

Violation of Human Rights and Enforced Disappearance in Bosnia and Herzegovina

Meldijana Arnaut Haseljić

Institute for Research of Crimes against Humanity and International Law, University of Sarajevo, Sarajevo, Bosnia and Herzegovina

Abstract: Every armed conflict outcome in a violation of fundamental human rights and freedoms. In areas where war conflicts are taking place, certain forms of crimes that are most often committed against civilians and other categories protected by international (humanitarian) law occur as an inevitable consequence. Thus, in the territory of Bosnia and Herzegovina in the war that took place in the period 1992-1995, committed numerous war crimes, and crimes against the peace and security of mankind. These crimes were committed against civilians and protected categories of the population, primarily prisoners of war. The issue of protection of human rights in Bosnia and Herzegovina is inevitably connected with the consideration of the consequences resulting from the armed aggression carried out at the end of the twentieth century. One form of crime that is particularly specific to Bosnia and Herzegovina is the crime of enforced disappearance. Enforced disappearances in Bosnia and Herzegovina are most often associated with the out-of-court detention of persons whose fate becomes unknown upon expulsion from their homes or stays in camps and other places of detention. This form of crime is especially significant because its consequences still last, even though 25 to 30 years have passed since its commission. Namely, the total number of registered forcibly missing persons in Bosnia and Herzegovina is 34,965. About 8,000 more people are wanted. Many families have not yet exercised their basic humanitarian right to know the truth about the fate of their family members. The bodies or remains of forcibly missing persons are most often found in unmarked individual or mass graves of a hidden locality. There are a numerous of forcibly missing persons who are still being searched for, and this is precisely the reason why studying the enforced disappearances of persons and considering the consequences of this committed crime is of special social interest. It is especially important to provide legal protection to families whose members were forcibly disappeared during the war and whose bodies or remains have not been found to date. The humane character of this issue must not be overlooked. It is important to find new possibilities in the search for forcibly missing persons, bearing in mind the fact that the passage of time and the biological processes that take place make it difficult to perform this task. Particular attention should be paid to the fact that witnesses or perpetrators of crimes who can provide adequate information end their lives. The truth about hidden bodies thus remains inaccessible. International bilateral agreements involving stakeholders represent one of the new possibilities in resolving issues related to enforced disappearances.

Keywords: Armed conflict, war crimes, enforced disappearances, human rights, victims, international law, Bosnia and Herzegovina.

1. INTRODUCTION

European Convention on Human Rights guarantees one's right to life,¹ prohibition of torture, prohibition of slavery and forced labor, right to liberty and security, right to a fair trial, no punishment without law and other rights [1]. Human rights protection system extends to all Signing States, among which are all members of Council of Europe and therefore all countries established after breakup of Yugoslavia. Human rights of every person in Bosnia and Herzegovina are regulated in the Constitution and the laws. Preamble of the Constitution gives priority to respect for the international humanitarian law: international conventions on civil, political, economic, social and

cultural rights, declarations and other human rights' instruments. In conclusion, human rights in Bosnia and Herzegovina are inevitably linked to the dissolution of Yugoslavia and the consequences that followed. Considering the fact that this process did not occur in peaceful manner, the results of the armed aggression still manifest in the whole society. One of subjects that directly violations the human rights protection in its roots is the enforced disappearance in Bosnia and Herzegovina. Definition of the term 'missing person'² in the state Law includes the civilians and the soldiers that disappeared during the warfare in Bosnia and Herzegovina [2].

A total number of reported missing persons in Bosnia and Herzegovina is 34.965 [3]. There are still missing 8.000 people [4]. Until now, more than 24.000 [3] unidentified bodies and human remains are found and excavated from individual and hidden mass

*Address correspondence to this author at the Institute for Research of Crimes against Humanity and International Law, University of Sarajevo, Sarajevo, Bosnia and Herzegovina; E-mail: ameldijana@hotmail.com, ameldijana@yahoo.com, arnautmeldijana@gmail.com

¹Article 2: "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law."

²he basic condition for a person to be treated as missing is: "a family does not have any news on the missing member; that the disappearance is reported; no confident information on the person exists" [3, Article 2]. All three conditions need to be fulfilled for one person to be considered missing.

gravesites on the territory of Bosnia and Herzegovina. One known fact is the killed people were victims of the crimes against humanity and international law. Over 22.000 of the victims are identified and returned to their families for an honorable funeral [3]. Many families had not realized their basic humanitarian right to know the truth on the fates of their beloved ones.

Principles of the international law guarantee the right to know the truth on the fates of their family members. According to Article 32, General Principle: "In the implementation of this Section, the activities of the High Contracting Parties, of the Parties to the conflict and of the international humanitarian organizations mentioned in the Conventions and in this Protocols shall be prompted mainly by the right of families to know the fate of their relatives." [5] According to Article 33: "Missing persons 1. As soon as circumstances permit, and at the latest from the end of active hostilities, each Party to the conflict shall search for the persons who have been reported missing by an adverse Party. Such adverse Party shall transmit all relevant information concerning such persons in order to facilitate such searches. 2. In order to facilitate the gathering of information pursuant to the preceding paragraph, each Party to the conflict shall, with respect to persons who would not receive more favorable consideration under the Conventions and this Protocol: a) record the information specified in Article 138 of the Fourth Convention in respect of such persons who have been detained, imprisoned or otherwise held in captivity for more than two weeks as a result of hostilities or occupation, or who have died during any period of detention; b) to the fullest extent possible, facilitate and, if need be, carry out the search for and the recording of information concerning such persons if they have died in other circumstances as a result of hostilities or occupation. 3. Information concerning persons reported missing pursuant to paragraph 1 and requests for such information shall be transmitted either directly or through the Protecting Power or the Central Tracing Agency of the International Committee of the Red Cross or national Red Cross (Red Crescent, Red Lion and Sun) Societies. Where the information is not transmitted through the International Committee of the Red Cross and its Central Tracing Agency, each Party to the conflict shall ensure that such information is also supplied to the Central Tracing Agency. 4. The Parties to the conflict shall endeavor to agree on arrangements for teams to search for, identify and recover the dead from battlefield areas, including arrangements, if appropriate, for such teams to be accompanied by personnel of the adverse Party while carrying out these missions in areas controlled by the

adverse Party. Personnel of such teams shall be respected and protected while exclusively carrying out these duties." [5] Victims' families also have a right to a social care and a right to legal definition of their status and other legal services. Aforementioned calls upon the need of state legal regulation³ of the families of victims [2]. Prevention from future conflicts and a rehabilitation of the post-conflict society is impossible without confronting the hard legacy of serious and systematic violations of human rights and a challenge of establishing the responsibility for committed crimes. Establishing the justice anticipates necessary measures for identifying the facts about the committed crimes and perpetrators, judicial proceedings and punishment of the perpetrators, compensating the victims' material and immaterial damages and securing the reforms for preventing the repetition of the past.

2. SEARCH FOR MISSING PERSONS

The families of missing persons were expecting information on the destinies of their beloved ones from official institutions created for finding missing persons and unlawfully arrested persons. Adequate listing of the missing persons and collecting the data on the circumstances of disappearance and possible locations of the human remains were the tasks of State Commission for Exchange of the Prisoners of War established by the Government of Republic of Bosnia and Herzegovina, Commission for Exchange of the Prisoners of Republic of Srpska and Commission for Exchange of the Prisoners of Croatian Community of Herceg-Bosnia. Together with these commissions, International Criminal Court for former Yugoslavia (ICTY) was doing the investigation of the enforced disappearance. Many other organs, local and international, were examining these matters within their activities, such as International Committee of the Red Cross (ICRC) and International Commission on Missing Persons (ICMP). Precondition for achieving progress was the harmonization of different sides in Bosnia and Herzegovina. In 1998 a proposal for establishing the Missing Persons Institute of Bosnia and Herzegovina on the state level was made. This proposal was based on the Initiative of the Office of High Representative (OHR) from 1997 named "Joint exhumations process" [6]. This project enabled the exhumation and excavation of missing persons in the both entities and the Brčko District of Bosnia and Herzegovina. In the

³In Bosnia and Herzegovina Law on Missing Persons in Bosnia and Herzegovina was adopted in 2004. It regulates the status of a missing person, responsibilities of the relevant state organs, specific rights of family members of missing persons.

implementation of the set objectives greatest challenge is the lack of information about the hidden locations where the human remains of missing persons are buried, where nowadays approach of the relevant institutions in solving this problem is characterized with absence of the political will and long-term inertia.

3. LEGAL REGULATION

International Convention for the Protection of All Persons from Enforced Disappearance [7] was derived from the Convention on United Nations, International Covenant on Civil and Political Rights [9], Universal Declaration on Human Rights [8], International Covenant on Economic, Social and Cultural Rights [20] and other relevant international instruments on human rights, humanitarian law and international criminal law. International Convention for the Protection of All Persons from Enforced Disappearance was adopted by General Assembly in the Resolution 47/122 on December 18, 1992 and represents the fundament of international law for the right of any victim to know the truth about the circumstances of an enforced disappearance and the fate of the missing person, and the right to freedom to seek, receive and impart information to this end. In its Article 1 Convention establishes no one shall be subjected to enforced disappearance. Under the Article 2 of the Convention, enforced disappearance is defined as “the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law” [7].

Widespread and systematic commitment of listed acts constitutes a crime against humanity and attracts the consequences provided for under applicable international law. No order or instruction given by a state organ (civil, military, other) may justify a crime of enforced disappearance.

Right to know the truth about the enforced disappearance is guaranteed in Protocol Additional to the Geneva Convention I [5],⁴ International Convention

for the Protection of All Persons from Enforced Disappearance [7],⁵ Universal Declaration on Human Rights [8],⁶ International Covenant on Civil and Political Rights [9].⁷ All these documents affirm the right to know what happened (violation of the right), why it had happened (cause of the violation), identification of victims and perpetrators. Final aim is preserving the documentation on violation of the rights which will prevent from revision of the past and negation of the crimes.

European Court for Human Rights by its case law affirmed the standards that establish the obligation of every state to undertake investigation and analyze the facts on the enforced disappearance which leads to the murder. Disappearance of persons constitutes a continued offence of the law under the European Convention on Human Rights. This is based on a circumstance that state did not conduct effective investigation of all the occurrences of the enforced disappearance or establish its responsibility in the criminal proceedings against perpetrators. On the other side, members of the family constantly suffer for not knowing the facts on the enforced disappearance of the victim. This violation equals the violation of the Article 2, Right to life, of the Convention.

4. ENFORCED DISAPPEARANCES IN BOSNIA AND HERZEGOVINA

Enforced disappearances in Bosnia and Herzegovina are the result of military activities during 1992-1995 period. The most significant and common crime is enforced removal, arrest, detention and liquidation of the victims. Besides physical destruction, this criminal action has also had strong psychological effect on the victims of the war (ones who were enforcedly removed and missing) but also their closest family seeking for the victim's remains even today. Some of the bodies have been found in the mass or individual graves. Other bodies have not been found because the locations of the mass graves are still hidden. This is a part of the politics of hiding the crime - the crime is not committed until the evidence is found. Individual and mass liquidations and deportations of the population were not only the method of aggression but also its occupational aim. In the process of hiding the crimes different social structures are directly and

⁴In the application of this section, the activities of the High Contracting Parties, the Parties to the conflict and international humanitarian organizations referred to in the Conventions and this Protocol shall establish primarily in the right of families to know the fate of their members” [5]

⁵Bosnia and Herzegovina signed this Convention on February 6, 2007.

⁶Everyone has the right, to life, liberty and security of person” [8, Article 3].

⁷“The family is a natural and basic cell of society and has the right to be protected by the society and the state...” [9, Article 23].

indirectly involved. They accomplish the final objective of minimizing the serious crimes and especially denial by creating the wrongful images and understanding of committed crimes, their widespread, duration, intensity, extent and dimensions.

Criminal Code of Bosnia and Herzegovina stipulates enforced disappearance as a crime against humanity [10].⁸ This Code is precise in defining enforced disappearance as “the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with an aim of removing them from the protection of the law for a prolonged period of time” [10, Article 172, paragraph 2, Point (h)]. Law on Missing Persons in Bosnia and Herzegovina regulates the issue of missing persons as a result of the warfare from April 30, 1991 to February 14, 1996 [2, Article 2]. This is a first such piece of national legislation related to missing persons anywhere in the world. The law also prescribes the search for the missing persons and exercise of the social and other rights of the families of missing persons. The continuous search and identification of the missing persons is obligatory, while the seek for causes and conditions pertaining the crime is favorable. Information on the place of the burial or location of the remains as well as the possibility of excavation of the graves must be given to the families. Identification is a final step of the process of the search for the missing persons. Since February 6, 2007 Bosnia and Herzegovina is a signatory of the International Convention for the Protection of All Persons from Enforced Disappearance. International legal framework favors criminal prosecution and punishment of the perpetrators of crimes. International Criminal Tribunal for the former Yugoslavia raised indictments against a number of perpetrators, with the highest responsibility for the committed crimes, amongst who were the perpetrators of the crime against humanity, the enforced disappearance [11, Paragraph 566].

Criminal Code of Bosnia and Herzegovina fortifies punishment of the crimes against humanity. It is inspired by the Rome Statute and includes the individual crime of enforced disappearance [10, Article 172, Paragraphs 1-i]. Criminal codes of entities and the Brčko District do not incriminate crimes against

humanity. Therefore, these crimes cannot be prosecuted nor adjudicated on under state levels. They could still apply the code of former Yugoslavia for the crimes committed in the period 1992-1995 since this was *de lege lata* at the time.

State of Bosnia and Herzegovina has taken the responsibility and made efforts to solve the matters of missing persons. Adoption of the Law on Missing Persons, forming of the Institute for Missing Persons and a number of completed exhumations and identifications brought significant results. Establishing of the Institute for Missing Persons was a step closer to respecting the right to know⁹ and equal treatment of the victims [2, Article 10]. According to the Law on Missing Persons of Bosnia and Herzegovina, the Central Records of Missing Persons in Bosnia and Herzegovina was created and therefore the final verification of the name started. Process of tracing missing persons is burdened by politization, impossibility to locate and excavate the graves but also hiding of the individual and mass graves. Law on Missing Persons stipulates the principles for promoting the process of locating, defining the term missing persons, keeping the Central Records, achieving social and other rights of members of the families of missing persons, and all the other issues in connection. The Law is based on: the Convention on the Prevention and Punishment of the Crime of Genocide (1948), the Geneva Conventions I - IV on Protection of War Victims (1949), Additional Protocols I-II (1977), the European Convention on the Protection of Human Rights and Fundamental Freedoms (1950) and 13 Additional Protocols, the General Framework Agreement for Peace in BiH (Annex 7, Articles III and V), the Convention on the Rights of the Child (1989), the International Covenant on Civil and Political Rights, the UN Declaration on the Protection of All Persons from Enforced Disappearance (1992).¹⁰ This Law defines a missing person as a person whom his family has no information about and/or is reported missing on the basis of reliable information as a consequence of the armed conflict that happened on the territory of the

⁸“Widespread or systematic attack directed against any civilian population” [10, Article 172, Paragraph 1].

⁹The right to know: Families of missing persons have the right to know the fate of their missing family members and relatives, their place of (temporary) residence, or if dead, the circumstances and cause of death and location of burial, if such location is known, and to receive the mortal remains” [2, Article 3].

¹⁰Enforced disappearance means: “... persons arrested, jailed or detained against their will or otherwise deprived of their liberty by the representatives of different types or levels of government or of by organized groups or individuals who work on behalf of or with the support of (direct or indirect), consent or approval of the government, followed by refusing to reveal the fate or location of persons or to acknowledge the act of deprivation of liberty, which puts these people out of legal protection” [12].

former SFRY [2, Article 2]. Families of missing persons “have the right to know the fate of their missing family members and relatives, their place of (temporary) residence, or if dead, the circumstances and cause of death and location of burial, if such location is known, and to receive the mortal remains” [2, Article 3]. Bodies and institutions of Bosnia and Herzegovina are “obliged to provide families of the missing and relevant institutions in charge of tracing missing persons with available information and to give all necessary assistance to improve the tracing process” [2, Articles 4-6]. The status of the missing person is terminated on the date of identification, and the process of tracing the missing person is concluded. Identified person is the person for whom it is certain the mortal remains match its physical, biological characteristics, or the person is found alive. In the case when the missing person declared dead and its mortal remains are not found, the process of search is continued [2, Article 9]. This Law regulates the matters of the status of missing person, rights of the family members of missing persons, records of missing persons, supervision and the penal provisions.

In the case of Bosnia and Herzegovina, enforced disappearances are mostly connected with the detainees whose destinies is unknown after deportation and stay in camps and other places of detention. These unlawful arrests that violate right to a fair trial also violate right to a human treatment, right to protection of acts of violence, right to protection of physical and mental torture and other forms of compulsion, but also the right of families of missing persons and ICRC to know about their detention and arrest. This right is also deprived in the cases of their displacement to other detainee camps, used as an avoidance of the responsibility for “disappearance”. Geneva Conventions demand that every replacement of the prisoner of war from one place to other needs to done in a human manner, where the prisoner's safety would not be questioned and the government (usually military) that keeps prisoners is obliged to officially register the replaced prisoners (including the right of a prisoner to inform its family on the replacement) [13]. Enforced disappearances could be described as a serious violation for the continuity that characterizes them.¹¹

¹¹“1. Acts constituting enforced disappearance shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified. 2. When the remedies provided for in article 2 of the International Covenant on Civil and Political Rights are no longer effective, the statute of limitations relating to acts of enforced disappearance shall be suspended until these remedies are reestablished” [7, Article 17].

The truth on past is important because it yields to changing the attitudes, perceptions and myths about the killed ones, about the ones who were killing, about the ones who were giving orders, reasons for doing all the atrocities and where they finally brought. In this sense, it is an obligation to persist in demands for punishment of the organizers, commanders and perpetrators of the greatest crime committed in Europe after the Second World War but also punishment of the ones who use silence as approval of the crimes.¹²

In order to speed up the process of finding forcibly missing persons resulting from the armed conflicts that took place in the former Yugoslavia in the 1990s, an initiative to establish multilateral cooperation was launched within the London Summit held in 2014. The initiative covered six Balkan countries, Bosnia and Herzegovina, Kosovo, Serbia, Montenegro, Macedonia and Albania. The initiative resulted in the adoption of the Framework Plan for Resolving the Issue of Missing Persons from the Conflict in the Former Yugoslavia [15]. Further steps were taken as part of the Berlin Process for the Western Balkans, and in 2018 the Group for Missing Persons for the Western Balkans was formed to help improve the discovery process. As part of the Berlin Process, the Joint Declaration on Regional Cooperation and Good Neighborly Relations, the Declaration on Missing Persons and the Declaration on War Crimes were signed in July 2018 in London. The declaration was signed by the Prime Ministers of Albania, Austria, Bosnia and Herzegovina, Croatia, France, Germany, Italy, Kosovo, Macedonia, Montenegro, Poland, Serbia, Slovenia and the United Kingdom. By signing the Declaration, the signatories reaffirmed their commitment to efforts to find and identify some 12,000 people missing due to the conflict in the former Yugoslavia, whose remains have not yet been found [16]. According to the Framework Plan for Resolving the Issue of Missing Persons from the Conflict in the Former Yugoslavia, it is stated: “... the armed conflicts that took place in the 1990s led to significant population movements within the territory of the former Yugoslavia. In many cases, persons reported missing in one area were killed or disappeared in another. As a result, hidden tombs may contain the remains of victims who have been reported missing in a territory different from the territory in which the tomb is located” [15]. In this regard, Bosnia and

¹²“Past events we do not agree about become fundamental as a source of challenges that influence over us today: our disagreement on past becomes our disagreement on present and future” [14].

Herzegovina has accepted and signed the Declaration on the Role of the State in Resolving the Issue of Missing Persons Due to Armed Conflict and Human Rights Violations. The declaration was signed on August 29, 2014 in Mostar under the auspices of the ICMP. The signatories of the Declaration are the then presidents of the signatory states who committed themselves to cooperation in resolving the issue of missing persons through the responsibility of states with the aim of building cooperation, reconciliation and preserving lasting peace. The goal of the Declaration is to establish cooperation with the aim of exchanging information that will help find and identify the missing, and realize the right of families to know the fate of their members. In this purpose bilateral protocols on cooperation in the search for missing persons have been established. Such a Protocol was established on November 4, 2015 between the Council of Ministers of Bosnia and Herzegovina and the Government of the Republic of Serbia. The protocol regulates mutual relations and obligations in the search for missing persons in armed conflicts in the former Yugoslavia. The signatories of the Protocol undertake "through their competent bodies to establish cooperation in order to facilitate and expedite the procedure of handing over the remains of deceased persons to their families, will cooperate in informing the families who need to enter the identification procedure, provide the documentation necessary for the entry and handover of the remains of identified persons, bear the costs of funeral equipment, as well as the transport of mortal remains on the territory of their country [17]."¹³ On April 19, 2018, the Council of Ministers of Bosnia and Herzegovina and the Government of the Republic of Croatia signed a protocol regulating mutual relations on issues of information exchange, search for missing persons, finding bodies, attending exhumations and identifying persons [18]."¹⁴ Protocol on Cooperation in Searching

for Missing Persons between the Council of Ministers of Bosnia and Herzegovina and the Government of Montenegro was ratified by the Presidency of Bosnia and Herzegovina on June 10, 2020 [19]."¹⁵

- reaffirming the obligation of the parties to report on the fate of persons in their power or in the territory under their control,
 - aware of the need for cooperation in the search for missing persons and reaffirming the right of families to know the truth about their missing member, have agreed as follows:

I. BASIC PROVISION

Article 1

This Protocol regulates mutual relations, obligations and manner of cooperation between the competent authorities of Bosnia and Herzegovina and the Republic of Croatia in the process of searching for persons missing in the conflict on the state territory of the Parties, in order to effectively resolve missing persons, ie finding and identifying their remains.

II. ACTION BY THE PARTIES

Article 2

The Parties shall without delay, through the competent authorities, take all necessary measures and actions to investigate the fate of missing persons within their jurisdiction.

In implementing this Protocol, the competent authorities of the Parties may agree on rules of procedure.

Article 3

The Parties shall without delay exchange all information related to the resolution of cases of missing persons through their competent authorities.

Article 4

At the request of the other party, the Party shall unconditionally hand over the remains of the pre-identified missing persons within the jurisdiction of the other Party.

The remains shall be handed over no later than 30 days from the day of receipt of the request referred to in paragraph 1 of this Article.

III. EXHUMATION PROCEDURE

Article 5

In the event that one party has knowledge of the possible burial place of the remains of one or more missing persons in the state territory of the other party, it shall provide the information to the other party for verification.

Depending on the results of the verification referred to in paragraph 1 of this Article, either party may submit a proposal to the other party for the exhumation of the remains.

The Parties shall carry out all necessary checks within their competence and exchange available information and respond to the exhumation proposal within 60 days from the date of its receipt, and in the event that the information proves credible within the specified period the regulations of the State Party in whose territory the exhumation is being carried out.

Exceptionally, in cases when the request refers to the exhumation of mortal remains buried in common graves, the exhumation will be carried out in accordance with the agreement of the competent authorities of Bosnia and Herzegovina and the Republic of Croatia.

A Party shall promptly notify the other Party of the exhumation, which may direct its observers to the place where the exhumation is being conducted, in the territory of the State of the other Party, to be present throughout the exhumation.

The Party conducting the exhumation may inform the interested international organizations operating in its territory and which may send its observers to be present throughout the exhumation.

IV. IDENTIFICATION PROCEDURE

Article 6

The Parties shall exchange all available information regarding the identification of the remains of missing persons and persons whose remains are sought, which are of interest to one of the Parties.

Article 7

A Party shall promptly notify the other Party of the identification, which may send its observers to the place where the identification is being conducted, in the territory of the State of the other Party, to be present throughout the identification process.

The Party conducting the identification may inform interested international organizations operating in its territory and which may send its observers to be present throughout the identification process.

Article 8

The Parties shall cooperate in informing families who are called upon to identify the remains of missing persons, and in carrying out these activities they shall cooperate with representatives of international organizations involved in this procedure ..." [18].

¹⁵Pursuant to the Constitution of Bosnia and Herzegovina and the Decision of the Parliamentary Assembly of Bosnia and Herzegovina No. 01.02-21-1-436 / 20 of 28 May 2020, the Presidency of Bosnia and Herzegovina adopted the

¹³Pursuant to the Constitution of Bosnia and Herzegovina and the Decision of the Parliamentary Assembly of Bosnia and Herzegovina No. 01.02-05-2-541 / 16 of March 22, 2016, on April 4, 2016, the Presidency of Bosnia and Herzegovina adopted the Decision on Ratification of the Protocol on Cooperation in Searching for Missing Persons between the Council of Ministers of Bosnia and Herzegovina and the Government of the Republic of Serbia.

¹⁴Pursuant to the Constitution of Bosnia and Herzegovina and the Decision of the Parliamentary Assembly No. 01.02-05-2-329 / 18 of 7 March 2018, the Presidency of Bosnia and Herzegovina, on 19 April 2018, adopted the Decision on the ratification of the Protocol on Cooperation between Council of Ministers of Bosnia and Herzegovina and the Government of the Republic of Croatia in Search of Missing Persons. The text of the Protocol reads:

"The Council of Ministers of Bosnia and Herzegovina and the Government of the Republic of Croatia (hereinafter: the Parties),

- on the basis of the General Framework Agreement for Peace in Bosnia and Herzegovina initiated at Dayton on 21 November 1995 and signed in Paris on 14 December 1995,

- Desiring to contribute to mitigating the humanitarian consequences of war conflicts,

5. CONCLUSIONS

The issue of enforced disappearances in Bosnia and Herzegovina is still unresolved because a significant number of persons, their bodies and/or remains have not been found. There is no knowledge of their fate. This is a problem that significantly burdens relations in the region. Ways are still being sought to improve the process of searching for the missing. Due to the social significance of this issue, which still problematizes and burdens relations in the country and the region, it is important to look at new trends

Decision on Ratification of the Protocol on Cooperation in Searching for Missing Persons between Council of Ministers of Bosnia and Herzegovina and the Government of Montenegro. The text of the Protocol reads:

"The Council of Ministers of Bosnia and Herzegovina and the Government of Montenegro (hereinafter: the Parties),

- Desiring to contribute to the mitigation of the humanitarian consequences of the war conflicts in the territory of the former Socialist Federal Republic of Yugoslavia (hereinafter: SFRY),

- aware of the need for cooperation in the search for missing persons and affirming the right of families to know the truth about their missing member, have agreed as follows:

Article 1

The Protocol on Cooperation in Searching for Missing Persons between the Council of Ministers of Bosnia and Herzegovina and the Government of Montenegro regulates mutual relations, obligations and the manner of joint work of the Parties in searching for missing persons in the armed conflict in the former SFRY, to 2/14/1996 years, and on the territory of the signatory states to this Protocol.

Article 2

The Parties agree to take all necessary measures without delay and to improve mutual cooperation in order to resolve all cases of persons listed as missing.

In accordance with the criteria established by the International Convention for the Protection of All Persons from Enforced Disappearance, a missing person is a person about whom the family has no news and / or is reported on the basis of reliable information as missing due to armed conflict in the former SFRY.

Article 3

The Parties shall without delay, through their competent authorities, exchange available information and documentation relevant to the resolution of missing persons' cases.

Article 4

The Parties shall pay special attention to cooperation in the exchange of available information and documentation on the establishment of graves, the process of exhumations and / or the identification of the remains of missing persons.

The Parties shall ensure compliance with standards and principles relating to the protection of personal data (privacy), including medical records.

Article 5

In the case of exhumations and / or identifications of common interest, the Parties shall promptly inform each other of the time of exhumation and / or identification and allow the presence of a representative of the other Party as an observer.

Attendance shall also be provided to interested international organizations, in accordance with their mandate in the territory of the State of the Party conducting the exhumation and / or identification.

Article 6

The Parties shall establish cooperation through their competent authorities to facilitate and expedite the handover of the remains of missing persons, shall cooperate in informing families who need to proceed with the identification procedure, remains, as well as the cost of transporting the remains to the territory of their country.

Article 7

The Parties shall agree and establish working rules and procedures for the implementation of this Protocol within 90 days from the date of signature.

Article 8

The competent authorities and organizations of both Parties shall, within their respective spheres of competence, assist in the implementation of the commitments made in concluding this Protocol.

The Parties agree that the competent authorities referred to in the preceding paragraph shall regularly monitor the implementation of this Protocol and coordinate cooperation in the field of missing persons, and to that end, if necessary, at the request of one of the Parties, organize meetings..." [19].

established in the new circumstances and frameworks, which search for the still large number of missing persons. Unresolved cases of enforced disappearances are an issue that significantly undermines the human rights segment. Emphasis is placed on *the right to the truth*, which is affirmed by all important international documents that recognize the right of victims and their families. It is important to find out the truth about what happened and what the causes are, and to identify victims and perpetrators, but also to preserve documentation on violations of rights in order to prevent the revision of the past and the denial of crimes. Under international law, enforced disappearances are considered unsolved crimes until the fate of the persons against whom this form of crime was committed is established. The Convention for the Protection of Persons from Enforced Disappearance also considers family members of enforced persons to be victims of enforced disappearances. The Convention against Torture obliges the families of missing persons to be provided with adequate reparations, including adequate compensation. Also, the European Court of Human Rights considers inhumane treatment that the families of forcibly missing persons are not informed, i.e. they do not have information about what happened to their close members, i.e. where their bodies or remains are. The Convention against Torture also sanctions this as inhumane treatment. Families have the right to receive information about their members. If they are killed, their families have the right to know the circumstances, the cause of death and the place of burial, if such a place is known, and to receive the remains. The competent state bodies and institutions of Bosnia and Herzegovina are obliged to provide the information they obtain to the competent institutions for the search for missing persons as well as to the families of the missing. Until the person or his remains are found his status cannot be changed. The status of a missing person ceases on the day of identification, which concludes the procedure for searching for a missing person. The activities through regional cooperation seek to ensure the continuity of the search for missing persons and provide assistance to their family members. Therefore, they are trying to find new models of action that would respond to the demands arising from the imposed question, and phlegmatize relations in the region. Commitments made by accepting and signing international resolutions, declarations, protocols, treaties, constitutions, laws and other legislation must be respected in order to address the issue of enforced disappearances as a crime that is still

going on. Protocol on Cooperation in Searching for Missing Persons between the Council of Ministers of Bosnia and Herzegovina and the Government of Montenegro was ratified by the Presidency of Bosnia and Herzegovina on June 10, 2020.

Bilateral Protocols confirm the common desire to mitigate the consequences of armed conflicts in the former Socialist Federal Republic of Yugoslavia. Agreed agreements in the process of searching for missing persons determine mutual relations, obligations and manner of joint work and exchange of information and documentation important for resolving individual cases of missing persons, determining the existence of individual and mass graves, the process of

exhumation and / or identification of remains, and the handover procedure the remains of missing persons.

REFERENCES

- Convention for the Protection of Human Rights and Fundamental Freedoms (1950).
- Law on Missing Persons in Bosnia and Herzegovina, "Službeni glasnik Bosne i Hercegovine", broj 50/04 ("Official Gazette of Bosnia and Herzegovina", No. 50/04).
- The Institute for Missing Persons of Bosnia and Herzegovina - Central Records database of Missing Persons (2021).
- The International Committee of the Red Cross - Central Records database (2021).
- Protocol Additional to the Geneva Conventions of 12 August 1949. <http://www.ohr.int/the-agreement-on-the-recovery-and-identification-of-mortal-remains-in-the-brcko-district-signed-today/>

Received on 22-03-2023

Accepted on 15-04-2023

Published on 03-05-2023

<https://doi.org/10.6000/2817-2302.2023.02.06>

© 2023 Meldijana Arnaut Haseljić; Licensee Lifescience Global.

This is an open access article licensed under the terms of the Creative Commons Attribution License (<http://creativecommons.org/licenses/by/4.0/>) which permits unrestricted use, distribution and reproduction in any medium, provided the work is properly cited.