

CURRENT STATE INITIATIVES FOR DEALING WITH THE PAST



Within its many years of activities related to transitional justice, and among other matters, the Humanitarian Law Center Kosovo aims to monitor the current state initiatives which are related to Dealing with the Past and Transitional Justice. Therefore, this Newsletter will briefly discuss the initiatives recently undertaken by state institutions regarding the treatment of the past and the course of their implementation to date.

These initiatives include:

- Institute for Crimes Committed During the War in Kosovo;
- Truth and Reconciliation Commission;
- National Strategy for Transitional Justice;
- State Commission for research, registration/inventory, assessment and documentation of cultural and historical heritage sites destroyed during the 1998-1999 war;
- Law on Missing Persons;
- Memorial for Children Killed during the 1998-1999 War in Kosovo;
- Museum for documentation and presentation of the crimes of former Yugoslavia and Serbia against Albanians in Kosovo.





INSTITUTE FOR CRIMES COMMITTED DURING THE WAR IN KOSOVO

The operationalization of the Institute for Crimes Committed During the War in Kosovo is expected to contribute to the field of documentation, preservation of collective memory, and education of future generations on the past. The initiative for the establishment of such an Institute was taken by the Ministry of Justice, since a similar mechanism which was active in the past ceased to exercise its activity upon a decision of the Government of Kosovo in 2018, as a result of its inability to fulfill the mission for which it was founded.

In order to operationalize this Institute and facilitating dealing with the past, the Ministry of Justice rendered a new decision dated May 13, 2020, thereby appointing a Working Team for the preparation of an analysis for the establishment of the Institute for the Research of Crimes Committed during the War in Kosovo. This team consisted of representatives of various departments of the Ministry of Justice, representatives of the Ministry of Culture, Youth and Sports, the Ministry of Education, Science, Technology and Innovation, the Faculty of History and Faculty of Law, as well as representatives from civil society and external experts.

As a result of the work of such working group, a Concept Document on the establishment of the mechanism to document the crimes committed during the war in Kosovo was drafted. This Concept Document identifies and lists causes bringing about the lack of documentation on the crimes committed during the last war in Kosovo. It also proposed to establish a mechanism to collect, verify, systematize, process and publish data on serious human rights violations, war crimes and crimes against humanity. Upon a public consultation process, this Concept Document was presented at the Government meeting on November 10, 2021, whereupon it was approved by the government cabinet.

According to the suggestions given to the Concept Document, a Working Group was established to draft the Draft Law for the Institute for Crimes Committed During the War in Kosovo. This Draft Law was published on the public consultations platform, and after this process, it was referred to the Government for review, upon which it was approved at the 96th meeting of the Government of the Republic of Kosovo, on September 14, 2022. It then was taken to the Assembly of Kosovo for a vote, and in the plenary session held on October 7, 2022, upon a first review of the Draft Law on the Institute of Crimes Committed during the War in Kosovo, the Assembly of Kosovo took the decision to adopt the Draft Law in principle. In this decision, 4 Assembly Committees were assigned to examine the Draft Law and present their reports with recommendations.

In the Kosovo Assembly session held on July 13, 2023, the Draft Law for the Institute for Crimes Committed during the War in Kosovo was adopted in its second reading, upon having collected 61 votes of Members of the Assembly of Kosovo.



TRUTH AND RECONCILIATION COMMISSION

The initiative to establish the Truth and Reconciliation Commission was taken with the aim of documenting and establishing the facts about human rights violations that occurred in the recent past, restoring the dignity of victims and survivors, and contributing to social transformation for overcoming the consequences of violations and abuses suffered, as well as preventing their repetition. On December 13, 2017, the then president Hashim Thaçi, as the initiator of this initiative, established a Preparatory Team for the Truth and Reconciliation Commission.

The preparatory team had adopted their Rules of Procedure and held Public Consultations for the establishment of the Truth and Reconciliation Commission, which led to the drafting and publication of the Normative Act for the Truth and Reconciliation Commission. This Normative Act was subject to public consultations from January 28, to July 15, 2020.

Upon the confirmation of the indictment by the Office of the Specialized Prosecutor against former President Thaçi and termination of his term, no other steps were taken regarding the establishment of the Commission. According to the head of the Transitional Justice Division of the Ministry of Justice, Baki Svirca, who also chairs the working group for the National Strategy for Transitional Justice of Kosovo, the idea of the Truth and Reconciliation Commission is part of the strategy and has not been abandoned.



NATIONAL STRATEGY FOR TRANSITIONAL JUSTICE

Kosovo, as a post-conflict state, has not, since the end of the war, managed to prepare a comprehensive Transitional Justice Strategy, which would focus on victims and social cohesion. In the absence of such a Strategy, the existing mechanisms and initiatives for dealing with the past have not had a proper interaction with each other. In 2012, there was an initiative to prepare a Strategy for Transitional Justice under an inter-ministerial group, but it failed as such.

Now, there is an initiative taken by the Ministry of Justice, which by decision of July 26, 2021, established the Working Group for the drafting of the National Strategy for Transitional Justice. This working group assembles representatives from relevant public institutions, academic institutions and civil society. During the drafting of the draft strategic document, a total of 30 meetings were held, of which 22 with the majority community and 8 with the minority communities. The collected data and the resulting recommendations have helped towards the design of the strategy's objectives and action plan.

The National Strategy for Transitional Justice has so far represented a document "which intends to establish a comprehensive framework for the handling of massive violations of human rights and international humanitarian law, which serves the enjoyment of the rights of the victims and the construction of a peaceful future". The current draft contains the strategic objectives in each pillar of transitional justice, namely in finding the truth, ensuring criminal justice, reparations and institutional reforms, which are also state obligations in the Republic of Kosovo.

Upon organizing closed-doors consultations, the draft Strategic Document was placed in the public Consultation platform during the period May 15 - June 2, 2023. On June 26, the Ministry of Justice, under the leadership of Minister Albulena Haxhiu, and with participants from the narrow working group, held a one-day workshop to review all comments received through the public consultation platform.

Until the publication of this bulletin, the National Strategy for Transitional Justice has not been finalized.



STATE COMMISSION FOR RESEARCH, REGISTRATION/INVENTORY, ASSESSMENT AND DOCUMENTATION OF CULTURAL AND HISTORICAL HERITAGE SITES DESTROYED DURING THE 1998-1999 WAR

The State Commission for research, registration/inventory, assessment and documentation of cultural and historical heritage sites destroyed during the 1998 - 1999 was established by a decision of the Government of Kosovo on July 14, 2021. The purpose of this mechanism is the research, collection and administration of all relevant evidence from public and non-public archives, in order to fully implement the task of research, registration, inventory, evaluation and documentation of cultural and historical objects destroyed during the war of the year 1998 - 1999.

This Commission should draw up a final report along with an assessment of the damages and/or the historical, cultural, social and spiritual significance of the destroyed sites, as well as their relevant estimated financial cost, since in accordance with international standards, it should also develop a compensation claim for such damages.

On January 26, 2022, the Government rendered a decision to amend and complement its decision of July 14, 2021 on the establishment of the State Commission for the research and documentation of cultural and historical heritage sites destroyed during the war of 1998 and 1999. Such amendments also included changes and additions to the members of this Commission.

At the end of 2022, the Minister of Culture, Youth and Sports, Hajrulla Çeku, in a statement to the media, stated that under the proceedings of this Commission, a preliminary report was compiled, and that the number of sites already in the database and destroyed by Serbia is over 1,300, and spoke of a very large number of documents, in addition to the 1,247 ethnographic and archeological artifacts that continue to be held by Serbia. This report was submitted to the Prime Minister, but according to the Commission, the report cannot yet be made public due to the discretion that must be maintained.

In a conversation with the head of the Commission - Gjejlane Hoxha, she clarified that, during the period September 2021 - March 2023, "Commission has carried out an intensive work in terms of identification, documentation and assessment of damages". According to her, the statement given by the Minister of Culture, Youth and Sports, Hajrulla Çeku in December 2022, was about a preliminary report on a part of the constructed cultural heritage. Meanwhile, "in March 2023, the Commission had drawn up the Complex Report, with the records on damages, including the movable cultural heritage... and as for the damage estimation, in addition to other aspects of collateral losses, it is also presented in preliminary monetary values, in due account of the obligation for the recovery of damaged cultural heritage... At the end of the report, recommendations for further actions are given... The aforementioned report, with its voluminous related documents, was submitted to the Government of the Republic of Kosovo".



LAW ON MISSING PERSONS

The Law on Missing Persons was drafted with the aim of protecting the rights and interests of missing persons, and in particular their family members who have the right to know about the whereabouts of their beloved, who disappeared during the period January 1, 1998 – December 31, 2000, as a result of the war in Kosovo in 1998-1999.

Due to the dissatisfaction of the family members of the missing persons, and after continuous requests, it was deemed necessary to take steps towards amending the Law on Missing Persons. Consequently, after the consultations held on June 4, 2018, the Government rendered a decision to establish a Group responsible for drafting the Concept Document for Missing Persons. This Concept Document was approved at the meeting of the Government of the Republic of Kosovo, on June 18, 2019, whereby the Government also adopted a decision to establish the Commission for the drafting of the Draft Law to amend the Law on Missing Persons. The work of this commission was characterized by its poor intensity, and also faced numerous criticisms from interest groups.

The Concept Document for Missing Persons stated that the law then in force “fails to fully meet the needs and fully address the concerns of family members of this category. In addition, some legal provisions have generated unequal treatment among the different categories emerging from the war, which has resulted in concern and dissatisfaction of family members”.

Due to the delays in proceeding the amendments to such a law, the Government Commission for Missing Persons (GCMP), on March 11, 2020, filed a request with the Ministry of Justice, thereby requiring the re-initiation of this matter, which had stalled due to certain political circumstances. One year later, namely on September 15, 2021, the first meeting of the working group was held for the drafting and finalization of the Draft Law containing amendments to the Law on Missing Persons.

In a meeting held on May 31, 2023, the Assembly of Kosovo Committee for Human Rights, Gender Equality, Missing Persons, Victims of Sexual Violence during the War and Petitions, had additional members assigned to the Committee, including Andin Hoti, head of the Government Commission for Missing Persons – GCMP, and Kushtrim Gara as the head of the GCMP unit. The meeting debated narrowly on the draft law, while Andin Hoti announced that they are in fact very close to finalizing this draft law, but that the work had been delayed, since there was no agreement reached in terms of incorporating the demands of the families of the missing persons in this draft law.

Meanwhile, Kushtrim Gara had stated that the working group for this draft law was still active, and that it would be a matter of weeks to proceed with the tabling with the Assembly, since the requests of the families of missing persons implicate two other laws which are currently in force. He stated that this draft law would be processed before November 30, 2023, a date specified as the last date for processing the draft law on missing persons, within the Legislative Agenda of the Government.



MEMORIAL FOR CHILDREN KILLED DURING THE 1998–1999 WAR IN KOSOVO

At the meeting of the Government of Kosovo held in June 2022, a decision was rendered to establish a Ministerial Commission for the Memorial for Children Killed during the 1998–1999 War in Kosovo, which was to be chaired by the Prime Minister of Kosovo, and involve members such as the Minister of Justice, the Minister of Environment, the Minister of Finance and the Minister of Culture.

In the meetings held by this Commission, on October 13, 2022, it established a Working Group, to be chaired by Saranda Bogujevci. Two months later, namely on December 13, 2022, the Action Plan for the construction of the Memorial, which was drawn up by the Working Group itself, was approved.

In January 2023, the Ministry of Culture, Youth and Sports - MCYS announced a public call for non-governmental organizations to implement the project "Consultation of survivors and families with children killed during the 1998–1999 war in Kosovo". Through this call, organizations registered as NGOs were invited to apply with their project-proposals to address and fulfill the objectives of the project, in terms of consulting survivors and families of children killed during the 1998–1999 war.

On March 16, 2023, a Memorandum of Understanding was signed between the MCYS and the University of Pristina on the consultation and drafting of a narrative document on the memorialization of children killed and missing during the 1998–1999 war in Kosovo. Under the framework of this cooperation, on March 25, 2023, the Faculty of Philosophy announced a call for students, in a view of consulting survivors and families with children killed and missing during the war, as well as documenting their stories. Upon drafting the narrative document, the Faculty of Philosophy will publish an international design competition for the Children's Memorial project. The construction of this Memorial is aimed at honoring and elevating the memory of children killed and missing during the war.

On International Children's Day, on June 1, 2023, the Prime Minister of the Republic of Kosovo Albin Kurti met with the Rector of the University of Prishtina, Qerim Qerimi, as well as with the staff and students engaged in the project for the Memorial dedicated to children killed during the 1998 – 1999 war in Kosovo. In this meeting, it was discussed about the initiation of a consultation phase, and the drafting of the narrative document on the memorial for the children killed and missing during the war in Kosovo. In its efforts to involve the families of the killed children in the consultation process, the Government of the Republic of Kosovo established a toll-free line, and also an email account, which would provide the teams to be contacted to go to the families of the victims.

MUSEUM FOR DOCUMENTATION AND PRESENTATION OF THE CRIMES OF FORMER YUGOSLAVIA AND SERBIA AGAINST ALBANIANS IN KOSOVO

The Museum for documenting and presenting the crimes of the former Yugoslavia and Serbia against Albanians in Kosovo is an initiative of the Ministry of Culture, Youth and Sports - MCYS under the Government of the Republic of Kosovo. In its 145 th meeting, namely on June 7, 2023, the Government Cabinet established a Working Group for the drafting of the Concept Document for the establishment of the Museum for the documentation and presentation of the crimes of the former Yugoslavia and Serbia against Albanians in Kosovo.

The role of this Working Group is to research and draft a concept document on the establishment of a Museum to document and present the crimes of the former Yugoslavia and Serbia against the Albanians in Kosovo. The Working Group consists of representatives of central and public institutions, such as representatives from the Office of the Prime Minister, the Assembly of the Republic of Kosovo, the Presidency of the Republic of Kosovo, MCYS, the Academy of Sciences and Arts of Kosovo, the University of Pristina, public institutions, war-related associations, as well as representatives of civil society. The mandate of this working group ends with the adoption of the Concept Document, which will be drafted by the same group.

On August 7, 2023, the Ministry of Culture, Youth and Sports invited civil society organizations (CSOs) to nominate suitable candidates for the Working Group, who would also contribute to the design of the concept for this Museum. MCYS considered that the involvement of CSOs is vital to a comprehensive approach in this process.

CONCLUSIONS AND RECOMMENDATIONS

Upon analyzing all current state initiatives related to Dealing with the Past, HLCK found that in recent years, there have been significantly intensified efforts to deal with the past, testified by various initiatives and mechanisms, which marks a remarkable increase in positive terms.

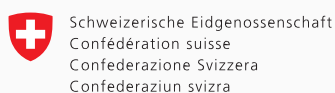
However, all these initiatives are undertaken by political and governmental actors, without prior consultation with the groups of interest in this process, and this gives rise to some risk, in terms of potential decline of political will, that such initiatives would also decline as such.

On the other hand, there has been observation of a lack of public transparency regarding the progress and operation of these initiatives, thereby rendering it difficult to provide accurate and timely information to citizens.

Therefore, it is recommended to strengthen the transparency of the initiatives/mechanisms established for Dealing with the Past. At the same time, it is also recommended that the organizations whose mission is dealing with the past, be more involved in the processes related to Dealing with the Past.

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