Missing*, BIRN, 1 September 2014.

89 EurActiv Serbia, 12 March 2015.

90 Sven Milekić, Saša Dragojlo, *Croatia Stalls Serbia's EU Negotiations*, BIRN, 7 April 2016.

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## XIV. Recommendations

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### ❖ **The ICMP Agreement**

Croatia should accede to the ICMP Agreement thereby affirming its commitment to fulfilling the rights of families of the missing to truth and justice, opening a new chapter in the long-standing and productive cooperation between Croatia and ICMP, and creating a new platform of cooperation with Serbia (already a State Party to the Agreement) that is vital for the resolution of the remaining, still open missing persons cases from the Croatia conflict.

### ❖ **Implementation of Missing Persons Declaration principles to enhance regional cooperation**

Croatia should maintain its commitment to resolving missing persons issues and uphold the principles endorsed in the Missing Persons Declaration signed on 29 August 2014 in Mostar. The Declaration stresses that cooperation between governments is necessary and that the exchange of information is encouraged and is often a necessary condition for establishing efficient, reliable and transparent processes of locating and identifying the missing, and that such cooperation ought to be based on adequate agreements incorporating, *inter alia*, the principles of the Declaration.

### ❖ **Framework Plan and MPG**

Croatia should continue its participation as a member of the MPG in order to implement the Framework Plan to resolve missing persons cases from conflicts on the territory of the former Yugoslavia, which is comprised of activities aimed at addressing the issue of NN cases through NN pilot projects, the exchange of information on locations of potential clandestine gravesites, joint excavations, and exchange of information about missing persons through the Database of active missing persons cases from conflicts on the territory of the former Yugoslavia.

### ❖ **Regional cooperation of families of missing persons**

The Regional Coordination should remain strong, united and vigilant in its lobbying of authorities to conduct effective investigations into missing persons cases and to provide information about such investigations, as well as information about the fate of the missing, to relatives of missing persons

in a timely manner. The Regional Coordination should continue organizing annual regional meetings of national authorities from all affected states on the territory of the former Yugoslavia with representatives of associations of families of missing persons to facilitate the exchange of information and to ensure that the process of search and identification of missing persons cases remains a priority for governments in affected states on the territory of the former Yugoslavia.

#### ❖ **ICMP OIC**

Usage of ICMP's OIC by families of missing persons and responsible state institutions should be expanded. OIC can help to disseminate up-to-date and accurate information about missing persons cases to ensure transparency and greater accountability of state institutions. In addition, citizens in possession of information regarding the location of clandestine gravesites believed to contain the human remains of missing persons should utilize the Site Locator application on OIC, either anonymously or not, to share this information and so help carry forward the process of locating and excavating clandestine gravesites.

#### ❖ **Exchange of genetic profiles**

Given the regional dimension of the conflicts in the former Yugoslavia and efforts to account for the missing from them, Croatia should consider providing ICMP with all unmatched post-mortem DNA profiles in its possession. Provision of such profiles may lead to new DNA matches with all sets of genetic references in ICMP's data systems and therefore new identifications. This pertains to missing citizens of BIH whose remains may have been buried, and later exhumed, on the territory of Croatia.

#### ❖ **Exchange of documentation**

The Croatian Government Commission on Detained and Missing and the Serbian Government Commission on Missing Persons should exchange documentation pertinent to the search for and recovery of missing persons. This includes, in particular, documentation relating to burials carried out in sanitation operations in 1991-1992 and secondary graves to which human remains were transferred in Croatia.

**❖ Satellite and aerial imagery**

As a member of the North Atlantic Treaty Organization (NATO), Croatia should request all information and satellite and aerial imagery that NATO member countries have in their possession that might assist in pinpointing the location of clandestine gravesites for future excavation.





