

**GOVERNMENT OF THE REPUBLIC OF CROATIA**

**FINAL DRAFT LAW ON PERSONS MISSING IN THE  
HOMELAND WAR**

**Zagreb, June 2019**

**FINAL DRAFT LAW  
ON PERSONS MISSING IN THE HOMELAND WAR**

**PART ONE**

**GENERAL PROVISIONS**

**Article 1**

(1) This Law defines the following: protection, improvement and promotion of the rights and interests of persons missing in the Homeland War and of persons killed in the Homeland War whose burial place is unknown and of members of their families; and the procedure, responsibility, record keeping and other matters related to tracing, exhumation and identification of persons missing in the Homeland War and of persons killed in the Homeland War whose burial place is unknown.

(2) The Homeland War, in accordance with the Constitution of the Republic of Croatia and the Declaration on the Homeland War, was a just, legitimate, defensive and liberation war in the period between 1991 and 1995, by which the Croatian people expressed its determination and willingness to establish and preserve the Republic of Croatia as an independent, sovereign and democratic state.

**Article 2**

Persons missing in the Homeland War and persons killed in the Homeland War whose burial place is unknown and members of their families have, for the purposes of this Law, equal rights without any difference with respect to whether they were members of the armed forces or civilians, or with respect to their race, gender, language, religion, political opinion, national or social origin, property status or any other personal status.

**Article 3**

It is an obligation of the Republic of Croatia to trace persons missing in the Homeland War and mortal remains of persons killed in the Homeland War whose burial place is unknown.

**Article 4**

Certain terms used in this Law shall have the following meanings:

1. *a person missing in the Homeland War* is:
  - a) a person about whom, in accordance with international standards and this Law, family members have no news on the basis of reliable data on the disappearance in the Homeland War in the territory of the Republic of Croatia or in relation to the Homeland War, and who at the time of disappearance had Croatian nationality or had a registered permanent or temporary residence in the territory of the Republic of Croatia or
  - b) a person of foreign nationality who has the status of a Croatian Homeland War veteran and who at the time of disappearance did not have a registered permanent or temporary residence in the territory of the Republic of Croatia, about whom, in accordance with international standards and this Law, family members have no news on the basis of reliable data on the disappearance in the Homeland War in the territory of the Republic of Croatia or in relation to the Homeland War

2. *a person killed in the Homeland War whose burial place is unknown* is:
  - a) a person about whom, in accordance with international standards and this Law, there are reliable data on being killed in the Homeland War in the territory of the Republic of Croatia or in relation to the Homeland War, and who at the time of being killed had Croatian nationality or had a registered permanent or temporary residence in the territory of the Republic of Croatia, and whose burial place is unknown, or
  - b) a person of foreign nationality who has the status of a Croatian Homeland War veteran and who at the time of being killed did not have a registered permanent or temporary residence in the territory of the Republic of Croatia, and about whom, in accordance with international standards and this Law, there are reliable data on being killed in the Homeland War in the territory of the Republic of Croatia or in relation to the Homeland War, and whose burial place is unknown
3. *a family member* includes a spouse, an extramarital partner who had lived with the missing person before they disappeared in a joint household for no less than three years or for a shorter period if they had a child together while living as extramarital partners, as well as children, parents, brothers, sisters, half-brothers and half-sisters
4. *reliable data on the disappearance of a person* are data based on which an unambiguous conclusion can be reached (reports, witness statements and other means of proof) that the whereabouts of a particular person are unknown to family members or, in the event there are no family members, that the person does not appear in their place of permanent or temporary residence
5. *reliable data on a person being killed* are data based on which an unambiguous conclusion can be reached (reports, witness statements and other means of proof) that the person has been killed, but its burial place is unknown
6. *minimum data on the identity of a person missing in the Homeland War or a person killed in the Homeland War whose burial place is unknown* are, taken cumulatively, data on the first and last names of the person missing in the Homeland War or the person killed in the Homeland War whose burial place is unknown; the first and last names of one of their parents; data on the place and date of birth or year of birth; and data on the presumed place and date of disappearance or death
7. *an individual grave is a place* in the territory of the Republic of Croatia where mortal remains of one or two persons are buried
8. *a mass grave* is a place in the territory of the Republic of Croatia where mortal remains of three or more persons are illegally buried, without any markings and acts of respect for mortal remains
9. *a sanitation grave is a place* in the territory of the Republic of Croatia where in accordance with the Geneva Conventions and the Additional Protocols, mortal remains have been buried following humane sanitation.

## Article 5

Terms used in this Law that are expressed in a specific gender shall have a neutral meaning and shall include equally the masculine and the feminine gender.

**PART TWO****PROTECTION OF THE RIGHTS OF PERSONS MISSING IN THE HOMELAND WAR AND OF PERSONS KILLED IN THE HOMELAND WAR WHOSE BURIAL PLACE IS UNKNOWN AND OF MEMBERS OF THEIR FAMILIES****Article 6**

Persons missing in the Homeland War are presumed to be alive until their burial place is identified or until they are declared dead in accordance with the regulation governing the declaration of missing persons dead and proving their death.

**Article 7**

(1) A fundamental right of family members of a person missing in the Homeland War or of a person killed in the Homeland War whose burial place is unknown is to be able to learn about the place of permanent or temporary residence of the missing family member or to find their mortal remains for permanent burial, and also to learn to the greatest extent possible about the circumstances of their disappearance or death.

(2) The state administration body responsible for Croatian Homeland War veterans (hereinafter: Ministry) is required to provide available information to family members regarding the progress and results of the tracing of their family members missing in the Homeland War or their family members killed in the Homeland War whose burial place is unknown.

(3) No one may be subjected to violence, threats or any form of intimidation for the purposes of seeking information about one's family members missing in the Homeland War or family members killed in the Homeland War whose burial place is unknown.

**PART THREE****TRACING PERSONS MISSING IN THE HOMELAND WAR AND MORTAL REMAINS OF PERSONS KILLED IN THE HOMELAND WAR WHOSE BURIAL PLACE IS UNKNOWN****CHAPTER I.****Launching a procedure of tracing a person missing in the Homeland War****Article 8**

(1) The procedure of tracing a person missing in the Homeland War shall be launched on the basis of a request filed by a family member, while in cases where a person missing in the Homeland War does not have any living family members, the procedure of tracing a person missing in the Homeland War may be launched by another person.

(2) Notwithstanding Paragraph 1 of this Article, the procedure of tracing a person missing in the Homeland War may also be launched by the Ministry acting *ex officio* on the basis of reliable data on the disappearance of a person.

(3) The request referred to under Paragraph 1 of this Article shall be submitted to the Ministry directly or through the Croatian Red Cross, International Committee of the Red Cross, Red Cross Society or Red

Crescent Society, or diplomatic missions and consular offices of the Republic of Croatia in the country where the person submitting the request referred to under Paragraph 1 of this Article resides.

#### **Article 9**

- (1) The person submitting the request referred to under Article 8, Paragraph 1 of this Law shall provide the minimum data on the identity of the person missing in the Homeland War.
- (2) In the event the data referred to under Paragraph 1 of this Article have not been provided, the person submitting the request referred to under Article 8, Paragraph 1 of this Law must provide additional information within a period set by the Ministry.

#### **Article 10**

- (1) The procedure of tracing a person missing in the Homeland War shall not be launched if:
  - a) the person submitting the request referred to under Article 8, Paragraph 1 of this Law fails to provide the minimum data in accordance with Article 9 of this Law or
  - b) the requirements defined under Article 4, Items 1 and 2 of this Law have not been satisfied.
- (2) In the case referred to under Paragraph 1 of this Article, the Ministry shall inform thereof the person who submitted the request referred to under Article 8, Paragraph 1 of this Law.

#### **Article 11**

If the requirements have been met to launch the procedure of tracing a person missing in the Homeland War in accordance with this Law, the Ministry shall enter such person missing in the Homeland War in the Register of persons missing in the Homeland War in accordance with this Law.

#### **Article 12**

Acting at a request of a family member of a missing person or another person or body having a legitimate interest, the Ministry shall issue a certificate confirming that the person missing in the Homeland War has been entered in the Register of persons missing in the Homeland War in accordance with this Law.

#### **Article 13**

Provisions of Articles 8 to 12 of this Law shall apply *mutatis mutandis* to the requests for tracing mortal remains of persons killed in the Homeland War whose burial place is unknown.

### **CHAPTER II.**

#### **Gathering information about persons missing in the Homeland War and on individual and mass graves**

#### **Article 14**

- (1) For the purposes of gathering information and material on persons missing in the Homeland War and on persons killed in the Homeland War whose burial place is unknown and on sites of individual and mass graves, the Ministry shall be authorised to request of state administration bodies responsible for internal affairs, foreign and European affairs, justice, health care, security-intelligence agencies, judicial bodies, local or regional governments, institutions referred to under Article 21, Paragraph 2 of this Law,

the Croatian Red Cross and other state administration bodies, organisations, institutions and legal entities in the Republic of Croatia, to undertake activities within their respective responsibilities according to the regulation governing the organisation and jurisdiction of ministries and other state administration bodies or according to bylaws of organisations, institutions and other legal entities and/or according to agreements signed regarding performance of activities for the needs of the Ministry.

(2) All bodies, organisations, institutions and other legal entities referred to under Paragraph 1 of this Article are required to provide all available information and documentation as well as all necessary assistance to resolve cases of persons missing in the Homeland War and of persons killed in the Homeland War whose burial place is unknown, in accordance with this Law and other regulations.

#### **Article 15**

Every individual is required to provide to the Ministry all information and documentation available to them to resolve cases of persons missing in the Homeland War and of persons killed in the Homeland War whose burial place is unknown.

#### **Article 16**

The Ministry shall process the collected data, information and material on persons missing in the Homeland War and on persons killed in the Homeland War whose burial place is unknown and on sites of individual and mass graves, and, on the basis of this, it shall conduct activities of field surveys and investigations as well as other activities within its responsibility.

#### **Article 17**

(1) The Ministry shall organise, coordinate and implement activities of field surveys and investigations; document completed activities and draw up reports on them; and collect and process data on investigated sites.

(2) The Ministry shall perform the activities referred to under Paragraph 1 of this Article in cooperation with the bodies, organisations, institutions and other legal entities referred to under Article 14, Paragraph 1 of this Law.

### **CHAPTER III.**

#### **Exhumation of mortal remains**

#### **Article 18**

(1) In the event of a reasonable suspicion or information on the existence of an individual, mass or sanitation grave, the Ministry shall inform thereof the competent state attorney office and the state administration body responsible for internal affairs.

(2) In cases where it is suspected or obvious that the death was caused by a criminal offence or that it is related to the commission of a criminal offence, individual, mass or sanitation graves shall be exhumed in accordance with the regulation governing criminal proceedings.

(3) In cases where it is not suspected that the death was caused by a criminal offence or it is obvious that the death was not caused by a criminal offence or in relation to the commission of a criminal offence or where criminal proceedings have been concluded by a final court judgment, individual, mass or sanitation graves shall be exhumed on the basis of a request of the Ministry in accordance with this Law.

## **Article 19**

Exhumation of mortal remains from an individual, mass or sanitation grave shall be organised and conducted by the Ministry in cooperation with the bodies, organisations, institutions and other legal entities referred to under Article 14, Paragraph 1 of this Law.

## **CHAPTER IV.**

### **Processing and identification of mortal remains**

## **Article 20**

(1) In cases where it is suspected or obvious that the death was caused by a criminal offence or that it is related to the commission of a criminal offence, the processing and identification of mortal remains exhumed from individual, mass or sanitation graves shall be carried out in accordance with the regulation governing criminal proceedings.

(2) In cases where it is not suspected that the death was caused by a criminal offence or it is obvious that the death was not caused by a criminal offence or in relation to the commission of a criminal offence, the processing and identification of mortal remains exhumed from individual, mass or sanitation graves shall be carried out at the request of the Ministry in accordance with this Law.

## **Article 21**

(1) The processing and identification of mortal remains exhumed from individual, mass and sanitation graves shall be organised by the Ministry.

(2) The medical part of the processing and identification of exhumed mortal remains shall be carried out by an institution with which the Ministry has signed a contract.

(3) The institution referred to under Paragraph 2 of this Article is required to process mortal remains for the purposes of identification and determining the cause of death.

(4) The institution referred to under Paragraph 2 of this Article shall decide on the methods of processing the mortal remains.

(5) The institution referred to under Paragraph 2 of this Article shall submit to the Ministry findings of its processing of mortal remains, including findings on the established identity.

(6) The findings referred to under Paragraph 5 of this Article are property of the Ministry.

## **Article 22**

(1) The processing and identification of mortal remains of persons missing in the Homeland War and person killed in the Homeland War whose burial place is unknown, which have been exhumed in the territory of another state, shall be organised by the Ministry after the mortal remains have been taken over in accordance with the concluded international legal instruments on cooperation in the tracing of missing persons.

(2) The processing and identification of mortal remains of persons missing in the Homeland War and person killed in the Homeland War whose burial place is unknown, which have been exhumed in the territory of another state with which the Republic of Croatia has not signed any international legal instruments, shall be organised by the Ministry after the mortal remains have been taken over by mutual agreement, in accordance with international legal instruments on human rights and international humanitarian law.

### **Article 23**

(1) Based on the findings of the institution referred to under Article 21, Paragraph 2 of this Law regarding the established identity of exhumed mortal remains, the final identification of the mortal remains shall be organised and coordinated by the Ministry in cooperation with other competent bodies, institutions and organisations that carry out activities within their respective responsibilities and/or on the basis of agreements signed regarding performance of activities for the needs of the Ministry.

(2) An identified person is a person for whom it has been reliably established that the mortal remains found correspond to their physical, hereditary or biological characteristics, based on a procedure conducted by the institution referred to under Article 21, Paragraph 2 of this Law.

(3) The Ministry shall notify a completed identification procedure to the competent judicial authorities in cases referred to under Article 18, Paragraph 2 and Article 20, Paragraph 1 of this Law, as well as to other competent state bodies, institutions and organisations.

### **Article 24**

If it is established based on the findings of the institution referred to under Article 21, Paragraph 2 of this Law regarding the established identity of exhumed mortal remains that these are mortal remains of foreign nationals who do not have the status of Croatian Homeland War veterans, the Ministry shall organise the handover of mortal remains to the country of nationality of the person, in accordance with the concluded international legal instruments on cooperation in the tracing of missing persons or by mutual agreement with states with which the Republic of Croatia has not signed any international legal instruments, in accordance with international legal instruments on human rights and international humanitarian law.

### **Article 25**

(1) In cooperation with the institution referred to under Article 21, Paragraph 2 of this Law, other competent bodies, organisations and institutions, the Ministry shall carry out activities to identify unidentified mortal remains, which consist in collecting additional data and information on persons missing in the Homeland War and on persons killed in the Homeland War whose burial place is unknown, processing of mortal remains and other activities to identify unidentified mortal remains.

(2) The findings of the processing of unidentified mortal remains shall remain active to allow for their future identification.

(3) In order to identify unidentified mortal remains, the Ministry shall organise gathering of data and samples of biological material of blood relatives of persons missing in the Homeland War and of persons killed in the Homeland War whose burial place is unknown, as well as exhumation of deceased blood relatives of unidentified mortal remains in order to obtain samples of biological material when there are no living blood relatives or when the samples of biological material of a living blood relative are insufficient for identification.

(4) In the case referred to under Paragraph 3 of this Article, when it is suspected or obvious that the death was caused by a criminal offence or that it is related to the commission of a criminal offence, the exhumation shall be carried out in accordance with the regulation governing criminal proceedings.

(5) In the case referred to under Paragraph 3 of this Article, when it is not suspected that the death was caused by a criminal offence or it is obvious that the death was not caused by a criminal offence or in relation to the commission of a criminal offence, the exhumation shall be carried out at the request of the Ministry in accordance with this Law.

(6) The Ministry shall organise and provide for a dignified storing of unidentified mortal remains until their final identification and/or funeral care.

### **Article 26**

(1) The Ministry shall conduct a re-exhumation of mortal remains and their processing and final identification if it has reason to suspect the reliability of the identification of the mortal remains.

(2) The exhumation of mortal remains shall be conducted at the request or with the consent of the person who launched the tracing procedure or shall be conducted by the Ministry acting *ex officio*.

(3) The procedure of re-exhumation of mortal remains and their processing and final identification shall be conducted in accordance with provisions on exhumation of the regulation governing criminal proceedings and of this Law.

## **CHAPTER V.**

### **Completion of the tracing procedure**

#### **Article 27**

(1) Tracing activities shall cease once the traced person or their mortal remains have been found, and once the person who submitted the request referred to under Article 8, Paragraph 1 of this Law or a family member of the person missing in the Homeland War is notified thereof.

(2) A prerequisite for the conclusion of the procedure of tracing a person missing in the Homeland War is that the person who submitted the request referred to under Article 8, Paragraph 1 of this Law or a family member of the person missing in the Homeland War accepts the identification findings or delivers to the Ministry a declaration on conclusion of the tracing procedure directly or through the Croatian Red Cross or the International Committee of the Red Cross, Red Cross Society or Red Crescent Society, or diplomatic missions and consular offices of the Republic of Croatia in the country where they have residence.

(3) Notwithstanding Paragraph 2 of this Article, in cases where the tracing procedure was launched by the Ministry or when the person who submitted the request referred to under Article 8, Paragraph 1 of this Law has died or there are no living family members, the procedure of tracing the person missing in the Homeland War shall be concluded once the traced person or their mortal remains have been found.

(4) In cases where a person missing in the Homeland War has been declared dead in accordance with the regulation governing the declaration of missing persons dead, before their mortal remains have been

found, tracing activities shall not cease and the procedure of tracing the person missing in the Homeland War shall not be concluded.

### **Article 28**

(1) The activities of tracing mortal remains of a person killed in the Homeland War whose burial place is unknown shall cease once their mortal remains have been found, and once the person who submitted the request for tracing the person killed in the Homeland War whose burial place is unknown or a family member of the person killed in the Homeland War whose burial place is unknown is notified thereof.

(2) A prerequisite for the conclusion of the procedure of tracing a person killed in the Homeland War whose burial place is unknown is that the person who submitted the request for tracing the person killed in the Homeland War or a family member of the person killed in the Homeland War whose burial place is unknown accepts the tracing identification findings directly or through the Croatian Red Cross or the International Committee of the Red Cross, Red Cross Society or Red Crescent Society, or diplomatic missions and consular offices of the Republic of Croatia in the country where they have residence.

(3) Notwithstanding Paragraph 2 of this Article, in cases where the tracing procedure was launched by the Ministry or when the person who submitted the request for tracing a person killed in the Homeland War whose burial place is unknown has died or there are no living family members of the person killed in the Homeland War whose burial place is unknown, the procedure of tracing the person killed in the Homeland War whose burial place is unknown shall be concluded once their mortal remains have been found.

## **CHAPTER VI.**

### **Funeral care**

#### **Article 29**

Funeral care for persons missing in the Homeland War and persons killed whose burial place is unknown, following their identification, shall be organised and coordinated by the Ministry in cooperation with other competent bodies, institutions, organisations and legal entities that carry out activities within their respective responsibilities and/or on the basis of agreements signed regarding performance of activities for the needs of the Ministry.

#### **Article 30**

Following the procedure of exhumation and identification, funeral care for persons identified as having the status of a Croatian Homeland War veteran shall be provided in accordance with regulations governing the rights of Croatian Homeland War veterans and their family members.

#### **Article 31**

Following the procedure of exhumation and identification, funeral care for identified civilian victims of the Homeland War shall be provided in accordance with regulations governing the rights of civilian victims of the Homeland War.

**PART FOUR****REGISTERS****CHAPTER I.****Register of persons missing in the Homeland War and Register of persons killed in the Homeland War whose burial place is unknown****Article 32**

- (1) For the purposes of gathering data on persons missing in the Homeland War and their tracing, the Ministry shall keep, organise and maintain a Register of persons missing in the Homeland War.
- (2) The Register of persons missing in the Homeland War is an official record of the Ministry where entries are made for persons missing in the Homeland War for whom a tracing procedure has been launched in accordance with international standards and this Law.

**Article 33**

The Register of persons missing in the Homeland War shall contain personal data on the missing person, data regarding the circumstances of their disappearance as well as other information relevant for tracing the missing person.

**Article 34**

The Ministry shall carry out independent, impartial and thorough verification of the authenticity and matching of the data entered in the Register of persons missing in the Homeland War with data contained in other official records which are kept or had been kept in the Republic of Croatia.

**Article 35**

- (1) The data contained in the Register of persons missing in the Homeland War shall not be publicly available, except for a part of the data defined by the rulebook referred to under Article 37 of this Law, in accordance with regulations on personal data protection.
- (2) Notwithstanding Paragraph 1 of this Article, the data contained in the Register of persons missing in the Homeland War which are not publicly available may be made available to:
- a) family members of persons entered in the Register of persons missing in the Homeland War and their legal representatives
  - b) state bodies, organisations, institutions and other legal entities referred to under Article 14, Paragraph 1 of this Law and
  - c) other persons for the purposes of protecting the rights of persons missing in the Homeland War and their family members in accordance with regulations on the right of access to information and on personal data protection.

**Article 36**

Provisions of Articles 32 to 35 of this Law shall apply *mutatis mutandis* to the Register of persons killed in the Homeland War whose burial place is unknown.

**Article 37**

The method of keeping, the content and other matters related to the keeping of the Register of persons missing in the Homeland War and the Register of persons killed in the Homeland War whose burial place is unknown shall be governed by a rulebook adopted by the Minister of Croatian Veterans.

**CHAPTER II.****Register of exhumed, identified and unidentified mortal remains****Article 38**

(1) The Ministry shall keep an official Register of exhumed, identified and unidentified mortal remains from individual, mass and sanitation graves.

(2) The method of keeping, the content and other matters related to the keeping of the Register of exhumed, identified and unidentified mortal remains from individual, mass and sanitation graves shall be governed by a rulebook adopted by the Minister of Croatian Veterans.

**PART FIVE****BODIES RESPONSIBLE FOR TRACING PERSONS MISSING IN THE HOMELAND WAR****Article 39**

(1) The Republic of Croatia, acting through competent bodies, is in charge of the activities of tracing persons missing in the Homeland War and persons killed in the Homeland War whose burial place is unknown.

(2) The activities of tracing missing foreign nationals who do not have the status of a Croatian veteran or did not have a registered permanent or temporary residence in the territory of the Republic of Croatia at the time of disappearance in the territory of the Republic of Croatia during the Homeland War shall be carried out in accordance with regulations of the country of nationality of such person and international standards.

(3) In the case referred to under Paragraph 2 of this Article, the Republic of Croatia, acting through competent bodies, shall participate in the tracing of persons referred to under Paragraph 2 of this Article at the request of bodies responsible for tracing missing persons of the country of nationality of such person, in accordance with international standards and this Law.

**Article 40**

(1) The Ministry shall carry out the activities related to the tracing of persons missing in the Homeland War and mortal remains of persons killed in the Homeland War whose burial place is unknown as well as exhumation, identification and funeral care of persons whose mortal remains have been found in mass, individual or sanitation graves, and shall in particular:

- a) gather and process data and keep the Register of persons missing in the Homeland War, the Register of persons killed in the Homeland War whose burial place is unknown and the Register of exhumed, identified and unidentified mortal remains, and shall issue certificates regarding facts contained in its official registers

- b) gather, compile and process information and archival material on persons missing in the Homeland War and on mortal remains of persons killed in the Homeland War whose burial place is unknown as well as on sites of individual, mass and sanitation graves
- c) organise, coordinate and participate in field surveys, investigations and exhumations of mortal remains from individual, mass and sanitation graves
- d) organise and coordinate the processing of mortal remains exhumed in the territory of the Republic of Croatia and of mortal remains taken over from the territory of other states, as well their identification
- e) carry out funeral care services for persons identified as well as the activities of dignified temporary storing of unidentified mortal remains
- f) implement activities in accordance with the concluded international legal instruments on cooperation in tracing persons missing in the Homeland War and persons killed in the Homeland War whose burial place is unknown
- g) participate in the tracing of missing persons referred to under Article 39, Paragraph 2 of this Law and
- h) implement other activities related to the tracing of persons missing in the Homeland War and persons killed in the Homeland War whose burial place is unknown.

(2) In the performance of activities referred to under Paragraph 1 of this Article, the Ministry shall cooperate with other competent bodies, institutions, organisations and other legal entities referred to under Article 14, Paragraph 1 of this Law.

(3) In the performance of activities referred to under Paragraph 1 of this Article, the Ministry shall also cooperate with competent bodies of other states, international and humanitarian organisations and associations of families of persons missing in the Homeland War and other associations dealing with the protection of the rights of persons missing in the Homeland War and their family members.

(4) Where appropriate, the Ministry shall provide assistance to other competent bodies, institutions and organisations in resolving cases of missing persons within their respective responsibility.

### **Republic of Croatia Government commission for persons missing in the Homeland War**

#### **Article 41**

(1) The Republic of Croatia Government commission for persons missing in the Homeland War (hereinafter: Commission) is an advisory and expert inter-agency body for affairs of persons missing in the Homeland War and persons killed in the Homeland War whose burial place is unknown.

(2) The Commission shall issue proposals, opinions and technical explanations in the field of tracing persons missing in the Homeland War and persons killed in the Homeland War whose burial place is unknown, and in this regard the Commission shall:

- a) propose to the Government of the Republic of Croatia measures regarding the gathering of information on persons missing in the Homeland War and on persons killed in the Homeland War whose burial place is unknown and on sites of mass and individual graves
- b) propose to the Government of the Republic of Croatia measures regarding cooperation with other states in the tracing of persons missing in the Homeland War and of persons killed in the Homeland War whose burial place is unknown and of sites of mass and individual graves
- c) assess the situation regarding affairs of persons missing in the Homeland War and persons killed in the Homeland War whose burial place is unknown, and propose to the Government of the Republic of Croatia measures for resolving certain problems and measures for improving the situation
- d) monitor activities undertaken by state administration bodies and other bodies in the Republic of Croatia whose responsibilities include dealing with the issue of persons missing in the Homeland War and persons killed in the Homeland War whose burial place is unknown, and propose to the

Government of the Republic of Croatia measures for improving and increasing the effectiveness of their work

- e) monitor the work of international organisations whose responsibilities include dealing with the issue of persons missing in the Homeland War and persons killed in the Homeland War whose burial place is unknown and their relations with the Republic of Croatia, and make proposals and issue opinions to the Government of the Republic of Croatia regarding the modes of cooperation with them
- f) monitor activities of associations registered in the Republic of Croatia that involve families of persons missing in the Homeland War and persons killed in the Homeland War whose burial place is unknown and associations dealing with the protection of the rights of persons missing in the Homeland War and persons killed in the Homeland War whose burial place is unknown and their family members, and make proposals and issue opinions to the Government of the Republic of Croatia regarding the method of cooperation with them and
- g) follow the experience of other states and international organizations that deal with the tracing of missing persons and, according to interests and needs, propose to the Government of the Republic of Croatia establishing cooperation with them.

#### **Article 42**

(1) The Commission shall be composed of one representative of:

- a) Ministry
- b) state administration body responsible for internal affairs
- c) state administration body responsible for defence
- d) state administration body responsible for justice
- e) state administration body responsible for foreign and European affairs
- f) state administration body responsible for health
- g) State Attorney Office of the Republic of Croatia
- h) Security and intelligence agency
- i) Military security and intelligence agency
- j) Zagreb Faculty of Medicine, Institute of Forensic Medicine and Criminology and
- k) Croatian Red Cross.

(2) The representative of the Ministry shall be the person who manages the internal organisational unit of the Ministry responsible for the affairs of missing persons, who shall also be the Commission president.

(3) The Commission secretary shall be a civil servant of the Ministry from the internal organisational unit responsible for the affairs of missing persons.

#### **Article 43**

(1) The Commission president, members and secretary shall be appointed and dismissed by a decision of the Government of the Republic of Croatia.

(2) The Commission members and secretary shall be appointed by the Government of the Republic of Croatia based on a prior proposal made by heads of bodies referred to under Article 42, Paragraph 1 of this Law.

#### **Article 44**

(1) For the purposes of establishing cooperation with competent bodies of other states and international organisations, the Commission president shall determine the composition of delegations and shall lead such delegations.

(2) Members of the delegation referred to under Paragraph 1 of this Article shall be the Commission secretary and individual Commission members who, depending on the area of cooperation, have been selected by the Commission president.

#### **Article 45**

Professional, administrative and technical activities necessary for the work of the Commission shall be performed by the Ministry through the Commission secretary.

#### **Article 46**

(1) The Ministry shall supervise the implementation of this Law.

(2) The Ministry shall submit an annual report regarding the implementation of this Law to the Government of the Republic of Croatia in March of the current year for the previous year.

### **PART SIX**

## **COOPERATION WITH OTHER STATES, INTERNATIONAL ORGANISATIONS AND ASSOCIATIONS**

### **CHAPTER I.**

#### **Cooperation with other states**

#### **Article 47**

Cooperation with other states in the tracing of persons missing in the Homeland War and of persons killed in the Homeland War whose burial place is unknown and of persons referred to under Article 39, Paragraph 2 of this Law shall be conducted in accordance with the concluded international legal instruments on cooperation in the tracing of missing persons or by mutual agreement with states with which the Republic of Croatia has not signed any international legal instruments, in accordance with international legal instruments on human rights and international humanitarian law.

#### **Article 48**

(1) In accordance with the concluded international legal instruments on cooperation in the tracing of missing persons or by mutual agreement with states with which the Republic of Croatia has not signed any international legal instruments, in accordance with international legal instruments on human rights and international humanitarian law, the competent bodies shall cooperate with competent bodies of other states in particular in the following: tracing persons missing in the Homeland War and persons killed in the Homeland War whose burial place is unknown and persons referred to under Article 39, Paragraph 2 of this Law; gathering information on individual and mass graves; performing field surveys and investigations; exhuming mortal remains and their identification; handing over mortal remains and providing funeral care for identified persons.

(2) The competent bodies shall cooperate with competent bodies of other states in transferring knowledge and experience in the tracing of missing persons.

**CHAPTER II.****Cooperation with international organisations****Article 49**

Cooperation with international organisations in the tracing of persons missing in the Homeland War and mortal remains of persons killed in the Homeland War whose burial place is unknown shall be conducted in accordance with the concluded international legal instruments on cooperation in the tracing of missing persons and within the scope of operation of such international organisations.

**Article 50**

Cooperation with international organisations in the implementation of this Law shall be the responsibility of the Ministry and the Commission, unless otherwise defined in the concluded international legal instruments on cooperation in the tracing of missing persons.

**Article 51**

(1) The competent bodies referred to under Article 50 of this Law shall cooperate with international organisations in particular in the following: gathering data for the Register of persons missing in the Homeland War and the Register of persons killed in the Homeland War whose burial place is unknown; tracing persons missing in the Homeland War and persons killed in the Homeland War whose burial place is unknown; gathering information on individual and mass graves; performing field surveys and investigations; exhuming and identifying mortal remains.

(2) The competent bodies referred to under Article 50 of this Law shall cooperate with international organisations in transferring knowledge and experience in the tracing of missing persons.

**CHAPTER III.****Cooperation with associations****Article 52**

(1) In order to protect, improve and promote the rights of persons missing in the Homeland War and of persons killed whose burial place is unknown and of their family members, the competent bodies referred to under Article 50 of this Law shall cooperate with associations of families of persons missing in the Homeland War and persons killed in the Homeland War whose burial place is unknown, which have been registered in the Republic of Croatia.

(2) The competent bodies referred to under Article 50 of this Law shall also cooperate with other associations dealing with the protection of the rights of persons missing in the Homeland War and persons killed in the Homeland War whose burial place is unknown and their family members.

**PART SEVEN****PENAL PROVISIONS****Article 53**

(1) A fine ranging between HRK 10,000.00 and 300,000.00 shall be imposed on bodies, organisations, institutions and other persons referred to under Article 14, Paragraph 1 of this Law, except for state administration bodies and judicial bodies, which in accordance with Article 14, Paragraph 2 of this Law fail to provide the Ministry with all available information and documentation and all the necessary assistance for resolving cases of persons missing in the Homeland War and persons killed in the Homeland War whose burial place is unknown.

(2) A fine ranging between HRK 5,000.00 and 20,000.00 shall be imposed on responsible person in the state administration body or the judicial body referred to under Article 14, Paragraph 1 of this Law, which in accordance with Article 14, Paragraph 2 of this Law fails to provide the Ministry with all available information and documentation and all the necessary assistance for resolving cases of persons missing in the Homeland War and persons killed in the Homeland War whose burial place is unknown.

(3) A fine ranging between HRK 5,000.00 and 20,000.00 shall be imposed on an individual who in accordance with Article 15 of this Law fails to provide the Ministry with all available information and documentation for resolving cases of persons missing in the Homeland War and persons killed in the Homeland War whose burial place is unknown.

(4) For the misdemeanour referred to under Paragraph 1 of this Article, a fine ranging between HRK 5,000.00 and 20,000.00 shall also be imposed on the responsible person in the legal entity.

## **PART EIGHT**

### **TRANSITIONAL AND FINAL PROVISIONS**

#### **Article 54**

The keeping of the Register of persons missing in the Homeland War and the Register of persons killed in the Homeland War whose burial place is unknown shall continue in accordance with this Law.

#### **Article 55**

The Minister of Croatian Veterans shall adopt the rulebooks referred to under Articles 37 and 38, Paragraph 2 of this Law within six months of the entry into force of this Law.

#### **Article 56**

(1) As of the date of its entry into force, this Law shall supersede the Decision on Establishing the Republic of Croatia Government Commission for Detained and Missing Persons (Official Gazette, No. 44/17).

(2) As of the date of the entry into force of this Law, the president, members and secretary of the Republic of Croatia Government Commission for Detained and Missing Persons shall continue working in accordance with this Law, until the decision referred to under Article 43, Paragraph 1 of this Law is made.

#### **Article 57**

This Law shall enter into force on the eighth day of being published in the Official Gazette.

## **I. ASSESSMENT OF THE SITUATION AND MAIN ISSUES TO BE REGULATED BY THE LAW, AS WELL AS CONSEQUENCES OF ENACTING THE LAW**

The Republic of Croatia, acting through the Ministry of Croatian Veterans, is still tracing 1,488 persons missing during the Homeland War and 414 persons killed in the Homeland War whose burial place is unknown, which makes a total of 1,902 unsolved cases from the Homeland War<sup>1</sup>.

There is no single law in the Republic of Croatia that governs the non-financial rights of persons missing in the Homeland War and their families to know the fate of their missing family members, as well as the procedure for tracing persons missing and persons killed in the Homeland War whose burial place is unknown.

The legal framework in this area consists of the Geneva Conventions relating to the protection of victims of war and Additional Protocols thereto (ratified by the Republic of Croatia in 1991), while the activities and responsibilities in the tracing process are defined by the Republic of Croatia Government Decree on Internal Organisation of the Ministry of Croatian Veterans and the Decision on Establishing the Republic of Croatia Government Commission for Detained and Missing Persons. In addition to these, there are also applicable general regulations (Criminal Code, Criminal Procedure Code, Law on Declaring Missing Persons Dead and on Proving Their Death as well as the Law on the State Administration System, Law on the Organisation and Mandate of Ministries and Other State Administration Bodies, etc.).

At the same time, due to violations of fundamental rights and freedoms, the issue of persons missing in armed conflicts has been regulated by a series of international legal instruments on human rights and international humanitarian law; furthermore, due to the increasing scale of the problem of missing persons and in order to strengthen the concept of human rights in general, new international legal instruments have recently been adopted dealing with missing persons.

The most significant instruments dealing with or related to the issue of missing persons are:

- Universal Declaration of Human Rights of 1948
- Convention on the Prevention and Punishment of the Crime of Genocide of 1948
- Geneva Conventions for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949
- Geneva Conventions for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea of 02 August 1949
- Geneva Conventions Relative to the Treatment of Prisoners of War of 12 August 1949
- Geneva Conventions Relative to the Protection of Civilian Persons in Time of War of 12 August 1949
- Convention (ETS No. 5) for the Protection of Human Rights and Fundamental Freedoms of 1950 and Protocols thereto
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts of 1977
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts of 1977
- International Covenant on Civil and Political Rights of 1966
- Convention on the Rights of the Child of 1989
- Rome Statute of the International Criminal Court of 1998
- International Convention for the Protection of All Persons from Enforced Disappearance of 2006

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<sup>1</sup> according to the records as of 04 June 2019

- European Convention (ETS No. 126) for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 1987
- Protocol No. 1 (ETS No. 151) to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 1993
- Protocol No. 2 (ETS No. 152) to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 1993
- Resolution “Missing persons from Europe’s conflicts: the long road to finding humanitarian answers” (Parliamentary Assembly of the Council of Europe 2013)
- Declaration on the Role of the State in Addressing the Issue of Persons Missing as a Consequence of Armed Conflict and Human Rights Abuses of 2014 and
- other instruments in the field of international human rights law and international humanitarian law.

At the core of all these international legal instruments and other instruments governing this area are human rights of missing persons and their families to know the fate of their missing family members, as well as the commitment of the state to resolve cases of enforced disappearances.

Since there is no law in the Republic of Croatia that regulates the non-financial rights of persons missing in the Homeland War and their families to know the fate of their missing family members, legal regulation of these matters in a single law will provide a higher level of protection for the fundamental rights of missing persons and their families.<sup>2</sup> At the same time, it will also contribute to preserving the dignity of persons missing in the Homeland War and members of their families as well as to preserving the dignity of Homeland War victims as a whole.

Furthermore, the activities of tracing persons missing in the Homeland War and persons killed in the Homeland War whose burial place is unknown – ranging from the recording of missing persons, gathering of information, conduct of exhumation procedures, identification, funeral care, etc. – require an interdisciplinary approach and cooperation of all competent bodies in the Republic of Croatia as well as organisations and institutions, as follows:

- Ministry of Croatian Veterans, primarily the Directorate for Detained and Missing Persons
- Ministry of Internal Affairs
- Ministry of Defence
- Ministry of Foreign and European Affairs
- Ministry of Justice
- Ministry of Health
- competent judicial bodies - county attorney offices and courts
- security and intelligence agencies
- state administration offices in counties
- scientific and medical institutions
- Croatian Red Cross, etc.

All activities in the tracing process are coordinated by the Ministry of Croatian Veterans, i.e. the Directorate for Detained and Missing Persons, whose scope of work is defined in the Republic of Croatia Government Decree on Internal Organisation of the Ministry of Croatian Veterans.

While competent bodies, organisations and institutions carry out their responsibilities in accordance with the Law on the Organisation and Mandate of Ministries and Other State Administration Bodies or according to bylaws of organisations, institutions and other legal entities and/or according to agreements signed regarding performance of activities for the needs of the Ministry, there is no comprehensive legal

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<sup>2</sup> The financial rights of family members of persons missing in the Homeland War are regulated in the Law on Croatian Homeland War Veterans and Members of Their Families and in the Law on the Protection of Military Personnel and Civilians Disabled by War.

basis that would unequivocally and clearly prescribe their respective obligations in the process of tracing missing persons and persons killed whose burial place is unknown. This legal dispersion leaves room for legal loopholes and incorrect interpretation of the existing legal framework. For this reason, it is necessary to enact the Law on Persons Missing in the Homeland War to ensure more effective coordination of activities by the competent body, i.e. the Ministry of Croatian Veterans, and to minimise the sometimes necessary improvisations in its implementation.

In addition, it is also necessary to enact the Law on Persons Missing in the Homeland War in order to create a legal basis for the Ministry of Croatian Veterans to conduct activities of tracing missing persons and persons killed whose burial place is unknown in cases where violent death is not suspected, which has not been possible before because the activities of exhumation and processing and identification of mortal remains have been conducted on the basis of the Criminal Procedure Code.

Furthermore, the following also needs to be noted: in the states that emerged from the breakup of the former Yugoslavia, in relation to which the Republic of Croatia has not resolved the issue of missing persons, this issue has been regulated by law. Thus, Bosnia and Herzegovina enacted the Law on Missing Persons in 2004 which specifically regulated the matters of persons missing in the period between 1991 and 1996, while the issue of persons missing in the period between 1991 and 1996 in the Republic of Serbia was regulated by the 2012 Law on Migration Management. The lack of a legal framework in the Republic of Croatia and the simultaneous existence of applicable legislation in neighbouring states may have a negative impact on the Republic of Croatia, especially when considering the possibility of relativization of data on missing persons which could in turn leave room for relativization of historical facts.

Furthermore, legislative regulation of the rights of missing persons and their families to know the fate of their missing family members as well as of the tracing procedure is recommended by the following:

- United Nations Working Group on Enforced or Involuntary Disappearances
- Resolution 1956 of the Parliamentary Assembly of the Council of Europe entitled *Missing persons from Europe's conflicts: the long road to finding humanitarian answers*, where item 7.2. lists a priority of the development and promotion of national legislation as being essential in addressing the fate of missing persons and
- *Declaration on the Role of the State in Addressing the Issue of Persons Missing as a Consequence of Armed Conflict and Human Rights Abuses* (which was signed by the Republic of Croatia in August 2014), where item 8 emphasises particular commitment to pursuing legislative measures to implement all principles set forth in the Declaration.

Areas regulated by this Law:

- gathering and processing of data and archival material on missing persons
- keeping records of missing persons
- gathering information on the fate of missing persons and potential grave sites
- investigation of hidden mass and individual graves and exhumation of mortal remains from hidden and registered graves in cooperation with relevant actors
  - keeping records of all identified sites of mass and individual graves
- processing and identification of mortal remains and their burial and permanent dignified storing
  - keeping records of all identified victims
- cooperation with competent bodies of other states and international organisations
- bodies responsible for implementation of the Law and their mandate.

## **II. EXPLANATION OF PROVISIONS OF THE PROPOSED LAW**

**Article 1**

In accordance with the Uniform Methodological and Nomotechnical Rules for the Drafting of Laws adopted by the Croatian Parliament (Official Gazette, No. 74/15), Article 1 with introductory or main provisions defines the essence and refers to the main scope and content of the regulation, which is elaborated in more detail through the Law.

**Article 2**

Once of the principles on which this Law is based is that persons missing in the Homeland War and persons killed in the Homeland War whose burial place is unknown and members of their families have, for the purposes of this Law, equal rights without any difference with respect to whether they were members of the armed forces or civilians, or with respect to their race, gender, language, religion, political opinion, national or social origin, property status or any other personal status.

**Article 3**

This Article defines that it is an obligation of the Republic of Croatia to trace persons missing in the Homeland War and mortal remains of persons killed in the Homeland War whose burial place is unknown.

**Article 4**

For reasons of clarity, less cognitive load and avoidance of any unnecessary length of the text of the regulation, this Article provides explanations and definitions of terms used in the further text of the Law.

**Article 5**

This provision complies with Article 13 of the Uniform Methodological and Nomotechnical Rules for the Drafting of Laws adopted by the Croatian Parliament.

**Article 6**

Missing persons are presumed to be alive until their fate is determined or until their burial place is identified or until they are declared dead in accordance with the Law on Declaring Missing Persons Dead and on Proving Their Death (Official Gazette, No. 10/74).

**Article 7**

This Article regulates the fundamental rights of family members of persons missing in the Homeland War or persons killed in the Homeland War whose burial place is unknown. The right of the family to know the fate of a missing family member is provided for in the international humanitarian law.

**Article 8**

This Article defines persons who may submit a request to launch a procedure of tracing persons missing in the Homeland War, which is equally applicable to the launching of a procedure of tracing persons killed in the Homeland War whose burial place is unknown.

This Article constitutes a legal basis (which has been absent so far) which makes it possible for the Ministry, in addition to family members, to launch the procedure of tracing a person missing in the Homeland War, acting *ex officio* on the basis of reliable data on the disappearance of a person.

**Articles 9 and 10**

These Articles regulate the requirements that must be met to launch the tracing procedure.

**Articles 11 and 12**

These Articles regulate the entry of persons missing in the Homeland War in the Register of persons missing in the Homeland War and the issuance of certificates from this Register.

**Article 13**

This Article defines that provisions of Articles 8 to 12 of this Law, which regulate the procedure of tracing persons missing in the Homeland War, apply *mutatis mutandis* to the procedure of tracing mortal remains of persons killed in the Homeland War whose burial place is unknown.

**Articles 14 to 17**

These Articles regulate the gathering of information on persons missing in the Homeland War as well as the obligation of competent bodies in the Republic of Croatia as well as of other legal entities and individuals to provide all available information for the purposes of tracing missing persons.

**Article 18**

In the case when it is suspected or obvious that the death was caused by a criminal offence or that it is related to the commission of a criminal offence, the exhumation is to be carried out pursuant to Article 319 of the Criminal Procedure Code (Official Gazette, Nos. 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13, 145/13, 152/14 and 70/17).

A problem that has been occurring in practice so far is the situation where Article 319 of the Criminal Procedure Code did not apply.

For this reason, Paragraph 3 of this Article provides a legal basis for conducting exhumations in cases where Article 319 of the Criminal Procedure Code does not apply because it is not suspected that the death was caused by a criminal offence or it is obvious that the death was not caused by a criminal offence or in relation to the commission of a criminal offence, or where criminal proceedings have been concluded by a final court judgment.

**Article 19**

This Article stipulates that the exhumation of mortal remains from an individual, mass or sanitation grave is organised and conducted by the Ministry in cooperation with other competent bodies, institutions, organisations and legal entities that carry out activities within their respective responsibilities and/or on the basis of agreements signed regarding performance of activities for the needs of the Ministry.

**Article 20**

In the case when it is suspected or obvious that the death was caused by a criminal offence or that it is related to the commission of a criminal offence, the identification of mortal remains is to be carried out pursuant to the Criminal Procedure Code (Official Gazette, Nos. 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13, 145/13, 152/14 and 70/17).

A problem that has been occurring in practice so far is the situation where the Criminal Procedure Code did not apply.

For this reason, Paragraph 2 of this Article provides a legal basis for the processing and identification of mortal remains in cases where the Criminal Procedure Code does not apply because it is not suspected that the death was caused by a criminal offence or it is obvious that the death was not caused by a criminal offence or in relation to the commission of a criminal offence.

**Article 21**

This Article stipulates that the processing and identification of mortal remains exhumed from individual, mass and sanitation graves are organised by the Ministry, while the medical part of the processing and identification of exhumed mortal remains is carried out by institutions with which the Ministry has signed a contract. So far, the Ministry has signed contracts with the Zagreb Faculty of Medicine Institute of Forensic Medicine and Criminology, Clinical Hospital Centre in Split, Clinical Hospital Centre in Osijek,

Faculty of Medicine in Osijek and the General County Hospital in Vukovar and the Croatian Veterans' Hospital.

**Article 22**

This Article defines the responsibility of the Ministry for the processing and identification of mortal remains of persons missing in the Homeland War and persons killed in the Homeland War whose burial place is unknown, which have been exhumed in the territory of another state.

**Article 23**

This Article regulates the final identification of mortal remains.

**Article 24**

If it is established based on the findings of institutions referred to under Article 21 of this Law regarding the established identity of exhumed mortal remains that these are mortal remains of foreign nationals who do not have the status of Croatian Homeland War veterans, the Ministry shall organise the handover of mortal remains to the country of nationality of the person, in accordance with the concluded international legal instruments on cooperation or by mutual agreement with states with which the Republic of Croatia has not signed any international legal instruments.

**Article 25**

A problem that has been occurring in practice so far is the situation where the Criminal Procedure Code did not apply and which required exhumation of deceased blood relatives of unidentified mortal remains in order to obtain samples of biological material when there were no living blood relatives or when the samples of biological material of a living blood relative were insufficient for identification of unidentified mortal remains.

For this reason, this Article provides a legal basis for action in cases when it is not suspected that the death was caused by a criminal offence or it is obvious that the death was not caused by a criminal offence or in relation to the commission of a criminal offence, and it further defines that in such situations the exhumation shall be carried out at the request of the Ministry.

**Article 26**

This Article regulates the procedure of re-exhumation of mortal remains and their processing and final identification if there is reason to suspect the reliability of the identification of mortal remains.

**Articles 27 and 28**

These Articles regulate the requirements for completion of the procedure of tracing a person missing in the Homeland War and of mortal remains of a person killed in the Homeland War whose burial place is unknown.

**Articles 29 to 31**

This Law does not regulate the issue of funeral care; however, for the purposes of comprehensive regulation of the tracing of missing persons, this Law refers to special regulations that govern funeral care following exhumation and identification of Croatian Homeland War veterans (Law on Croatian Homeland War Veterans and Members of Their Families) and of civilian victims of the Homeland War (Law on the Protection of Military Personnel and Civilians Disabled by War).

**Article 32**

This Article regulates the purpose of keeping the Register of persons missing in the Homeland War.

**Article 33**

This Article defines the main data contained in the Register of persons missing in the Homeland War, which will be elaborated in more detail in a rulebook to be adopted by the Minister of Croatian Veterans (Article 37).

**Article 34**

This Article defines that the data entered in the Register of persons missing in the Homeland War are subject to independent, impartial and thorough verification of their authenticity and their matching with data contained in other official records which are kept or had been kept in the Republic of Croatia.

**Article 35**

This Articles refers to regulations on personal data protection when handling data contained in the Register of persons missing in the Homeland War.

**Article 36**

This Article defines that provisions of Articles 32 to 35 of this Law, which concern the keeping of the Register of persons missing in the Homeland War, apply *mutatis mutandis* to the keeping of the Register of persons killed in the Homeland War whose burial place is unknown.

**Article 37**

This Article provides for the adoption of a rulebook that will define the method of keeping, the content and other matters related to the Register of persons missing in the Homeland War and the Register of persons killed in the Homeland War whose burial place is unknown, which is to be adopted by the Minister of Croatian Veterans.

**Article 38**

This Article provides that the Ministry shall keep an official Register of exhumed, identified and unidentified mortal remains from individual, mass and sanitation graves, while the method of keeping, the content and other matters related to the Register shall be governed by a rulebook to be adopted by the Minister of Croatian Veterans.

**Article 39**

This Article defines the Republic of Croatia is in charge of the activities of tracing persons missing in the Homeland War and persons killed in the Homeland War whose burial place is unknown, and that it participates in the tracing of missing persons who do not have the status of a Croatian veteran or did not have a registered permanent or temporary residence in the territory of the Republic of Croatia at the time of disappearance in the territory of the Republic of Croatia during the Homeland War. Article 32 of the Fourth Geneva Convention orders parties to the conflict to allow enquiries about persons missing as a result of hostilities. The 1977 Protocol Additional to the Geneva Conventions “requires each party to the conflict to search for persons who have been reported missing by an adverse party”. These provisions are complementary to universal guarantees that are grounded in human rights. Legal acts, such as the European Convention on Human Rights (ECHR), define the obligation of each state party to conduct effective investigations regarding missing persons.

**Article 40**

This Article defines the activities carried out by the Ministry related to the tracing of persons missing in the Homeland War and mortal remains of persons killed in the Homeland War as well as exhumation, identification and funeral care of persons whose mortal remains have been found in mass, individual or sanitation graves.

**Articles 41 to 45**

This Article [*sic!*] defines the responsibility, the composition and other matters related to the Republic of Croatia Government Commission for persons missing in the Homeland War.

This Commission has actually already been established under the Decision on Establishing the Republic of Croatia Government Commission for Detained and Missing Persons (Official Gazette, No. 44/17). As of the date of its entry into force, this Law will supersede the Decision on Establishing the Republic of Croatia Government Commission for Detained and Missing Persons, while the president, members and secretary of the Republic of Croatia Government Commission for Detained and Missing Persons appointed under the Decision on Establishing the Republic of Croatia Government Commission for Detained and Missing Persons (Official Gazette, No. 44/17) will continue working in accordance with this Law until the new president and new members and the secretary are appointed.

The Law takes over provisions of the Decision in order to create a single law governing the procedure of tracing persons missing in the Homeland War.

The name of the Commission has been changed so that the name is more indicative of the Commission's responsibilities. Indeed, the Commission is not responsible for matters of persons detained in the Homeland War, but only persons missing in the Homeland War.

#### **Article 46**

This Article defines that the Ministry of Croatian Veterans will supervise the implementation of this Law and that it will report to the Government once a year regarding the implementation of this Law.

#### **Article 47**

This Article defines that cooperation with other states in the tracing of persons missing in the Homeland War and of persons killed in the Homeland War and of missing foreign nationals who do not have the status of a Croatian veteran or did not have a registered permanent or temporary residence in the territory of the Republic of Croatia at the time of disappearance in the territory of the Republic of Croatia during the Homeland War shall be conducted in accordance with the concluded international legal instruments on cooperation or by mutual agreement with states with which the Republic of Croatia has not signed any international legal instruments.

#### **Article 48**

This Article specifies the cooperation with competent bodies of other states in the tracing of missing persons.

#### **Articles 49 to 51**

These Articles regulate the cooperation with international organisations in the tracing of persons missing in the Homeland War and of mortal remains of persons killed in the Homeland War whose burial place is unknown.

#### **Article 52**

This Article regulates the cooperation with associations of families of persons missing in the Homeland War and of persons killed in the Homeland War whose burial place is unknown, which have been registered in the Republic of Croatia.

#### **Article 53**

This Article defines the misdemeanours and fines for non-compliance with the provisions of this Law.

#### **Article 54**

Articles 32 to 38 regulate the keeping of the Register of persons missing in the Homeland War and the Register of persons killed in the Homeland War whose burial place is unknown. Considering that this Law regulates the keeping of the Registers according to the present practices of keeping these Registers, a transitional provision was added specifying that the existing Registers will continue to be kept, as no new Registers are being established.

**Article 55**

This Article defines the period for adopting the rulebook defining the method of keeping, the content and other matters related to the Register of persons missing in the Homeland War and the Register of persons killed in the Homeland War whose burial place is unknown as well as of the rulebook defining the method of keeping, the content and other matters related to the Register of exhumed, identified and unidentified mortal remains from individual, mass and sanitation graves. These rulebooks will standardise the existing practices in the keeping of these Registers.

**Article 56**

This provision specifies that as of the date of its entry into force, this Law shall supersede the Decision on Establishing the Republic of Croatia Government Commission for Detained and Missing Persons (Official Gazette, No. 44/17).

**Article 57**

This Article stipulates that the Law shall enter into force on the eighth day of being published in the Official Gazette.

**III. ESTIMATE OF FUNDS AND SOURCES OF FUNDS NEEDED TO IMPLEMENT THIS LAW**

The implementation of this law does not require any additional funding, because it does not provide for regulation of financial and status rights of families of persons missing in the Homeland War and their family members (which are provided for in another normative act); this law regulates the procedure of tracing persons missing in the Homeland War and this activity has so far been funded under the budgetary item of the Ministry of Croatian Veterans.

**IV. DIFFERENCES BETWEEN SOLUTIONS PROPOSED IN THE FINAL DRAFT LAW COMPARED TO SOLUTIONS FROM THE DRAFT LAW AND THE REASONS FOR THESE DIFFERENCES**

Compared to the text of the Draft Law that was first read and adopted at the Croatian Parliament, the Final Draft Law contains certain differences as a result of adopting proposals and comments made between the first and second readings.

At the 11th session held on 05 April 2019, a conclusion was reached to adopt the Draft Law. All comments, proposals and opinions were forwarded to the party that proposed the law in order to prepare the Final Draft Law.

Compared to the Draft Law, as per the comments, proposals and opinions presented during the debate or in the report of the Croatian Parliament working bodies, the text of the Final Draft Law contains the following differences:

- at the proposal of the Legislation Committee, the introductory sentence in Article 4 has been changed
- in accordance with the proposal of the Legislation Committee, related to the proposal made by the Veteran Committee, the first reference to the state administration body responsible for

Croatian veterans in Article 7 includes the full name, and this term has been shortened to Ministry in the rest of the text and there is therefore no need to define it in Article 4.

- in Article 12, the words “has been entered” have been added after the words “Homeland War” for clarity
- in Article 8, Paragraphs 1 and 2 have been merged to avoid the situation where the previous Paragraph 3, which is now Paragraph 2, stipulates an exception to an exception, as pointed out by the Legislation Committee.

## **V. PROPOSALS, COMMENTS AND OPINIONS GIVEN REGARDING THE DRAFT LAW THAT WERE REFUSED BY THE PARTY THAT PROPOSED THE LAW AND REASONS FOR REFUSAL**

The proposals and opinions given regarding the Draft Law during the debate in the Croatian Parliament and on its working bodies, which the party that proposed the law could not accept, are listed below.

The proposal of the War Veteran Committee that in Article 15, between the words “burial place” the words “killing or execution” are added, could not be accepted. Namely, Article 4, Item 2 defines the notion of a person killed in the Homeland War whose burial place is unknown, and this term has been used throughout the text of the Draft Law. At the same time this definition also covers this proposal, but the relevant fact from the aspect of the Draft Law is that the burial place is unknown, rather than the way a person died.

Another proposal made by the War Veteran Committee was not accepted, asking to add a paragraph in Article 15 to provide for the institute of a reward for information, which would read something like this: “Each individual who provides information or documentation to the Ministry of Croatian Veterans shall be rewarded according to a Regulation to be adopted by the Ministry...” With regard to this proposal, we note the following: According to its responsibilities, the Ministry of Croatian Veterans acts as an implementing and operational body in charge of technical activities related to the tracing of missing persons and mortal remains of the Homeland War as well as exhumation, identification and burial of persons whose mortal remains have been found in mass, individual or common graves originating from the Homeland War in the Republic of Croatia. The Directorate for Detained and Missing Persons receives documentation and information related to potential sites of hidden mass and individual graves and compiles, analyses and processes this documentation and information in order to proceed with field activities to verify the information received.

Direct gathering of information on potential sites of individual and mass graves containing mortal remains of persons originating from the Homeland War is predominantly performed by the Ministry of Internal Affairs and security agencies, in accordance with regulations governing their operation which include rules on rewards for information, while this law refers to general regulations when it comes to these matters.

Therefore, the rules of reward for information have already been defined in regulations governing the operation of bodies that are primarily responsible for information gathering.

A proposal to reduce the range of the fine prescribed under Article 53, Paragraph 1 made by representatives of the Labour and Solidarity Party and by independent representatives has not been accepted. Specifically, this provision is in compliance with Article 33, Paragraph 1 of the Misdemeanour Law, which stipulates that a legal entity cannot be subject to a fine prescribed by law in an amount lower than HRK 2,000.00 or higher than HRK 1,000,000.00.

Proposals made during the debate regarding the name of the Law, specifically asking that the name of the Law should indicate that the Homeland War was the result of the Greater Serbian aggression, was not accepted. Indeed, the Homeland War has been defined in the Constitution of the Republic of Croatia and in the Declaration on the Homeland War, as well as in Article 1 of this Law. According to the Uniform Methodological and Nomotechnical Rules for the Drafting of Laws adopted by the Croatian Parliament (Official Gazette, No. 74/15), the name of a law should be brief and should concisely indicate the type of legislation and the subject matter to identify what the law regulates.

All the remaining comments and proposals have already been appropriately addressed by this Law and there is no need to re-state them, or they lie outside the scope of the subject matter of this Law.