



**International Convention for
the Protection of All Persons
from Enforced Disappearance**

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Committee on Enforced Disappearances

**Additional information submitted by Serbia under
article 29 (4) of the Convention***

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I. Criminalization of enforced disappearance as a separate criminal offence in accordance with the definition in Article 2 of the Convention and its adequate sanctioning

1. Amendments to the Criminal Code¹ from 2016, the act of committing the criminal offence of Crimes against Humanity (Article 371 of the Criminal Code) has been explicitly expanded to enforced disappearances in order to comply with Article 2 of the Convention. Furthermore, within the framework of continuously aligning the Criminal Code with international standards during the process of joining the EU, work shall continue on the harmonisation of criminal legislation with international norms in order to explicitly criminalise enforced disappearances.

2. With regard to the appropriate sentence, the Criminal Code stipulates that the penalty for an offence under Article 371 may not be lower than a prison sentence of at least five years, therefore envisaging that the sentence ranges from 5 to 20 years, with the possibility of life imprisonment.

3. Moreover, the submissions from the first periodic report regarding partial compliance through, above all, the criminal offences of Unlawful Depriving of Liberty under Article 132 and the criminal offence of Abduction under Article 134 remain as current.

II. Obsolescence

4. With regard to obsolescence, criminal prosecution and execution of a sentence do not become obsolete for the criminal offence provided for under Article 371, as well as for criminal offences for which a sentence of life imprisonment is prescribed, nor for criminal offences for which, according to ratified international treaties, the statute of limitations cannot occur.

III. Investigations involving enforced disappearances, access to archives, punishment of those responsible and support to competent services

5. The National War Crimes Prosecution Strategy for the period 2016–2020 foresees obligations on part of the Republic of Serbia to investigate criminal acts of war crimes committed within the territory of the former Yugoslavia, including criminal acts of enforced disappearances, as well as sanction responsible persons accordingly. The War Crimes Investigation Service of the Criminal Police Directorate in the Ministry of Interior, as well as a specialised organisational unit, responsibly, professionally and impartially deal with the detection, clarification of circumstances and reporting of all war crimes to the Office of the War Crimes Prosecutor without selecting suspects on any grounds.

6. The Ministry of Interior continuously cooperates with all procedural entities within court proceedings conducted for war crimes, providing all relevant documentation that could represent evidence. In that sense, the Ministry of Interior, through the Ministry of Justice, continues to cooperate with the United Nations International Residual Mechanism for Criminal Tribunals, as the legal successor of the International Criminal Tribunal for the former Yugoslavia. In addition, representatives of the Ministry of Interior are actively participating in activities of the Working Group of the Committee for Kosovo and Metohija of the National Assembly of the Republic of Serbia to gather facts and evidence in shedding light on crimes against members of the Serbian people and other national communities in Kosovo and Metohija, which was established in 2015, as well as in the work of the Commission for Missing Persons, which was formed by a decision adopted by the Government of the Republic of Serbia in 2006, with the mandate of resolving issues involving persons who went missing during armed conflicts in the former SFRY.

¹ “Official Gazette of the RS”, number 94/2016.

7. During the reporting period, the Office of the War Crimes Prosecutor acted within its competence, which includes detecting and prosecuting perpetrators of war crimes committed within the territory of the former SFRY and actively participating in clarifying the fate of persons still listed as missing.

8. In order to increase efficiency in its work, while implementing activities from the National War Crimes Prosecution Strategy, on 4 April 2018 the Prosecutorial Strategy for Investigation and Prosecution of War Crimes was adopted, aiming, among others, to achieve progress in clarifying the fate of missing persons and improving the mechanism of protection and support for witnesses and victims; since then, we have been working on its implementation. This strategy is expected to provide a maximum contribution in clarifying the fate of persons still listed as missing, by intensifying investigations in the direction of discovering sites containing the remains of victims from armed conflicts in the former SFRY.

9. In line with the Action Plan for Negotiating Chapter 23 and the National War Crimes Prosecution Strategy, the capacities of the Office of War Crimes Prosecutor have been strengthened during the reporting period, however, there is still room for further improvement. The new War Crimes Prosecutor came into office on 31 May 2017.

10. At the beginning of September 2018, a new decision adopted by the State Prosecutorial Council² on the number of deputy public prosecutors came into force, according to which the Office of the War Crimes Prosecutor would have, in addition to prosecutors, 11 deputy war crimes prosecutors, thus strengthening the OWCP's capacity. At the end of the reporting period, ten persons performed the function of Deputy War Crimes Prosecutor, while 32 persons were employed in the administration.

11. In the forthcoming period, the OWCP shall employ one person at the position of psychologist, who shall be tasked with working with victims and witnesses, which will significantly contribute to strengthening the capacities of the Information and Support Service for Victims and Witnesses of Crime.

12. The prosecution service regularly takes an active part in the UNDP project "Strengthening Regional Cooperation in Prosecuting War Crimes and Searching for Missing Persons", within which several regional consultations and meetings have been held so far, with the participation of representatives of regional prosecutor's offices and the IRMCT.

13. In the period from 2015 to December 2020, a large number of war crimes perpetrators had been prosecuted, whose cases involved events in which injured parties were abducted and disappeared and where remains were found later, at various locations ("Štrpci" case, "Ćuška" case, main trials under way, "Trnje" case, finalised).

14. The Commission for Missing Persons does not have an investigative mandate, rather within its mandate it deals with searching for missing persons through the process of registering missing persons, exhumations, identification and handover of mortal remains. All relevant information and documentation collected during the work of the Commission is available to the competent state authorities for investigation and prosecution of war crimes and the search for missing persons.

15. The Commission actively cooperates and exchanges available information and documentation with bodies competent for finding missing persons of other countries on the basis of signed agreements and protocols on cooperation and within the framework of the Belgrade-Priština dialogue according to established cooperation mechanisms.

16. In order to enhance cooperation with the Commission for Missing Persons, on 12 June 2018 the Prosecutor for War Crimes and the President of the Commission for Missing Persons signed a Memorandum of Cooperation.³ An Expert Group for Resolving Missing Persons in the Former SFRY was established with the basic task of collecting, processing and exchanging data on missing persons in order to resolve specific cases. A representative of the Office of the War Crimes Prosecutor regularly participates in the work of the aforementioned group.

² "Official Gazette of the RS", Nos. 106/2013, 94/2015, 114/2015, 80/2016, 39/2018, 68/2018.

³ See items 25 and 26 of this Report.

17. In order to resolve the remaining cases, a special expert group was formed with the aim of strengthening cooperation between bodies responsible for investigating war crimes. The expert group consists of representatives of the Commission for Missing Persons, the Office of the War Crimes Prosecutor, the Ministry of Justice, the War Crimes Investigation Service, and the Military and Civilian Security Services.

18. The expert group has a mandate to collect, process, exchange and analyse data related to locations, events and specificities of cases involving missing persons. All available documentation relevant for establishing the facts of enforced disappearances, collected through the work of this expert group, was submitted by the Commission to stakeholders in the previous period.

19. A representative of the prosecution took part in the working meeting held on 23 October 2020 between the Commission of the Government of the Republic of Serbia and the Commission of the Government of the Republic of Croatia for Missing Persons, further confirming the serious commitment to regional cooperation in resolving the issue of missing persons with the competent state authorities of the Republic of Croatia.

20. As part of the Berlin Process at the level of Prime Ministers, the Joint Declaration on Missing Persons was adopted on 10 July 2018 in London, whereby, on 6 November 2018, as part of the declaration, at the level of domestic institutions for missing persons, the Framework Plan for resolving the issue of missing persons from the conflict in the former Yugoslavia was signed in The Hague, consisting of activities aimed at resolving about 4,000 cases of unidentified remains throughout the former Yugoslavia, exchanging data on cases of missing persons among domestic institutions and families of missing persons through the "Database of Active Missing Persons Cases From the Armed Conflicts in the Former Yugoslavia during the 1990s", exchanging information on possible locations of hidden graves and joint exhumations, involving families of missing persons in the process and organizing joint commemorations to mark International Day of the Disappeared.

21. In order to implement the Framework Plan, the Missing Persons Group (MPG) has been formed, consisting of domestic institutions that are responsible for searching for and identifying missing persons from the Republic of Serbia, Bosnia and Herzegovina, the Republic of Croatia, Montenegro and so-called Kosovo. In order to implement the Framework Plan more efficiently and in a timely manner, the Missing Persons Group has established two Operational Groups, one for the database and the other for unidentified remains. Both groups achieved significant results, which were positively assessed by the Ministry of Foreign Affairs of the United Kingdom and the International Commission on Missing Persons (ICMP).

22. A regional database "Database of Active Missing Persons Cases from the Armed Conflicts in the Former Yugoslavia" has been established, which contains a total of 12,211 unique names, of which 11,740 are still active missing persons cases. Domestic institutions use this database on a daily basis to exchange data and information, which is a key achievement of the multilateral cooperation process. In the following period, work shall continue on the harmonisation of data in the working version of this database with the aim of its publication, which will be interactive and publicly available.

23. In order to identify about 4,000 cases of unidentified remains throughout the former Yugoslavia, experts from domestic institutions shared their knowledge of best practices and methods in solving unidentified cases, exchanged and analysed documentation from their archives, and also analysed cases without isolated DNA profiles, which resulted in the resolution of three cases that involved missing persons whose identification had been delayed for more than two decades. These activities shall continue in the future, whereby a certain number of cases are still expected to be resolved.

24. In accordance with Article 10, paragraph 4 The Law on Migration Management⁴ and point 5, Objective 2 of the National War Crimes Prosecution Strategy, envisage conducting an analysis of the organisational structure and position of the expert service of the Commission for Missing Persons with the aim of improving efficiency and sustainability.

⁴ "Official Gazette of the RS", number 107/2012.

Having in mind the aforementioned, all in order to provide a comprehensive, professional and systematic approach to resolving this issue, an analysis of the organisational structure and position of the professional service had been conducted, whereby in accordance with the Rulebook on internal organisation and systematisation of work positions of the Commissariat for Refugees and Migration, the Missing Persons Division, which until then was under the auspices of the Sector for Reception, Care, Readmission and Permanent Solutions, was superseded by the Missing Persons Department, as a specialised internal unit outside the sector that has two smaller internal units: the Missing Persons Group for AP Kosovo and Metohija and the Missing Persons Group for the former SFRY. The Missing Persons Department consists of 9 executive positions instead of the previous 5.

25. On 12 June 2018, in accordance with the National War Crimes Prosecution Strategy in the Republic of Serbia and the Prosecutorial Strategy for Investigation and Prosecution of War Crimes in the Republic of Serbia, the Commission for Missing Persons and the Office of the War Crimes Prosecutor signed a Memorandum of Cooperation. In view of the fact that the common goal is to shed light on the fates of persons listed as missing in connection with armed conflicts in the former SFRY, that the clarification of the fates of persons still listed as missing is in direct connection with conducting a thorough investigation and bringing to justice those responsible for enforced disappearances during armed conflicts within the territory of the former SFRY and the territory of the Autonomous Province of Kosovo and Metohija, as well as that a significant number of persons are still listed as missing, certain concrete results have been achieved so far.

26. The memorandum was signed in order to define the procedure for more efficient exchange of data, information and documentation regarding the circumstances of missing persons and possible locations of individual and mass graves. This act also regulates mutual cooperation among these institutions in informing about activities and events that are related to the establishment and quality of cooperation with bodies, organisations and institutions at the regional and international level, as well as conclusions and recommendations adopted at conferences and the need for joint participation at conferences and expert gatherings significant for resolving missing persons cases and prosecuting war crimes.

27. Over the course of the reporting period, the technical and financial resources of the Commission on Missing Persons were further strengthened through cooperation and a donation from the United Kingdom Government through the United Nations Development Programme (UNDP) in the form of equipment for field research and locating the remains of missing persons. The donated technical equipment (geo-radar with a drone) is used to detect changes in the ground and shall enable the Commission to search the terrain faster, including hard-to-reach locations, where there are suspicions that the remains of missing persons may be found. Furthermore, the Government of the United Kingdom, through the UNDP, the Ministry of Foreign Affairs of the Swiss Confederation and the Ministry of Foreign Affairs of Finland, allocated funds for the work of the Commission to investigate the Kiževak mine near Raška and find the remains of persons missing in connection with the conflicts in Kosovo and Metohija.

IV. Suspension from work and ban on participation in the investigation of persons suspected of enforced disappearances

28. With respect to paragraph 16 of the Concluding remarks concerning the implementation of the Committee's recommendation to adopt explicit legal provisions directly establishing a suspension during the investigation of any state officials, civilians or military personnel under suspicion of perpetrating the criminal offence of enforced disappearance, as well as regarding a mechanism ensuring that members of the police or security forces under suspicion of committing the offence of enforced disappearance, regardless of whether they are civilians or military personnel, are not included in such an investigation, we point out that enforced disappearance has been elaborated under Chapter 14 of the Criminal Code – "Criminal offences against Freedoms and Rights of Man and Citizen". In essence, the criminal offence of "Unlawful Depriving of Liberty" under Article 132, as well as other criminal offences under Chapter 14, elaborate in detail criminal liability for enforced disappearance of a person.

29. The institutes of suspension from work and mandatory exemption in criminal proceedings are provided by positive regulations of the Republic of Serbia. Article 217 of the Law on Police⁵ stipulates that employees in the Ministry of Interior may be temporarily dismissed from work, at the reasoned proposal of the competent official, when an order has been issued against them to investigate a criminal offence prosecuted ex officio, or disciplinary proceedings have been initiated for serious misconduct of duties and if their presence at work might harm the interests of the service, interfere with the procedure of gathering evidence or interfere with the course of criminal or disciplinary proceedings, along with a special explanation.

30. Article 37 of the Criminal Procedure Code⁶ prescribes provisions on the exemption of judges and lay judges, while Article 42 stipulates that the aforementioned provisions on exemption apply accordingly, inter alia, also to public prosecutors and persons authorised by law to replace the public prosecutor in the procedure. Moreover, Article 42 of the Criminal Procedure Code stipulates that when authorised police officers undertake evidentiary actions on the basis of the Criminal Procedure Code, the public prosecutor must decide on their exemption. If the keeper of the minutes participates in undertaking these actions, the authorised police officer who undertakes the action shall decide on his/ her exemption.

31. In addition to this status, professional military personnel may also hold the status of authorised officials of the Military Police. Suspension during investigation, for any criminal offence, including enforced disappearance, is provided for in Article 77 of the Law on the Serbian Armed Forces⁷ as “Removal from duty”, which defines in paragraph 2 that a professional military person can be removed from duty if he/she is caught in committing a serious violation of military discipline or if criminal charges have been brought against him/her or proceedings for disciplinary offence and the crime or the disciplinary offence is of such nature that it would be harmful for the interest of the service that such a person should remain in duty. The very fact that a person is removed from duty is at the same time a mechanism that excludes a suspect from participating in the investigation.

32. At this moment, the Republic of Serbia does not have explicit legal provisions that directly establish a suspension during investigation of persons authorised by the state, civilians or military personnel, who are suspected of the criminal offence of enforced disappearance. The Security Information Agency is of the opinion that, logically and essentially, it is impossible to introduce “explicit legal provisions that directly establish” the suspension of this category of persons in case they are under suspicion of the criminal offence of “enforced disappearance”, without first incriminating enforced disappearance in the Criminal Code as a special offence.

33. Based on the referring provision from Article 20a of the Law on the Security-Information Agency,⁸ according to which the Agency was established and which regulates its competencies, tasks and authorisations, the provisions of Article 217 of the Law on Police shall apply to members of the Agency in the event, among other things, that they are ordered into custody by the competent court, a measure is taken to ensure the presence of the accused for unhindered criminal proceedings, and in particular when an order is issued against them by the public prosecution for a criminal offence that is prosecuted ex officio.

34. Taking into account that all of the acts (actions) described in Article 2 of the Convention are undoubtedly incriminated as various (special) criminal offences in the Criminal Code of the Republic of Serbia and that they all are prosecuted ex officio, as well as that custody may be ordered for all of the aforementioned, it can be stated that, although at the present the Republic of Serbia has not incriminated enforced disappearance as a special criminal offence, in case a member of the Security Information Agency is suspected of committing these criminal offences (arrest, detention, kidnapping or other form of deprivation of liberty, with refusal to recognize deprivation of liberty or conceal the fate of a

⁵ “Official Gazette of the RS”, Nos. 6/2016, 24/2018 and 87/2018.

⁶ “Official Gazette of the RS”, Nos. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014 and 35/2019.

⁷ “Official Gazette of the RS”, Nos. 116/07, 88/09, 101/10 - state law, 10/15, 88/15 - CC, 36/18 and 94/19.

⁸ “Official Gazette of the RS”, Nos. 42/02, 111/09, 65/14 - CC, 66/14 and 36/18.

missing person or place the person is located by which the aforementioned is placed outside the protection of the law), the stated provisions of the valid legal framework in the Republic of Serbia (a) guarantee one's suspension from work (b) which absolutely excludes any possibility of this person's participation in the investigation of such crimes.

35. This is due to the fact that in such cases he/she must be deprived of his/her official badge, official identification card, weapons and other means entrusted to him/her for the performance of his/her duties (paragraph 10 of Article 217 of the Law on Police), thus excluding the possibility of his/her appearance at one's workplace.

V. Witness protection in court proceedings related to war crimes and enforced disappearances

36. The provisions of the Criminal Procedure Code clearly regulate the phase of investigation and the ways of protecting an injured party or witness from insult, threat and any other attack during court proceedings. Accordingly, we are of the opinion that positive regulations have already established the necessary measures and mechanisms that can ensure the protection of witnesses from intimidation or threats, i.e. the prosecution of potential perpetrators of these threats and intimidation.

37. In its work, the Office of the War Crimes Prosecutor applies the Criminal Procedure Code, which in Article 102 prescribes that the authority conducting proceedings is required to protect an injured party or witness from an insult, threat and any other attack, as well as that the public prosecutor's authority is to prosecute or immediately inform the competent prosecutor about the receipt of a notification from the police or the court or upon learning about the existence of violence or a serious threat directed at an injured party or a witness. Moreover, the Office of the War Crimes Prosecutor applies the Law on the Protection Programme for Participants in Criminal Proceedings and thus strengthens the rights of witnesses in order to protect their lives, health, physical integrity, freedom or their property.

38. According to the Prosecutor's Strategy, acting Deputy Prosecutors are authorized to initiate various procedural and extra-procedural measures for witness protection whenever the need arises, whether it is a particularly sensitive witness or a witness whose security is endangered due to his/her testimony. With the aim of improving cooperation, representatives of the Office of the War Crimes Prosecutor and the Protection Unit signed a Protocol on Cooperation in the Field of Witness Protection on 6 July 2017.

39. Over the course of 2017, the Witness and Victims Information and Support Service (SIP) was established within the Office of the War Crimes Prosecutor, which at that time had a coordinator and two members. The administrative capacities of this Service were strengthened in September 2019, when 4 more prosecutor's assistants, 2 deputies and a secretary of the prosecutor's office were assigned to it. Two members of the Service have been designated as contact persons within the Protection Unit.

40. The Witness and Victims Information and Support Service provides support to witnesses, inter alia, by informing them that they may be protected by the granting of protected witness or particularly sensitive witness status, if there are justified concerns for their safety, following an assessment based on available information.

41. According to the Rulebook on internal organisation and systematisation of work positions in the Ministry of Interior of 13 June 2018, the competencies of the Division for Cooperation with Domestic and Foreign Judicial Bodies within the War Crimes Investigations Service, Department for Cooperation with Domestic and Foreign Judicial Bodies, Operational Analytics, Documentation and Support, have been supplemented.

42. This supplement provided within the competence of the aforementioned, among other things, is as follows: participation in security assessment and measures establishing police protection of families and witnesses in war crimes cases before the International Criminal Tribunal for the Former Yugoslavia and domestic courts and supervision of their implementation; ensuring the presence of witnesses of interest to the International Criminal Tribunal for the former Yugoslavia; providing support to victims and witnesses and out-of-

court witness protection, referring to identity protection measures when testifying before domestic judicial authorities.

VI. Prohibition of expulsion, return, surrender, or extradition in case of a danger of enforced disappearance

43. Although the Law on Mutual Legal Assistance in Criminal Matters does not contain an explicit prohibition on extradition when there are justifiable reasons that a person shall be threatened with enforced disappearance, each individual extradition case is examined by a competent court taking into account the individual circumstances of the case, in accordance with international human rights standards in respect of any person.

44. Activities are under way to change the legal framework for asylum in the Republic of Serbia and its adjustment to European Union standards, among other things, within cooperation between the Republic of Serbia and EASO under the auspices of the project “Regional Support to Protection-Sensitive Migration Management in the Western Balkans and Turkey” through development and implementation of a roadmap and pilot of an Action Plan.

VII. Mandatory training of all authorised persons in accordance with Article 23 of the Convention

45. The Judicial Academy has developed a module for training in the field of human rights and this training is continuously implemented both for participants in initial training so that participants in initial training are completely ready to perform functions in the judiciary, and also through continuous training for judicial office holders. The initial training programme also includes the acquisition of knowledge concerning the European Convention on Human Rights and the standards of the European Court of Human Rights in Strasbourg.

46. Within the criminal law segment of the training, a special unit is dedicated to detention and in particular to international legal standards concerning respect for the right to liberty and security of citizens, including unlawful deprivation of liberty. The Judicial Academy’s ongoing training programme and action plan also includes training of judges and prosecutors for the implementation of international human rights conventions, including relevant United Nations standards.

47. Within its competence both in regards to recommendations and measures for the prevention of enforced disappearances (Articles 16–23), in the requested period (2015–2020) the Judicial Academy organised 27 educational events, whose beneficiaries were judges, prosecutors and members of the Ministry of Interior and which examined certain issues relating to the Convention for the Protection of All Persons from Enforced Disappearance.

48. The following were held:

- 6 seminars on the topic “War crimes trial” – attended by judges and prosecutors of the War Crimes Department, as well as judicial and prosecutorial assistants in those departments (10 participants per seminar);
- 16 seminars on the topic “Methodology for conducting investigations in cases of ill-treatment by the police” – attended by prosecutors, assistant prosecutors and police officers (15 participants per seminar);
- 2 seminars on “Prohibition of Torture, Inhuman or Degrading Treatment or Punishment” – attended by judges and prosecutors, as well as judicial and prosecutorial assistants (13 participants per seminar) and
- 3 seminars on the topic “Witness protection in criminal proceedings” – which was attended by judges of the criminal department and prosecutors and assistant judges and prosecutors who act in this matter (20 participants per seminar).

49. In relation to paragraph 22 of the Concluding Observations of the Committee on Enforced Disappearances, in the period from 2015 to 2020 in the thematic area

“Implementation of instructions on the treatment of arrested and detained persons” covered by the Convention, the Ministry of Interior implemented 22 seminars over the course of 2015 for 578 police officers, 3 seminars for 67 police officers in 2016, as well as 12 seminars for 79 police officers in 2018.

50. Authorised officials of the Military Police participate in securing certain categories of prisoners of war at locations where they are temporarily detained and in bringing certain categories of prisoners of war to the competent authorities. During training for work within the units of the Military Police, the mentioned persons also are provided with training relating to the legal treatment of the stated categories of persons. In addition to the provisions defined in domestic legislation, especially in the Criminal Procedure Code, provisions contained in the Geneva Convention, international war and humanitarian law, as well as in the International Convention for the Protection of All Persons from Enforced Disappearance, are also studied.

51. According to the valid legal regulations in force in the Republic of Serbia, all employees of the public administration, including members of the Security Information Agency, must pass a state (professional) exam for working in state authorities of the Republic of Serbia before starting their employment for an indefinite period.

52. The material covered by the professional exam programme partly deals with issues concerning respect for basic human rights and freedoms, guaranteed by the Constitution of the Republic of Serbia and international instruments that bind the Republic of Serbia and are an integral part of its legal order and directly applied.

53. The Security Information Agency organises a professional development programme for its members, governed by general acts, which also covers the subject matter of established human rights and freedoms, including rights that are the subject of the protection under this Convention. The education of members in this regard is regular – it begins with the establishment of employment and takes place constantly, as long as the member is employed by the Agency.

54. In accordance with the activities envisaged by the National War Crimes Prosecution Strategy and the Action Plan for Negotiating Chapter 23, deputy war crime prosecutors, assistant prosecutors and other officers of the Office of the War Crimes Prosecutor continuously attend training courses in the field of international criminal and international humanitarian law, through which they attain knowledge correlating to the objectives of the Convention.

55. In the reporting period, employees of the prosecution service attended a number of training courses in these areas, among other things, they took part in professional training courses, such as on “Crime against humanity and command responsibility” and “Treatment of witnesses and victims in war crimes cases”, at a regional conference entitled “Detention – regional criminal legislation, implementation experience and improvement measures”, and participated in an on-line course during 2020 within the Council of Europe’s HELP programme, entitled “Introduction to the European Convention on Human Rights and the European Court of Human Rights”.

56. In the forthcoming period, the War Crimes Prosecutor shall initiate training in accordance with Article 23 of the International Convention for the Protection of All Persons from Enforced Disappearance

VIII. Defining the term “victim of enforced disappearance” in accordance with Article 24 of the Convention

57. In accordance with the Action Plan for the implementation of the National Strategy on the Rights of Victims and Witnesses of Crime in the Republic of Serbia 2019–2025 and the Action Plan for Negotiating Chapter 23: “Judiciary and Fundamental Rights”, amendments to the criminal legislation have been envisaged in order to align the definition of victim with international standards and Directive (2012) 29 EU.

IX. Compensation to victims of enforced disappearances

58. The National Strategy on the Rights of Victims and Witnesses of Crime in the Republic of Serbia 2019–2025 sets as one of the priorities the improvement of efficiency in exercising the right to compensation. The idea is to achieve this goal by improving the efficiency of deciding on property claims within criminal proceedings.

59. In that sense, “Guidelines for the improvement of court practice in procedures for damage compensation for victims of criminal offences” have been developed for public prosecutors and judges of criminal departments, which contain practical instructions on determining the amount of damage, types of non-pecuniary damage and cash compensation for both non-pecuniary and pecuniary damages. The guidelines indicate the obligation of the competent authorities to resolve the issue of compensation within criminal proceedings, while civil proceedings would be the exception, not the rule.

60. In order to acquaint victims with the right to compensation and mechanisms for exercising this right as soon as possible and thus facilitate the submission of property claims, unique forms for filing property claims shall be developed, hence support in filling the aforementioned shall be provided by the Victim Assistance and Support Service within the framework of the primary support programme. Training courses on deciding on property claims shall be conducted for judges of criminal departments and public prosecutors. In this manner, it shall be possible for judges who act in criminal proceedings to have uniform guidelines for deciding on property claims within criminal proceedings, adopted by the Supreme Court of Cassation. In accordance with the AP accompanying the Strategy, it must be ensured that at least 200 public prosecutors and judges acting within criminal proceedings are provided training to apply the Guidelines.

61. Regarding the realization of property claims in litigation proceedings, the plan is to draft a Law amending the Civil Procedure Code with the aim of improving the position of victims in the process of exercising one’s rights in respect of a property claim upon litigation.

62. The Law on the Rights of Soldiers, Disabled Veterans, Civilian Disabled Veterans and Family Members⁹ entered into force on 11 March 2020 and it has been in force since 1 January 2021. This Law regulates the rights and conditions for exercising the rights of soldiers, disabled veterans, civilian disabled veterans and civilian victims of war, family members of fallen and deceased soldiers, families of disabled veterans and military personnel who were killed or died in the Armed Forces, families of civilian disabled veterans and civilian victims of war.

63. According to this Law, among other things, professional rehabilitation and financial assistance during professional rehabilitation are provided, as well as solving housing needs. The law does not include restitution and rehabilitation, bearing in mind that the Law on Rehabilitation and the Law on Restitution of Confiscated Property and Compensation are in force in the Republic of Serbia, according to which these issues are regulated.

X. Search for missing persons and their identification

64. The Commission for Missing Persons of the Republic of Serbia and the Belgrade delegation of the Working Group for Missing Persons are making continuous efforts to speed up the process of searching for missing persons in the Autonomous Province of Kosovo and Metohija, given the reduced scope and slowdown in activities in this area. There is also still a delay in the process of exhuming the remains of persons within the territory of AP Kosovo and Metohija, as well as a delay in the process of identification.

65. Due to the importance of the issue of missing persons, especially having in mind its humanitarian character, cooperation with EULEX and temporary institutions in Kosovo and Metohija continues through the already existing mechanism of the Working Group for Missing Persons within the Belgrade-Priština dialogue (hereinafter: Working Group).

⁹ “Official Gazette of the RS”, number 18/2020.

66. The Working Group was established in connection with the relevant provisions of International Humanitarian Law in 2004. The meetings of the Working Group are held under the auspices of the Special Representative of the Secretary-General of the United Nations, in the context of UN Security Council Resolution 1244 (1999). The Working Group consists of the Belgrade and Priština delegations (representatives of the UN and temporary institutions), and it is chaired by the International Committee of the Red Cross (ICRC). Representatives of the International Commission on Missing Persons (ICMP) participate in activities of the Working Group, as do members of the diplomatic corps of countries that have their missions in Kosovo and Metohija, the OSCE and representatives of associations of families of missing persons. Protocols signed by the Coordination Centre for Kosovo and Metohija with UNMIK on 11 February 2002 are also applied through this cooperation mechanism (Protocol on joint verification teams for hidden prisons, Protocol on exchange of forensic experts and expertise and Protocol on cross-border repatriation of identified remains).

67. The mechanism of the Working Group responded to its mandate and was maintained despite numerous challenges, and as such it still represents the only framework for the Republic of Serbia to find persons missing in the Kosovo and Metohija conflict. Since the establishment of the Working Group until present, the Belgrade delegation, respecting the Working Rules adopted by all participants, fulfilled its obligations, contributing to the improvement of the process and accelerating the timetable of activities, believing that joint work and direct cooperation between Belgrade and Priština have no alternative for resolving the issue of missing persons.

68. In accordance with the Working Rules, a Table of Undertaken Obligations was established, where requests both from Belgrade and Priština were entered, referring to checking the locations of possible mass graves and individual grave sites where the remains of missing persons might be buried. The Belgrade delegation responded to all of the requests made by the Priština delegation, while the Priština delegation consciously avoids answering our requests and checking the truthfulness of submitted information.

69. So far, the Belgrade delegation has handed over 2,500 different documents to the Priština delegation, which refer to information from the archives of competent state authorities of the Republic of Serbia (Ministry of Defence, Ministry of Interior, communal enterprises, and so-forth). Based on this documentation, the remains of a large number of persons of Albanian nationality were exhumed in the Autonomous Province of Kosovo and Metohija, identified and handed over to their families. On the other hand, the Priština delegation did not provide any information that would indicate a possible grave in which the remains of killed Serbs and other non-Albanians were buried.

70. In order to progress in this process, a responsible approach to solving this problem is expected from the Priština delegation, bearing in mind that the Belgrade delegation requested it to both provide relevant information on the basis of which the remains of victims could be found and handed over and also open the archives of the so-called KLA (for which the Belgrade delegation submitted excerpts from the diaries of members of the so-called KLA, which in the period 1999–2003 were seized by KFOR) that contain significant data for resolving the issue of missing persons.

71. In the reporting period, in order to resolve cases of missing persons in Kosovo and Metohija and reach an agreement on specific activities, 12 sessions of the Working Group, eight sessions of the Working Sub-group for Forensic Issues, and eight sessions of the Analysis Team were held. Joint reconnaissance, trial excavations and exhumation of remains were carried out at several locations in central Serbia (near the villages of Kozarevo, Karadak near Raška, Medevce, Medveđa municipality, Jalovište and Kiževak) and Kosovo and Metohija (Budisavci, Klina municipality, Petrušan near Đakovica, shores of the Ibar River near Leposavić, the immediate vicinity of the Church of Christ the Saviour in Priština, the village of Kovače near Zubin Potok, a bunker in Đakovica, near the mosque in Kosovska Mitrovica, Ugljare, Kačanik, Kišnik, Tusus and the Muslim cemetery in Kosovska Mitrovica).

72. Belgrade's delegation, in cooperation with the competent state authorities of the Republic of Serbia, in addition to the activities carried out during field inspections based on the request of Priština's delegation on 9 November 2015, commenced with activities at the Kiževak mine, Raška municipality, based on findings and investigations conducted by the

Office of the War Crimes Prosecutor and the War Crimes Investigation Service of the Ministry of Interior of the Republic of Serbia. Due to difficult weather conditions and lack of information about the micro location of the grave, activities have been interrupted and continued several times in the past five years. Based on satellite images provided by the United States Department of Defence, through the ICRC, activities at this location resulted in the discovery of a grave and the exhumation of remains during November 2020. The exhumation process was temporarily interrupted in December 2020 due to bad weather conditions, and it shall continue during 2021, when favourable weather conditions are attained, due to the work methodology used by the expert forensic team.

73. The ICMP shall collect samples for DNA analysis from all exhumed remains from this location, which shall enable their identification. Exhumation at the location of Kiževak mine is of special importance for the families of missing persons, who have been trying to find and bury the remains of their loved ones with dignity for many years.

74. In 2016, the Committee for Kosovo and Metohija of the National Assembly of the Republic of Serbia formed a Working Group to gather facts and evidence in shedding light on crimes against members of the Serbian people and other national communities in Kosovo and Metohija.

75. The composition of the Working Group consists of a Chairman, members and deputy members of the Committee for Kosovo and Metohija, as well as representatives of state authorities (Office of the War Crimes Prosecutor, MoI – War Crimes Investigation Service, Commission for Missing Persons, Judiciary, Human Rights and Property and Legal Issues Group of the Office for Kosovo and Metohija).

76. The task of the Working Group is to intensively gather facts and evidence that can help shed light on crimes against Serbs and other national communities. Namely, the Committee for Kosovo and Metohija will submit the collected facts and evidence to the Office of the War Crimes Prosecutor of the Republic of Serbia. So far, five sessions of this working group have been held, whereby an analytical team was formed at one of them with the task of uniting databases of competent state authorities that have information and documentation, in order to systematise all types of crimes by areas of responsibility of the terrorist KLA.

77. The signing of an agreement in Washington, as well as reaching an agreement in Brussels on the establishment of a Joint Commission (September 2020), all in order to support the mechanism of engagement of the Working Group on Missing Persons within the Belgrade-Priština dialogue and mediation in the process of finding new locations, exhumation and identification of remains, is extremely vital for resolving the issue of missing persons. All of the parties agreed that more progress was needed in illuminating the fate of missing persons, however, it was also noted that the work of the ICRC so far was irreplaceable, as 75% of missing persons cases had been clarified.

XI. Statement of absence

78. The Law on the Rights of Soldiers, Disabled Veterans, Civilian Disabled Veterans and Family Members¹⁰ provides protection to both civilian disabled veterans and civilian victims of war, and not only to members of the armed forces. A civilian, a citizen of the Republic of Serbia, who disappeared during the war or during the conduct of war operations within the territory of the Republic of Serbia, shall be considered a civilian victim of war, whereby his/her family, as well as civilian disabled veterans, shall be provided protection.

XII. The best interests of the child

79. Regarding the criminalization of illegal removal of children, the criminal legislation of the Republic of Serbia recognizes several relevant criminal offences. Criminal offence under Article 191, Confiscation of a minor, the basic form of which includes the act of

¹⁰ “Official Gazette of the RS”, number 18/2020.

unlawful detention or confiscation of a minor from a parent, adoptive parent, guardian or other person, or institution to whom he/she is entrusted, envisages a fine or imprisonment of up to three years. If the crime was committed against a new-born, the perpetrator shall be punished by imprisonment from six months to five years. If the act was committed out of greed or other indecent motives or the act seriously endangered the health, upbringing or education of a minor or the act was committed by an organised criminal group, the perpetrator shall be punished by imprisonment for one to ten years.

80. Another relevant criminal offence is the Change of Marital Status under Article 192, whose action consists of changing the family status of a child by planting, replacing or otherwise, and provides for a sentence of six months to five years in prison. Furthermore, the same punishment will be imposed on a doctor of the health institution who declares a living new-born dead in order to change a family situation. If the act was committed out of greed, abuse of position or the act was committed by an organised criminal group, a prison sentence of one to ten years is prescribed.

81. Article 388 of the Criminal Code defines Trafficking in Human Beings as a criminal offence committed by “whoever by force or threat, deception or maintaining deception, abuse of authority, trust, dependency relationship, difficult circumstances of another, retaining identity papers or by giving or accepting money or other benefit, recruits, transports, transfers, sells, buys, acts as intermediary in sale, hides or holds another person with intent to exploit such person’s labour, forced labour, commission of offences, prostitution, mendacity, pornography, removal of organs or body parts or service in armed conflicts”, prescribing that the perpetrator must be punished by imprisonment for a term between three and twelve years.

82. Paragraph 2 of this Article of the CC recognizes situations in which this criminal offence was committed against a juvenile, where the offender shall be punished by the penalty prescribed for that offence even if there was no use of force, threat or any of the other mentioned methods of perpetration and provides for imprisonment of at least five years. Paragraph 6 stipulates that if the crime was committed by a group, a prison sentence of at least five years is envisaged, and if the crime under this article is committed by an organized criminal group (paragraph 7), the perpetrator shall be punished by imprisonment for at least ten years.

83. Furthermore, Article 389 of the Criminal Code provides for the offence of Trafficking Minors for Adoption, which is incriminated in such a manner that whoever abducts a person under the age of sixteen for adoption contrary to applicable regulations or who adopts or mediates in such adoption or whoever buys, sells or hands over another person who has not reached the age of sixteen or transports him, provides him with accommodation or conceals him, shall be punished by imprisonment for a term between one and five years.

84. As regards falsification, concealment or destruction of documents, within the meaning of Article 25 § 1 (b) of the Convention, the above-mentioned acts may constitute the commission of the offence of forgery of a document under Article 355 of the Criminal Code, or the criminal offence of forging an official document under Article 357 of the Criminal Code. Namely, the act referred to in Article 355 is committed by whoever makes a forged document or alters a real document with intent to use such document as real or uses a forged or altered document as real or obtains such document to use. The envisaged punishment is imprisonment up to three years. If the act was committed respect of a public document, testament, bill of exchange, cheque, public or official record or other record that is kept under law, the offender shall be punished by imprisonment of three months to five years.

85. The criminal offence of forging an official document under Article 357 of the Criminal Code is defined in such a way that “An official who enters false data or fails to enter important data in an official document, record or file, or who certifies by his signature or official seal an official document, record or file with false content, or who with his signature or official seal enables another to produce an official document, record or file with false content, shall be punished by imprisonment of three months to five years.” The same penalty shall also be imposed to an official who in service uses a forged document, record or file as true, or who destroys, conceals or considerably damages an official document, record or file or makes it otherwise unusable.

86. In relation to the obligation of the state to provide an efficient and direct search in cases when there are reports of missing children, police officers of the Ministry of Interior act extremely urgently in accordance with the provisions of the Law on Police (Article 72), Criminal Procedure Code (Article 225 paragraph 2 and Article 566) and the Rulebook on police powers (Articles 61–63), in line with national and international norms and standards regarding respect for the rights of the child. The police does not wait for 24 hours to pass, rather searches for the missing child immediately after receiving a report of the disappearance.

XIII. Effective investigation of all cases involving enforced disappearances and respect for the rights of victims

87. The provisions of the Criminal Procedure Code stipulate that the investigative phase of criminal proceedings is within the competence of the public prosecutor and that the aforementioned may entrust the performance of certain evidentiary actions during the investigation to the police. Moreover, the Law on the Organisation and Competences of the Government Authorities in War Crimes Proceedings¹¹ prescribes the jurisdiction of the Office of the War Crimes Prosecutor to prosecute war crimes and grave violations of international humanitarian law in the former Yugoslavia and establishes the jurisdiction of the War Crimes Investigation Service, an organisational unit within the Ministry of Interior, which acts on the orders of the Office of the War Crimes Prosecutor. In connection with that, we stress that the War Crimes Investigation Service continuously acts on all requests of the Office of the War Crimes Prosecutor and that from the point of view of its competence it contributes to better results in terms of investigations.

88. The initiative for the adoption of the Law on Missing Persons in the Republic of Serbia was launched in 2019 by the Coordination of Serbian Associations of Families of Missing, Murdered and Killed Persons at a meeting organised at the Presidency of the Republic of Serbia. On that occasion, the President of the Republic of Serbia, Aleksandar Vučić, together with the President of the Commission for Missing Persons, Veljko Odalović and the Special Envoy of the President of the Republic of Serbia for Resolving the Issue of Missing Persons in the Republic of Croatia, Veran Matić, received representatives of the Coordination of Serbian Associations of Families of Missing, Murdered and Killed Persons, the President of the Coordination, Dušan Čelić, the President of the Steering Board of the Coordination, Dragan Pjevač and the Secretary of the Republic Organization of Families of Captured and Killed Soldiers and Missing Civilians of the Republika Srpska, Isidora Graorac.

89. Representatives of the Coordination called for greater state involvement in the rights of the families of missing, murdered and killed persons, including tangible and intangible assistance, requesting support in passing the Law on Missing Persons. They pointed to an increasingly negative attitude on the part of domestic institutions towards searching for missing persons in the former Yugoslavia and finding the remains of persons of Serb nationality. The President of the Republic of Serbia, Aleksandar Vučić, supported the requests made by the representatives of the Coordination and called on a more intensive involvement of other state bodies in solving this issue, stressing that the state of Serbia and he personally were dissatisfied with the timetable in terms of finding missing persons.

90. Following this initiative, the Coordination of Serbian Associations of Families of Missing, Murdered and Killed Persons developed a model Law on Forcibly Missing Persons and the Rights of Their Families, which would govern systemic legal regulation of the matter of missing persons in a comprehensive manner. The competent ministry for initiating the procedure for passing the law is the Ministry of Labour, Employment, Veteran and Social Affairs.

91. A Solution on the formation of the Working Group for drafting the Law on Missing Persons was passed on 22 January 2021. The adoption of this law is envisaged for the first autumn session of the National Assembly of the Republic of Serbia. In addition to strengthening the rule of law and human rights violations, the ICRC and UNDP have

¹¹ “Official Gazette of the Republic of Serbia”, Nos. 67/2003, 135/2004, 61/2005, 101/2007, 104/2009, 101/2011 - state law and 6/2015.

recognised the legal and administrative problems facing families of missing persons, and in accordance with their mandates, have offered expert and material assistance to draft this law.

XIV. Respect for the rights of women and children who have been victims of enforced disappearances

92. Prevention and suppression of violence against children and protection of children from violence are one of the priorities of the national policy of the Republic of Serbia. In 2005, the Government of the Republic of Serbia adopted the General Protocol on Protection of Children from Abuse and Neglect with the aim of providing a framework for establishing an efficient, operational, inter-sectoral network for the protection of children from abuse, neglect, exploitation and violence.

93. In addition to the General Protocol, special sectoral protocols were adopted that defined special roles and procedures in protecting children from abuse and neglect for each of the relevant sectors within the protection system – labour and social protection, education, police, health and justice.

94. Over the course of June 2020, the Government of the Republic of Serbia adopted the Strategy for Prevention and Protection of Children from Violence for the period 2020–2023, with an accompanying Action Plan for 2020 and 2021.

95. Positive legal regulations in the field of social and family protection and the aforementioned protocols and Strategy represent the basis for the actions of the competent authorities in the protection of children from all forms of abuse, neglect and violence, including protection of children who have been exposed to enforced disappearance.

96. The Law on Social Protection¹² also recognizes children who are victims of violence, abuse, neglect as beneficiaries of social protection services, so children who have found themselves in a situation involving enforced disappearance or who have suffered the consequences of their parents, relatives or other close acquaintances forcibly disappearing may be provided with various social protection services, from counselling to alternative accommodation services outside the family home, if it is in their best interest.

97. In addition, the Family Act¹³ authorises social work centres – guardianship authorities to organise the protection of families and children, in accordance with the Law. A guardianship authority may apply measures and provide services within its competence in cases demanding the protection of under-aged victims of enforced disappearance from abuse and neglect and it may also organise and plan children’s access to services and measures of other institutions and bodies, if it deems it in their best interest.

98. The guardianship authority also organises assistance and support to children and families in cases when the victims of enforced disappearance are relatives of the child or other persons close to the child. In addition to the mentioned measures and services, the Social Work Centre, in accordance with the Law on Social Protection, may also provide material support to a family, through the recognition of certain rights.

99. As regards to the protection of the right of a missing child to preserve one’s identity, in terms of Article 25, paragraphs 4 and 5 of the Convention, within a procedure for establishing adoption, a guardianship authority is obliged to assess the fact of enforced disappearance of parents in the context of establishing legally relevant facts relevant for determining the family-legal status of the child from the provision of Article 91 of the Family Act, which prescribes that a child without living parents, a child whose parents are unknown or whose whereabouts are unknown, a child whose parents are completely deprived of parental rights, a child whose parents are fully deprived of legal capacity, and a child whose parents give their consent to adoption, may be adopted.

100. In order to provide adequate legal protection to parents and children in case of any violation of rights, the Family Act regulates the procedure of annulling adoption, if the

¹² “Official Gazette of the RS”, number 24/2011.

¹³ “Official Gazette of the RS”, Nos. 18/2005, 72/2011 – state law and 6/2015.

provisions of the Family Act, as well as other provisions regulating the conditions for establishing adoption and the procedure for establishing adoption, are not respected. Actively legitimized persons in the procedure of annulling adoption can be the child's parents.

XV. Public availability of the International Convention for the Protection of All Persons from Enforced Disappearance, State Reports and Concluding Observations of the Committee on Enforced Disappearances

101. The text of the International Convention for the Protection of All Persons from Enforced Disappearance, the Initial Report of the Republic of Serbia on the Implementation of the Convention ([CED/C/SRB/1](#)), the Concluding Observations of the Committee on Enforced Disappearances ([CED/C/SRB/CO/1](#)), a List of Additional Questions of the Committee on Enforced Disappearances Regarding the Consideration of the Initial Report of the RS ([CED/C/SRB/Q/1](#)) and Answers to the List of Additional Questions ([CED/C/SRB/Q/1/Add.1](#)) have been published on the website of the Ministry of Human and Minority Rights and Social Dialogue (formerly the Office for Human and Minority Rights) for many years, all in Serbian and English, and in this manner the general public in the Republic of Serbia has the opportunity to acquaint itself with their content and monitor the progress of our country in respect of rights in this area.

102. Furthermore, over the course of 2014, the Office for Human and Minority Rights, with the support of the Delegation of the European Union to the Republic of Serbia, published a printed edition entitled "Collection of Selected UN International Agreements on Human Rights", which contains all eight United Nations international human rights treaties ratified by the Republic of Serbia in Serbian and English.

103. Over the course of a wide consultative procedure conducted during the drafting of this state report, the Commission for Missing Persons of the Government of the Republic of Serbia expressed its readiness to publish the documents described above on its website (www.kznl.gov.rs).
