



**RECOM**  
Reconciliation Network

XIII FORUM FOR TRANSITIONAL JUSTICE  
IN POST-YUGOSLAV COUNTRIES

Organised by the RECOM Reconciliation Network and the Humanitarian Law Center

21-22 December 2020



# JUSTICE FOR VICTIMS DESPITE ABSENCE OF POLITICAL SUPPORT

## XIII Forum for Transitional Justice in Post-Yugoslav Countries



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**XIII Forum for Transitional Justice in Post-Yugoslav Countries**

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## THE OPENING SPEECH

*Tea Gorjanc Prelević*<sup>1</sup>

The 13<sup>th</sup> Forum for Transitional Justice in Post-Yugoslav Countries<sup>2</sup> was held this year in the only manner possible—online, thanks to the organisers: the Coalition for RECOM, which was renamed the RECOM Reconciliation Network at last year's forum in Zagreb, and the Humanitarian Law Center from Belgrade.

The Human Rights Action, for which I work, is an organisation from Montenegro which is a member of our RECOM network, together with 2.000 others. I am one of more than half-a-million people who have supported the initiative for founding RECOM (the Regional Commission for the establishment of facts about war crimes and other serious human rights violations committed in the former Yugoslavia between 1991 and 2001), and who believe that established facts—not empty stories—are the only way to bequest peace to the future generations in the Balkans.

Even though the founding of RECOM, which seemed within reach in 2014, has been put off until a better political moment, the civic society gathered around this idea continues to:

- oversee the process of transitional justice,
- advocate the exercising of victims' rights,
- document the facts about human losses and war crimes,

thereby contributing to reconciliation and developing a culture of remembrance—based on facts.

I believe that our motives were explained properly by Thomas Buergenthal, who survived the Jewish ghetto and Auschwitz camp as a ten-year-old boy, and then grew up to become a Justice of the Inter-American Court for Human Rights and the International Court of Justice. In his memoirs *A Lucky Child*, he wrote that those of us who have survived owe it to those who perished to strive constantly to strengthen the tools against human rights violations.

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<sup>1</sup> Tea Gorjanc Prelević is director of Human Rights Action in Montenegro.

<sup>2</sup> The 13<sup>th</sup> Forum for Transitional Justice in Post-Yugoslav Countries was held online, on December 21<sup>st</sup> and 22<sup>nd</sup> 2020.

We must not despair and must not accept that humankind is incapable of creating a world where our descendants will be able to live in peace.

Three panel discussions were held at this year's Forum.

The discussion "Stocktaking of Transitional Justice – Challenges as Opportunities" addressed the current state of the process of transitional justice in the region, with the following participants: Žarko Puhovski, long-standing advocate of confrontation with the past and the establishment of RECOM, Sabina Čehajić-Clancy, professor of social psychology at Stockholm University, David Hudson, European Commission senior expert, Vjollca Krasniqi, professor at the University of Pristina, and Slađana Lazić, from the Center for Peace Studies at UiT The Arctic University of Norway, who studies crises of transitional justice.

The panel discussion "Politics of Memory and Commemorations of Victims" critically analyzed official remembrance policies and victim commemoration practices in Post-Yugoslav countries. The participants were Lejla Gačanić, Jelena Đureinović, Sven Milekić, and British anthropologist Stephanie Schwandner-Sievers. The panel was moderated by Lea David.

The panel discussion "The Issue of Missing Persons – The Priority of Regional Cooperation" addressed the issues of the fates of missing persons, determining the locations of mass graves, and establishing regional cooperation and international support in the search for mortal remains. The panelists were Manfred Nowak, UN expert, Ivan Grujić, former Head of the Commission on Detainees and Missing Persons of the Republic of Croatia, Ivan Jovanović, leader of the UNDP Regional War Crimes Project, and Nataša Kandić, RECOM Reconciliation Network Coordinator, who presented the results of the study on forced disappearances in Kosovo, in connection with the discovered mass graves. The panel was moderated by Thomas Osorio.

At the panel "Stocktaking of Transitional Justice – Challenges as Opportunities" we discussed the state of transitional justice today.

Judging by the reports of the European Commission and nongovernmental organisations, criminal justice is very slow, and ineffective; and, in the case of BH, it has been rendered pointless by suspects escaping justice to neighbouring countries.

Victims' compensations are insufficient, unequal, and burdened by procedural barriers.

There is no recognition of court-established facts, and governments that deny Hague Tribunal rulings—primarily, on the genocide in Srebrenica—are gradually prevailing (as of late, in Montenegro also).

The founding of a regional commission that would create a list of victims and determine the facts that the judiciary would not be able to determine, will have to wait for better times.

Institutional reforms in the Western Balkans—primarily the reform of the judiciary—are either suspended or limited; in any case, the judiciary is encumbered by political influences.

However, there have been some symbolic gestures in Croatia which appear to go beyond mere symbolism when it comes to the new government's attitude towards minorities. This give rise to hope.

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**21 December 2020**

10.00-12.00 **Panel I**

## **STOCKTAKING OF TRANSITIONAL JUSTICE - CHALLENGES AS OPPORTUNITIES**

Break: 11.00-11.15

**Žarko Puhovski, Professor Emeritus, Faculty of Philosophy, University of Zagreb:**  
**How Far Have We Got with Transition?**

**Thomas Unger, Geneva Academy of International Humanitarian Law and Human Rights: The Role of the International Community and Transitional Justice in the Western Balkans: Challenges and Opportunities**

**Sabina Čehajić, Stockholm University: Effects and Implications of Collective Apologies and Reparations on Intergroup Reconciliation Processes**

**David Hudson, Centre of Thematic Expertise for the Rule of Law, Fundamental Rights and Democracy, DG Near European Commission: "Transitional Justice: A Western Balkans Specific Approach"**

**Violca Krasniqi, Faculty of Philosophy, University of Prishtina: Transitional Justice in Kosovo: Challenges and Perspectives**

**Sladana Lazić, Centre for Peace Studies, University of Tromsø:**  
**Transformative Justice – a Way out of the Crisis?**

**Moderator: Tea Gorjanc Prelević, Director, Human Rights Action, Montenegro**

# I STOCKTAKING OF TRANSITIONAL JUSTICE - CHALLENGES AS OPPORTUNITIES

## Collective Apologies and Intergroup Reconciliation: Does It Work?

Sabina Čehajić-Clancy<sup>3</sup>

### What are collective apologies?

There are many ways to think about intergroup reconciliation. There are even more ways to approach the process of repairing broken trust and rebuilding damaged relations between former antagonistic groups. One approach that has been debated for several decades now is the approach of offering an apology for the wrongdoings and moral violations that have occurred in the past. The questions of whether collective or political apologies (or apologies offered on behalf of a collective for a collective wrong) are effective at all; whether such intergroup apologies can facilitate reconciliation in any meaningful ways; and what constitutes an effective apology are still not answered. What is known is that offers of apologies on behalf of nations or other social groups have become fashionable. Over the past thirty years, apologizing for recent or historic wrong has become a feature of political leadership. From the head of the EU commission apologizing to Italy for a tardy response to the Coronavirus crisis, to White religious leaders at a 2020 Black Lives Matter protest in the US state of North Carolina washing the feet of Black clerics in contrition for racial inequalities, official and personal acts of apology remain a relevant topic today.

Expressing collective remorse as embedded in such apologies is thought to be a critical step in the process of reconciliation between peoples previously involved at opposite ends of an injustice. Apologies are regarded as instruments of conflict transformation and as facilitators of reconciliation. A public collective apology, defined by Govier and Verwoerd<sup>4</sup>, is an apology "expressed in the public domain on the assumption that it is relevant to the pub-

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<sup>3</sup> Sabina Čehajić Clancy works as an Associate Professor of Social Psychology at Stockholm University. She is also affiliated with the Sarajevo School of Science and Technology in Bosnia and Herzegovina, associated with the Psychophysiology Lab at Stanford University and the Emotion Lab at Karolinska Institute.

<sup>4</sup> Govier, T., & Verwoerd, W. (2002). The promise and pitfalls of apology. *Journal of Social Philosophy*, 33, 67–68.

lic at large and not solely to the victims of the wrongdoing." When they take place within the political realm, public apologies are frequently referred to as political apologies. The interest in such political and collective apologies stem from the expectation that they are important for reconciliation.

However, existing evidence on whether collective apologies do indeed facilitate reconciliation is fairly mixed and still unclear. In other words, offers of collective apologies are still controversial.

### **Do collective apologies work?**

The literature on the effectiveness of apologies in helping to rectify a wrong and to promote intergroup reconciliation paints a confusing picture. Everyday intuition would suggest that after committing an egregious offense, the first, though not necessarily sufficient, step must be for the perpetrator to apologize to the victim. Research on interpersonal relationships largely supports this intuition since it has usually been found that apologies lead to a more forgiving response.

In intergroup context, as the one discussed in this paper, evidence on the apology effectiveness is less clear-cut. The form and the content of collective apologies is often being vigorously contested and analyses indicate that they do not always lead straightforwardly to reconciliation. There are many reasons for this. Apologies might not be perceived as sincere acknowledgment of the perpetrator's responsibility for the moral wrongdoings. On the contrary, apologies can often be perceived as cynical strategy to save the face. Furthermore, collective apologies (even if they are perceived as sincere and genuine gestures) might simply be regarded as insufficient to right the wrongs experienced by the victim group. Indeed, apologies are no sufficient and cannot be sufficient to rectify the injustices and inequalities brought by past moral wrongdoings. Finally, apologies might be regarded as a strategy by the perpetrator group to shift the burden and the demand of reconciliation away from the perpetrator group onto the victim group as a way of turning the page on history.<sup>5</sup> For all these reasons (and many more), collective apologies made by or on behalf of perpetrator groups may not support the process of reconciliation.

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<sup>5</sup> Zaiser, E., & Giner-Sorolla, R. (2013). Saying sorry: Shifting obligation after conciliatory acts satisfies perpetrator group members. *Journal of Personality and Social Psychology*, 105(4), 585–604.

## Are collective apologies good for anything?

As already stated, collective apologies can be controversial. Despite the controversy, literature and existing empirical evidence suggest that collective apologies, if delivered in a certain way, might be effective for achieving satisfaction (rather than reconciliation or forgiveness) among victim groups. In other words, apologies that are delivered in a way that does not 'close doors' on the past but rather 'opens questions of responsibility' have the potential to promote satisfaction among recipients. Furthermore, contextual factors that improve the reception of apologies are stability of intergroup relations (e.g., absence of acute crises) as well as temporal immediacy of the apology. In other words, apologies if delivered in a context characterized by some degree of stability and trust and in such a way that it does not attempt to 'close history' might indeed promote some degree of satisfaction among victim group members. This brings us to the final and most important question of what actually constitutes an effective collective apology or what should be the content of an apology aimed at improving intergroup relations?

## Content of effective collective apologies

Others' but also our own research<sup>6</sup> has identified two important elements of an effective apology: explicit acknowledgment of collective responsibility for moral wrongdoings and offers or endorsement of reparation policies. Our experimental studies conducted in the context of Bosnia and Herzegovina and using Bosniak participants as our participants found that non-emotional, explicit, clear and public acknowledgment of atrocities that occurred in the past accompanied with clear endorsement of reparation policies changed participants attitudes towards perpetrator group members. Moreover, and important for the discussion of this paper, such an apology promoted forgiveness and, in that way, facilitated reconciliation. Our results are in line with findings and ideas of Wohl and colleagues<sup>7</sup> who claimed that 'unemotional' yet 'concrete' apologies are more effective. They argued that victim group members

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6 Čehajić-Clancy, S. & Brown, R. (2019). "You say it best when you say nothing at all": Effects of reparation, apology, and expressions of emotions on intergroup forgiveness. *Peace and Conflict: Journal of Peace Psychology*, 25(1), 61–71.

7 Wohl, M. J. A., Hornsey, M. J., & Bennett, S. H. (2012). „Why group apologies succeed and fail: Intergroup forgiveness and the role of primary and secondary emotions." *Journal of Personality and Social Psychology*, 102, 306–322.

might be unwilling to accept emotional reactions (such as “I am deeply sorry”; “we feel regret”; “we are deeply ashamed”) offered by perpetrator groups as they are motivated to maintain a dehumanized perception of those who have harmed them. Our own results support this idea. We have found that explicit verbal expressions of guilt or shame are indeed less effective in comparison to acknowledgment containing no such explicit emotional expressions.

On the other hand, the seminal moment of Willy Brandt, then Chancellor of West Germany, kneeling at a memorial in the Warsaw Ghetto in 1970, while wordless (hence containing no explicit expressions of emotions) was hardly emotionless. His behavioral posture was clearly expressive of shame and guilt on behalf of the German people. He might have been silent in words but he clearly spoke with his body.

In other words, and in conclusion, victim group members might not be very receptive to explicitly stated emotions but seem to prefer an explicit acknowledgment of responsibility accompanied with emotionally-driven action (endorsement of reparation policies). Such collective apologies when delivered in way that does not “close the door” to the past of injustices but rather “open the question of responsibility” appear to be most conducive to intergroup reconciliation.

## **Transitional Justice in Kosovo: Challenges and Perspectives**

*Vjollca Krasniqi<sup>8</sup>*

### **Envisioning a Newborn State: Transitional Justice in Kosovo**

In post-Yugoslav states, mechanisms of accountability through transitional justice have been shaped by various discourses on peace-building, institution-building, reconciliation, and aspirations for European Union (EU) membership. In Kosovo, transitional justice has involved diverse perspectives and actors, both international and local. Transitional justice has assumed an important role in the key platforms that have defined the state of Kosovo, namely the “Comprehensive Proposal for the Kosovo Status”, better known as the Ahtisaari Plan, and the Constitution of the Republic of Kosovo. Transitional justice

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<sup>8</sup> Vjollca Krasniqi is Associate Professor at the Faculty of Philosophy, University of Prishtina. Her research interests are gender, nation-building, human rights, post-war justice, and social policy.

has been made part of the Stabilisation Association Agreement (SAA) between Kosovo and the EU, signed in 2015, and it is one of the domains of the agenda of Europeanisation and of Kosovo's aspirations for membership in the EU.

To be sure, Kosovo provides an interesting example of how transitional justice can trigger domestic legal and institutional reform. In recent years, transitional justice institutions have multiplied, and legal change has been frequent. The result is that Kosovo hosts a whole number of new institutions, from specialised courts and prosecutors who are empowered to investigate, prosecute and judge perpetrators of human rights abuses and war crimes to the Specialist Chambers and the Specialist Prosecutor's Office situated within the Kosovo justice system, yet physically located in The Hague. The Specialist Chambers and the Specialist Prosecutor's Office are mandated to conduct criminal proceedings in relation to allegations of crimes committed during and in the aftermath of the conflict in Kosovo, which relate to those reported in the Council of Europe Parliamentary Assembly Report Doc 12462 of 7 January 2011 and which have been the subject of criminal investigation by the Special Investigative Task Force of the Special Prosecution Office of the Republic of Kosovo. Several politicians who were leaders of the former Kosovo Liberation Army have been indicted by the Specialist Chambers and face charges of war crimes. War crimes trials are shaped by dominant war narratives and the way in which justice is interpreted. They are contested and disputed because they include notions of national identity, sentiments, and belonging.<sup>9</sup> The Special Criminal Tribunal is perceived as an externally driven institution, with the Kosovo political elite having no hand in its making, despite the law being adopted by the Kosovo Assembly. Symbolically, the Special Criminal Tribunal occupies a space between ideologies of the just war and friendship/partnership between Kosovo and the "international community," notably the EU and the United States.

### **Dealing with the past: An Institutional Undertaking without Fruition**

In 2012, the Kosovo Government established an Inter-Ministerial Working Group on Dealing with the Past and Reconciliation with aimed at developing a national strategy for Kosovo to address human rights violations and

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<sup>9</sup> Krasniqi, V. (2018). War, Law and Justice in Kosovo, in K. Bachmann, et al. (eds.) *International Criminal Tribunals as Actors of Domestic Change: The Impact on Institutional Reform* (111–134). Peter Lang: Berlin. p. 136.

breaches of international humanitarian law during the Kosovo war. The Working Group's mandate was to:

"establish a comprehensive, inclusive and gender-sensitive approach for dealing with the past in Kosovo including the last war and the transition period taking into consideration the views of victims of all communities in Kosovo, amounting to a National Transitional Justice Strategy."<sup>10</sup>

The working group included representatives of 12 public institutions and eight civil society organisations, with the participation of representatives of public agencies, international organisations, and diplomatic missions as observers and/or in an advisory role. The Inter-Ministerial Working Group on Dealing with the Past and Reconciliation organised its work around the four strands of transitional justice: truth-seeking, reparations, justice, and institutional reform. The work of the Inter-Ministerial Working Group was concluded four years later in 2016 without a strategy in place. The failure of the Inter-Ministerial Working Group on Dealing with the Past and Reconciliation to accomplish its mission was due to a set of interrelated factors that included lack of leadership and ownership, lack of participation by Kosovo's ethnic minority communities, and lack of public engagement.

### **Truth Matters: The Right to Truth**

More than two decades after the war in Kosovo, society needs to confront the past. Truth matters. It is vital for the healing process, the restoration of human dignity, and the contestation of impunity, denial and amnesia. A genuine process of reconciliation is hard to envision without establishing truth as a vehicle to enable societies to deal with the past and build themselves into cohesive social and political bodies. Giving account and truth-telling, as well as reparations, are necessary so that justice is served, and society is able to move forward.

Restorative justice mechanisms are about public consciousness, ethics, and morality in relation to human loss and about political determination that the past will not be repeated. Restorative approaches to justice are significant as they involve a larger public and diverse communities; they entail remem-

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10 Ahmetaj, N. & Unger, T. (2017). Kosovo's Framework for Dealing with the Past at a Turning Point: Civil society review of progress toward a National Strategy on Transitional Justice, p.8. Retrieved from <http://kosovomemory.org/wp-content/uploads/2018/10/Civil-society-review-of-progress-toward-a-National-Strategy-on-Transitional-Justice.pdf>.

bering and commemorating through public staging of suffering and loss. Examining the initiative for the regional commission known as RECOM, Denisa Kostovicova has argued for deliberations and endorsement of regional approaches to transitional justice to build a sense of regional public consciousness of the 1990s wars in the former Yugoslavia.<sup>11</sup> RECOM – Coalition for the Commission is tasked with establishing the facts about all victims of war crimes and other serious human rights violations committed in the territory of the former Yugoslavia during the wars of the 1990s, including Kosovo. There are reconciliation initiatives taking place in Kosovo. Altogether they are examples of positive peace building. They contribute to truth-telling, justice and healing that are preconditions for a future without violence.

Civic interventions on transitional justice challenge hardened frameworks concerning war divided along ethnic lines. Narratives of war are constructed through a dynamic interplay between politics, experience, and story. War discourses, framed by political actors, stress sacrifice and collective victimhood to fit nationalist ideologies. Hence, the public sphere is of paramount importance for the expression of plural narratives about the past, as well as giving voice to victims to narrate personal stories of political violence and coping strategies in the aftermath of conflict. Victims' personal stories challenge myths and denial and so stand against impunity. Moreover, they point to structural inequalities that led to both the original violence and marginalisation in the post-war period.

### **Research and Documentation: Preserving Memory of Victims**

Truth-telling is about giving space to victims to narrate their experiences and enhance opportunities for social reintegration.

In Kosovo truth-seeking and truth-telling have involved work on documentation of war crimes and human rights violations by Kosovo and international organisations. Indeed, the issue of missing persons has remained central in truth-telling work as 1,644 persons are still missing. The missing persons have been made part of legal reform: in 2011, the Kosovo Assembly adopted the law on the rights and interests of missing persons and their fami-

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<sup>11</sup> Kostovicova, D. (2016). Seeking Justice in a Divided Region: Text Analysis of Regional Civil Society Deliberations in the Balkans, *International Journal of Transitional Justice*, 1–22.

ly members. The law on missing persons is a legal channel for truth-telling and ensures the right to know about the fate of those who were reported missing during the period from 1 January 1998 to 31 December 2000, as a consequence of the violent conflict in Kosovo during 1998-99 war. Moreover, in 2019 the Government of Kosovo adopted a document with the aim of reviewing the legislation and institutional support for families of missing persons in Kosovo.<sup>12</sup>

Civil society organisations have played an important role in truth-telling. Indeed, civil society organisations have collected data, unearthed hidden stories, engaged in advocacy work and maintained a public space for victims to narrate their experiences of violence and abuse in war<sup>13</sup>. Notable examples include the Documentation Centre in 2017 in Prishtina, the first of its kind in Kosovo; the Kosovo Memory Book; the exhibition on child victims of the war by the Humanitarian Law Center Kosovo, as well as stories of women survivors of sexual violence.<sup>14</sup> These, along with numerous projects by other civil society groups in Kosovo, are precious records of war abuse through the testimonies of victims. They are valuable records informing victim-centred approaches to address the legacy of conflict, the root causes of violence, and victims' struggles for reintegration in society.

## Conclusion

Transitional justice mechanisms in Kosovo are important to ensure accountability, justice, peace, and rapprochement. To work toward this end there is a need to develop a comprehensive agenda for dealing with the past with the aim of empowering state institutions, civil society, and victims' organisations to address the wrongs of political violence and human rights abuses in the 1998-99 war in Kosovo. Transitional justice will be meaningful only when accompanied by accountable institutions and enhanced public consciousness on justice and human rights.

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12 Visoka, G. & Lumi, B. (2020). Democratizing Transitional Justice Towards a Deliberative Infrastructure for Dealing with the Past in Kosovo, pp. 18-19. Retrieved from <https://www.paxforpeace.nl/publications/all-publications/democratizing-transitional-justice-in-kosovo>

13 Council of Europe (2012). *Post-war justice and durable peace in the former Yugoslavia*, page 37. [https://www.coe.int/t/commissioner/source/prems/Prem545112\\_SER\\_1700\\_PostwarJustice.pdf](https://www.coe.int/t/commissioner/source/prems/Prem545112_SER_1700_PostwarJustice.pdf)

14 INTEGRA and forum ZFD (2017). *I want to be heard: Memory book with stories of with women survivors of torture during the last war in Kosovo*, Prishtina: INTEGRA and forum ZFD.

Dealing with the past should be regarded as an integral part of the rule of law, social justice and democracy. Kosovo needs an overarching strategy for transitional justice that is victim-centred and participatory while giving equal weight to retributive and restorative means to ensure that justice is served. The strategy needs to include research and documentation on human rights violations and abuse in war, reparation policies, institutional reform, memory and commemoration, as well as victims telling their stories, to promote justice. Leadership and commitment to the principles of transitional justice are needed to keep justice in sight. Justice also requires vibrant civic activism to sustain and promote spaces for dialogue on transitional justice as well as on the best ways of engaging bottom-up and victim-centred approaches to justice and peace.

## The Crises and the Future(s) of Transitional Justice Enterprise in the Post-Yugoslav Context

*Sladana Lazić*<sup>15</sup>

What are we talking about when we say 'the crisis of transitional justice'? What have been the political outcomes of *the crisis discourse*?

If we look at what has been written and said over the last two decades, one gets an impression that the transitional justice (TJ) project in the post-Yugoslav region has seemed suspended in a 'state of crises'. In the situation of an unsupportive political environment, the regional transitional justice movement used *the crisis discourse* as a tool for mobilization of (mostly) international political support. This was seen as a way of obtaining some form of leverage that would help to sustain the regional project of TJ.

By saying *the crisis discourse*, I do not imply that *the crises* have not existed, or that the set of events, actors, and institutions that have been used to describe *the crisis* have not had real material consequences. On the contrary, but at this point, I am just shedding a light on the discursive construction of the crisis. Where the source of the crisis was located? What was the call for

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<sup>15</sup> Sladana Lazić is post-doctoral research fellow at the Centre for Peace Studies (CPS), University in Tromsø, Norway. Her research and teaching interests include transitional justice, peacebuilding, gender, intersectionality, and memory politics with a geographical focus on the post-Yugoslav context and Colombia.

action? Finally, what have been the political outcomes of *the crisis discourse* at the regional level, but also the level of transitional justice as a global norm? What has usually been termed as *the crisis of TJ* in the region, is a sort of 'a push me-pull me dance' between, on one side, national political elites and national institutions in the region, and on the other side, the level of the European Union (EU) and its institutions. *The crisis* has been a reluctance and insincerity of the national political elites to genuinely deal with the past, then corruption and fragility of the institutions and the rule of law when it comes to the efforts directed at war crimes prosecution, and consequent wavering of the institutional regional collaboration on the issues of TJ.

Diagnosis of *the crisis* on this national and regional level would be followed by an appeal to the EU. The EU would be called to step in and break this stalemate by way of conditionality and coercion of reluctant political elites into compliance with the global norm of TJ. Correspondingly, *the crisis* was also perceived in situations of withdrawal of the EU's pressure, the EU's inconsistent conditionality, and its abandonment of deeper, wider, thicker conceptions of post-conflict justice and reconciliation due to its experiments in finding a balance between (criminal) accountability and regional political stability. Hence, the crisis discourse has particularly gained prominence since 2017. The closing down of the International Criminal Tribunal for Former Yugoslavia (ICTY) and the EU's turn inwards and its own 'crises', has sparked a sense of existential crisis for the regional TJ project.

There are two implicit assumptions behind this call for the EU's action and support for the continuation of the TJ project through conditionality. The first is the trust and belief in the TJ norm as the best or even the only way of dealing with the past and delivering justice for the victims. The second is the hope that if the EU pressured enough and the national institutions and political elites were willing to do everything deemed necessary in the interest of TJ norm, then eventually all the goods of this norm - justice, accountability, reconciliation, truth, and non-recurrence - would be achieved and post-conflict transformation would transpire.

However, the problem is a bit deeper and just getting the EU re-engaged in the regional TJ project on the same terms as before would not solve it. Neither would be just coming up with yet another "carrot on the stick" for the regional political leaders so that they would – once again – be motivated to engage in performative utterances of empty promises or excuses. This 'cri-

sis-dance' has been going on for the past 20 years, and I stand to be corrected but, we do not have much ground to believe that if we continue dancing to the same tune, we would eventually get different results.

What is needed, I would argue, when thinking about the future of TJ enterprise in the region, is to reconsider the strategies for engagement with the norm of TJ. In addition, to reconsider expectations from the TJ norm as it is and not as we wish the norm was, and to consider (additional) alternative policy and advocacy routes for satisfaction of victims' (and societies') post-violence needs and claims. This reconsideration of the future engagement with the norm of TJ should be based on a thorough analysis of the needs of the victims-survivors and the context. The context, however, should not be understood as a temporary transitional aberration ('the crisis') but as the general structural conditions that have had so far impeded transformation, and that will likely continue to do so. These conditions are both context (state functionality, domestic politics, and failed economic policies) and norm-based (performance of TJ), and taking them into TJ analysis and planning can help us understand the lack of transformation so far, and inform the ways forward and mitigation of the conditions and dynamics that aren't helpful.

This does not mean that we should not remain aspirational and creative in re-imagining ways of addressing violent past and present injustices and pushing for broader approaches to the legacy of the violent past. On the contrary! But it does mean that actors who assume responsibility for transitional justice should exercise responsibility in expectations and disappointment management. At its very core, the idea of TJ centers accountability - not only criminal accountability as the norm suggests but also political, social, and moral accountability - and that means taking responsibility for policy decisions in the area of transitional justice that have not panned out the way it was expected, and not making promises that cannot be kept. And here, I particularly have in mind representatives of the EU who, at the regional TJ forum, talk about the EU's transformative justice approach for the sake of making themselves "more interesting" to the audience.

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14.00-15.30 **Panel II**

## **POLITICS OF MEMORY AND COMMEMORATIONS OF VICTIMS**

**Lejla Gačanica, University of Mostar/Independent Researcher: Creating Memory in Divided Bosnian-Herzegovinian Society**

**Sven Milekić, Maynooth University: Croatia 2020: The Narrative of a Forgiving Victor**

**Jelena Đureinović, University of Vienna/Humanitarian Law Centre: The Memory Industry Relating to the 1990s Wars in Today's Serbia: Where Are the Victims?**

**Stephanie Schwandner-Sievers, Bournemouth University: Memorialisation in Kosovo: Reflecting on Transitional Justice Principles from an Ethnographic Perspective**

**Moderator: Lea David, University College Dublin**

## II POLITICS OF MEMORY AND COMMEMORATIONS OF VICTIMS

### Creating Remembrance in the Divided Society of Bosnia and Herzegovina

*Lejla Gačanica*<sup>16</sup>

In 2020, Bosnia and Herzegovina celebrated several significant anniversaries, which was an opportunity to assess the state of affairs, and to review the way that collective memory has been shaped here in the past 25 years. Within the official narratives about the past, it is important to analyse how this society has coped with the war and the suffering that occurred on all sides during the 1990s. Have we made progress in the process of reconciliation and building trust?

It is quite apparent that the present state of the society of Bosnia and Herzegovina is infused with the consequences of the war. Ethnic divisions and established parities, together with conflicting interpretations of the past, are present in every segment of daily life and political discourse. Public memory is ethnically segregated: from education, to memorials and official commemorations. The same applies to the victims: while one group commemorates them, the other disputes them. Convicted war criminals closely accompany the victims' narratives: in one ethnic group they are heroes, and in the other, criminals. Manipulation of the narratives about the war is a repeatedly applied political means of shaping public opinion, and denial, or approval and justification of the crimes committed—as well as selective acceptance of justice—are continuously causing tension in this divided society. Society at large is kept in a state of permanent conflict, which may only prolong the suffering—but by other ways...

The society of Bosnia and Herzegovina has not developed a systemic approach to the process of facing its past, and in an environment where war criminals are openly celebrated and ethnic divisions are institutionally encouraged, the needs of the victims of the crimes perpetrated are impacted and neglected the most. Even in the legal sense, the victims are not equal in BiH: their status and

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the scope of their rights depend on which part of the country they live in. In this country the victims are still defined by the ethnic criterion. They are not defined by their suffering but by their ethnic/national/religious affiliations. The notion of the absurdity of a “hierarchy” of the victims and of adherence to a “monopoly” on victimisation still appears far-flung. The victimological and heroic narratives are infused, alternated, intertwined, and for each group they are conditioned nearly exclusively by ethnicity. The dehumanisation has continued since the fighting stopped, and it is supported by many segments of the state defined by the Dayton Peace Agreement.

Presented here are examples of the remembrance policies and commemorations of victims in Bosnia and Herzegovina, through the cases of two anniversaries in 2020.

## **25 Years of the Srebrenica Genocide**

July 1995 in Srebrenica is deeply etched into the collective memory of BiH because of the crimes that followed the fall of Srebrenica on 11 July 1995, when more than 8,000 Bosniaks were killed. To date, 47 persons have been sentenced to more than 700 years in prison for crimes committed in Srebrenica, and four life sentences have been passed down. A ruling by the International Criminal Tribunal for the former Yugoslavia established that the crimes committed in Srebrenica also represent the crime of genocide.

The Srebrenica genocide is the „chosen” trauma of the Bosniak people, while the authorities in Republika Srpska (the entity where Srebrenica is located) deny the genocide and question the number of victims. This further leads to the downplaying of the tragedy, but also to the increase in nationalist rhetoric. This practice continues for every local election, continuing the politicisation of the crime. The consequences, however, are not limited to the level of the political elites; they descend into everyday life, preventing responsibility, understanding or empathy to reach the Srebrenica base, where “all sides” are trying to live again.

On Christmas Eve 2020, while a column of vehicles was carrying the Yule log through Srebrenica, next to the Srebrenica Memorial Center in Potočari—where the victims of the genocide are buried—they played Chetnik songs and fired guns. In 2020, a photo was posted on Instagram showing nine boys from the primary school in Srebrenica, posing while giving the three-finger salute. The picture was taken after the ceremony on the Day of St. Sava, the school's patron saint, with the caption “Chetnik brothers”. A [female] ninth-

grade pupil at the same school, who wears the hijab, was assaulted on her way home from school: the girl was harassed because she was covered. The Eastern Alternative Association from Bratunac wishes Ratko Mladić a happy birthday every year. They also put up posters around Srebrenica featuring a picture of Mladić and a text stating that the genocide never happened. Parallel with the commemoration in Srebrenica, this association organised an event celebrating 11 July as a day of victory and “the liberation of Srebrenica”. The rewriting of the past was also evident in the establishment of the Commission for the Investigation of All Ethnic Groups in Srebrenica (2019).

In 2020, we are no longer discussing events involving only the participants and victims of the wars from the 1990s. Remembering exclusionary ethno-nationalist versions of the past—with the message not to move beyond that past—has apparently been successfully passed on to the generations born after the war. Therefore, the issue of remembrance—what and how we remember in a divided society and state—should be understood beyond the ethnic perspective, which is something that seems abstract in present remembrance policies. In addition to denying the genocide in Srebrenica, many other war crimes are also being denied—both with respect to responsibility and with respect to disputing that they ever happened. Throughout BiH we can see cases of the naming of public spaces after persons convicted of war crimes, the displaying of the photographs of war criminals and the presentation of medals to them, the celebration of memorials and erection of monuments that venerate war criminals, the founding and activities of associations and organisations by war criminals or as a form of support for war criminals; financial support allocated from public budgets for convicted war criminals and their families.<sup>17</sup> The denial or veneration of judicially acknowledged war crimes in the public discourse is ubiquitous and has become the norm. Simultaneously, the culture of impunity exists openly.

## **25 Years of the Conclusion of the General Framework Agreement for Peace in Dayton**

The question that we are still trying to answer is: *How to carry on (living) after the conflict?* The Dayton Peace Agreement was a compromise that brought

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<sup>17</sup> Gačanica, L. and Finkeldey, C. *Calling war atrocities by their right name: regulating a ban on denial, trivialisation, justification or condonation of genocide, the holocaust, crimes against humanity or war crimes.* 2019, Forum Ziviler Friedensdienst and TRIAL International, Sarajevo.

a negative peace to BiH, trapping the conflicting parties into the category of constitutive peoples, and establishing ethnicity/nationality as the constitutional criterion. This inevitably affected the “peace” part of this agreement; many things were gained in this peace agreement, but peace was not one of them. The divisions in fact became institutionalized, and what was expected to occur in the reconciliation process—initiated, managed and supported internally— has not developed. It was overly optimistic to expect this, bearing in mind that political elites that promote values and ideologies from the 1990s are in power. Living in the Dayton state means living inside interpretations of the past, based on conflicting interpretations of the same events.

A significant shortcoming of the remembrance policies that are being developed in the context of Bosnia and Herzegovina is the exclusionary depiction of one’s own victims, to the neglect of the suffering of the others. In the long run this leads to divided societies that are prone to abusing memories and creating the potential for new conflicts.<sup>18</sup> In addition to remembrance policies—which, together with the Dayton Peace Agreement, create a vicious circle—the issue of the reproduction of memory is inevitably raised. How is “our” consent to the reproduction of such memories to be developed, and what would be one’s active role in the reproduction of such memories? The absence of a self-critical engagement with the past—in societies where the victims from any and every group have been marginalised—is perhaps the most significant common denominator in all the official narratives about the past in BH.

### **Instead of a Conclusion: Public Memory as a Battlefield**

Selective public memory in BiH has as a rule been proceeding in accordance with the affiliation pattern: nearly all the memorials that have been built across BiH express a one-sided (single-ethnic) view of the event or person they are dedicated to, and resound with “a deafening silence”.<sup>19</sup> On all sides, such discourses are used to assist the homogenisation of the ethnic groups. According to data

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18 Moll, N. “Sarajevska najpoznatija javna tajna”: Suočavanje sa Cacom, Kazanima i zločinima počinjenim nad Srbima u opkoljenom Sarajevu, od rata do 2015 [“Sarajevo’s most known public secret”: Dealing with Caco, Kazani and crimes committed against Serbs in besieged Sarajevo, from the war until 2015]. 2015, Friedrich-Ebert-Stiftung, Sarajevo.

19 Bergholz, M. *Nasilje kao generativna sila – Identitet, nacionalizam i sjećanje u jednoj balkanskoj zajednici* [Violence as a Generative Force: Identity, Nationalism, and Memory in a Balkan Community]. 2018, Buy-book, Sarajevo/Zagreb.

from the Central Register of Monuments in BH (CES BH), in postwar BiH more than 2,000 monuments have been erected, dedicated to the sufferings of civilians and/or combatants in the war in BiH. The monuments are dedicated 10.03% to civilians, 64.49% to soldiers, and 25.48% to both civilians and soldiers.

In addition to the memorials/monuments being representative of a deeply ethnicised and selective version of the past, the existence of places of suffering is often denied, so they remain unmarked, systemically preventing the commemoration of the victims. Namely, we not only use monuments to mark the version of the truth that we want to remember, but also to erase the elements of the past that we want to forget. Forgetting can be a deliberate political act, i.e. the rewriting of history in order to support the current balance of power. The resistance to the building of a monument to the children killed in Prijedor and the commemoration of the slaying of civilians at Kazani in Sarajevo are only some of the examples of the suffering outside of a given ethnic group being disputed.

The creators of the official memories who establish their narratives are lacking in a critical culture of remembrance, and invoke a new war, while the victims are abused for daily political purposes—including those of commercialisation. There are frequent ghastly examples of commemorations being hijacked from the victims and turned into platforms for political speeches, frameworks for collective (national) remembrance, or even monuments devoid of any meaning, such as the monument to peace in Srebrenica: a brass sculpture on a pedestal, in the shape of forearms, holding up the planet Earth, with the figures of four children embracing on top of it. In a city that persistently denies genocide.

As Aleida Assmann says, memories—individual and collective—are at the same time both dangerous and necessary for survival, because they are a means of inciting violence as well as a means of pacification and prevention of violence<sup>20</sup>. With the existing constellation of the relations within remembrance policies and individual memories—bearing in mind the inevitable influence of time—we must ask ourselves what will be remembered (and where) when there are no longer any persons alive bearing personal memories of the sufferings.

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20 Asman, A. *Duga senka prošlosti [The long shadow of the past]*, 2011, XX Vek, Belgrade.

## Croatia 2020: The Narrative About the Forgiving Victor

*Sven Milekić<sup>21</sup>*

In 2020, Croatia's official remembrance policy regarding the wars of the 1990s made limited progress on the one hand, whilst on the other, the dominant nationalist narrative became further entrenched in the commemorative practices. Even though Croatian remembrance policy has for decades been mainly focused on only a few select events—primarily the commemoration of Operation “Storm” and the Fall of Vukovar—this year, these events assumed a somewhat different character.

The dominant remembrance policy in Croatia is derived from a barely disguised ethnonationalist matrix that perceives Croatia—i.e. its sovereignty and statehood—as a value in itself. This nationalistic character is apparent in the fact that the existence of an independent Croatia is attributed to victory in war, which consequently represents the founding myth for this state. The fact that Croatia fought a war for its full independence makes this “Homeland War” (which is its official name in Croatia) a type of nationalist taboo. The ethnic character of the Homeland War is apparent in the fact that this conflict is perceived solely as the final battle in the “centuries of Croatian aspiration towards their own state”. According to this dominant and official narrative, Croatia perceives itself as both the victor and the victim of the Homeland War, merging the two roles in a way that no other post-Yugoslav state has managed to do—with the exception of Kosovo, to some extent.

As regards the victim/victor dichotomy, the anniversary of the Fall of Vukovar and the military and police Operation “Storm” hold a prominent place. Vukovar represents the place where the defenders and citizens of Vukovar, portrayed as heroes and victims, for three months resisted a far stronger and larger enemy—the Croatian version of the Alamo. In the commemoration of Vukovar, there is emphasis of the numerous sufferings and deaths of soldiers and civilians, and the destruction of the city, as well as the months that some of the captured soldiers and civilians spent in camps and prisons in Serbia.

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On the other hand, Knin marks the victory that de facto put an end to the war in Croatia. There the emphasis is on the courage and determination of the defending Croatian soldiers, as well as the good planning of the state and military leaderships. Operation "Storm" is therefore presented as the greatest victory of the Croats in history, even though the Croatian Army defeated an enemy that was far weaker and less motivated than its own—the Army of the Republic of Serbian Krajina. Operation "Storm" also marked the return of Croatian refugees to their homes and the prevention of "a new Srebrenica" against the Bosniak population of Bihać. References to the Serb civilian victims killed during and immediately following the operation (several hundred of them) are either suppressed, or raised in passing as instances of collateral damage for which the Serbian Krajina authorities are to blame. However, even when they claim that the promotion of the victims of Operation "Storm" is Greater Serbia propaganda, Croatian nationalists are aware of these victims. Long-standing discussions have introduced the Serb victims of Operation "Storm" into mainstream Croatian remembrance policy. It could be said that Croatian citizens are aware of their existence, if for no other reason than the collective memory of the plundering, torching and destruction by Croats in the weeks and months following the operation.

After taking over the ruling Croatian Democratic Union (HDZ) and the government, Croatian Prime Minister Andrej Plenković found himself split between a continuation of the relatively moderate conservatism of his own faction and the radicalised and hysterically anticommunist remembrance policy that had been built up by his predecessor, Tomislav Karamarko. Plenković's style of governance and political ideology can best be described as a combination of Sanader's pro-European modern Christian Democracy and Tuđman's Croato-centric option. Plenković therefore advocates Croatian sovereignty and statehood as Tuđman saw it, according to which the fact that the state exists—and not what that state should represent—is the most important fact, combined with Sanader's focus on Euro-Atlantic integrations and membership in the European family.

Because of the pragmatic considerations of a political coalescing with the Serbian minority, Plenković has turned even more openly towards the center, with certain positive steps in the process of reconciliation. In fact, immediately after assuming the role of prime minister in 2016, Plenković started a kind of deradicalisation of the commemoration of Operation "Storm", with the isolation of extremists. Although he refused to confront directly the growing right-wing radicalism—which is based on the revival of the Ustasha movement—in 2020 Plenković decided to quell passions further regarding Operation "Storm".

Therefore, Deputy Prime Minister Boris Milošević, from the Independent Democratic Serb Party (SDSS), the official representative of the Serbian minority in Croatia, took part in this year's commemoration of Operation "Storm" in Knin. The commemoration itself was devoid of content, restricted only to the level of formal protocols. Milošević did not speak at the celebration, but participated rather solely through his presence. As part of this participation, Milošević posted on Facebook a story that included his personal memory of Operation "Storm". As a Serb who had spent the entire war in territory controlled by Croatia, Milošević presented a complex story about Operation "Storm", which combined the experience of a child whose father was on the front on the Croatian side, and whose grandmother had remained in Krajina and died, suffering the tragic fate of several hundred (predominantly elderly) Serbian civilians. Therefore, intertwined in Milošević in an interesting way are the ideal-typical roles of hero and victim, merged in the ethnic Other, a Croatian Serb. In addition to Milošević's contribution, a counter-memory (countering, that is, the dominant narrative regarding Serbs) was shared by his SDSS colleague Draga Jeckov. In the Croatian parliament, she told the tale of her personal experience when, as a child, she fled from Krajina in the endless columns. Because of her public speech, Jeckov suffered a salvo of chauvinist insults by certain MPs, as well as instantaneous persecution on social networks and in right-wing media.

But this is not all. In his speech at the Knin Fortress, Plenković once again mentioned the Serb civilian victims. He started his speech by enunciating all the general points of Croatian nationalism related to the 1990s war. His perspective was that this was a victory in a defensive war - a victory against Slobodan Milošević's Greater Serbia policy in Croatia and Bosnia. According to Plenković, the operation was necessary and inevitable and led to peace in the region, and was therefore justified from a pacifist perspective. Further on in his speech, Plenković discussed the role of the winner in the war. He pointed out that Croatia won the war, but that every "winner must know how to forgive, so as not to sow the seed of future evils," which he said Croatia doesn't want. Plenković expressed his regret for all the victims, including the Serb civilians. Even though he first emphasised the crimes against Croats, he also expressed regret for the victims who were of Serb ethnicity, which "cast a shadow" on a legitimate operation. Plenković stated that the Serbs who fled experienced Operation "Storm" solely as a huge exodus, without perceiving its complex nature. However, despite the reverential tones, the prime minister still managed to reach for a blatant lie when he claimed that

much had been done to promote the return of Serbs. Anyone who followed Croatia's accession negotiations knows how much pressure the EU had to put on Croatia in order for it to meet certain minimum requirements related to the return of Serbs. Nevertheless, Plenković did admit that there are still some problems related to the return of Serbs and their full integration, and announced that the state is working on eliminating these problems.

However, he pointed out that all this "does not call into question the legitimacy and righteousness of the Homeland War", nor does it diminish the victory that was achieved in Operation "Storm". He explained that admitting a crime (as an isolated incident) demonstrates "the magnanimity and humanity of the victor", who regrets every crime. Such an approach, regardless of the recognition of the victims, who had been acknowledged by many statespersons before Plenković (Mesić, Račan, Sanader, Milanović, Josipović), in fact fails to recognise anything new. Recognising victims within this framework does not change the fundamental structure of Croatian nationalism. Accordingly, Croatia reinforces the narrative of the victor who is now—from a morally superior position—offering a hand to the defeated and morally inferior counterpart. Croatia is offering its hand in order to ensure national unity, thereby expanding Tuđman's idea of pan-Croatian reconciliation, which the prime minister needs for his majority in parliament. In this sense, Plenković did not pass up the opportunity to call on the Serb representative to condemn the crimes against the Croats. He pointed out, however, the need to investigate the facts pertaining to all the victims and missing persons, which will lead to genuine reconciliation. Similarly, Deputy Prime Minister and Veterans' Affairs Minister Medved took part in the commemoration of the crime in the village of Grubori, one of the crimes in Operation "Storm". Even though this is a minister who has extremely problematic views of the 1990s war (and even more so regarding the Second World War), his presence at the commemoration in Grubori represented a certain progress in acknowledging the existence of crimes that cannot be justified.

A similar format of commemoration was implemented in Vukovar, the difference being that there the role of the civilian victims was played by Croats. Milošević also took part in the Column of Remembrance and expressed regret, although the ceremony was still dominated by the same form of commemoration as in previous years. In Vukovar, the Government opted to indulge nationalist passions and organised a commemoration under pandemic conditions. Prior to that, it declared 18 November, the anniversary of the Fall of Vukovar, a public holiday and non-working day—a move that even part of the political right

opposed. Although the speeches were slightly more restrained in Vukovar, the Government did not initiate a more serious review of the dominant narrative, which regularly skips the Serb victims in Vukovar for July and August 1991.

In this sense, and all in all, a certain progress has been achieved. It was pointed out that there had been Serb victims and that they were innocent, and that reconciliation and a calmer tone is necessary, as well as that the commemoration of Operation "Storm" has been deradicalised. On the other hand, such a commemoration of Operation "Storm" is a political and symbolic victory for Croatian nationalism, which is beginning to resemble its counterparts in the West. In the words of nationalism theoretician Sinisa Malešević, it is wrong to believe that, because in Croatia nationalism is aggressive, it is strong. On the contrary, Malešević claims that in Croatia nationalism is weak, because it must rely on oppression in order to function. On the other hand, Western states, e.g., Denmark, have a deep-rooted nationalism, which functions on the postulates of banal nationalism. Croatia, therefore, is trying to integrate a Serbian perception into the dominant narrative about the war, which it has been advocating for years, without seriously reviewing it. This is a narrative about the victor who knows how to forgive, in order to achieve pan-national unity and avoid future conflicts—and consequently, any serious discussion about the postulates of this Croatian nationalism.

## The Industry of the Memory of the 1990s Wars in Serbia: Where Are the Victims?

*Jelena Đureinović*<sup>22</sup>

The term *memory industry* applies to the production and sale of souvenirs, entertainment, tourism and kitsch related to the past. In a broader sense, it in fact includes museums, archives, cemeteries, anniversaries, monuments, festivals - and also memory studies.

Viet Thanh Nguyen introduces the concept of the *memory industry* in his book on the memory of the war in Vietnam.<sup>23</sup> In this sense, the industry of memory

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23 Viet Thanh Nguyen, *Nothing Ever Dies: Vietnam and the Memory of War* (Cambridge, MA: Harvard University Press, 2016).

represents the exploitation of memory as a strategic resource, and it is a sign and product of power—which is actually its purpose. It is related to the entire mechanism of production and distribution of memory, including the ideological background, as well as the material and financial conditions that make it possible. The memory industry is based on power inequalities, and the fact that it excludes different groups. Using the example of the war in Vietnam, Viet Thanh Nguyen points to the inequality between the United States of America and Vietnam in their respective abilities to distribute their narratives and influence. The monopoly on the memory industry, such as the one that the USA maintains at the global level, creates unjust remembering and forgetting instead of a just memory, which is what the author advocates for.

Deliberations about the memory industry and structures of power can also be applied in the context of a country such as present-day Serbia. Domination of the master narrative about the 1990s wars—a pillar of the official politics of memory—is also achieved through cultural production, such as publishing and the film industry. Access to the resources and means of production of this cultural industry is, of course, not equal, but restricted, rather, to those who promote hegemonic discourses about the past. This cultural production, which serves the memory industry and distributes dominant narratives to the general population, has been characteristic of the past five years. The war in Kosovo and the NATO Bombing of FR Yugoslavia are key points in the memory politics and topics contributing to the widespread production of media and other contents. During the first decade following the fall of Slobodan Milošević there was no clear memory politics regarding the wars of the 1990s. Even though wreaths were laid and statements were made on anniversaries, the state authorities were more focused on the revision of the Second World War and Socialist Yugoslavia than on the 1990s. At the same time, the political elites did not distance themselves from the policies that were pursued during the wars of the 1990s, and there was no open recognition of Serbia's responsibility or of the suffering of non-Serb victims. Also, the Socialist Party of Serbia had made a quick comeback, and became one of the strongest political parties in the country.

After the Serbian Progressive Party came to power in 2012, the 1990s wars—together with the Second World War—became a central focus of memory politics. The new state authorities used precisely the fact that there had been no significant focus on the wars of the 1990s prior to their accession to power as a foundation for developing their political legitimacy and distinguishing

themselves from their political predecessors. The SNS regime became the regime that was restoring pride to the Serbian people, with the discourse that the Serbian people had previously been forced to be ashamed of their heroes and victims of the 1990s wars, whilst now they could finally remember them proudly. The legitimacy of the current authorities is built precisely on the fact that they are the ones who are creating the memory industry.

Serbian heroes and victims are the main backbone of the official memory politics, which is based on the populist discourse about the glorious past and national pride, with the 1990s wars a part of that glorious past. The heroes are the Serbian armed forces—including convicted war criminals—and the only victims that exist in this memory culture are the Serbian victims.

Since 2015, there have been central ceremonies and official solemn academies organised as commemorative practices for events from the 1990s wars, such as Operation Storm, the beginning of the NATO Bombing, and the so-called Battle of Košare in 1999. The speakers at these events have been Aleksandar Vučić, Milorad Dodik, and the late Patriarch Irinej, with the indispensable participation of the Serbian Orthodox Church and the Serbian Armed Forces in these commemorative practices. The speeches are accompanied by programmes that include historical reenactments (such as the staged convoy of refugees on the bridge in Sremska Rača in August 2020), poetry readings, theatre plays, folklore and testimonies by members of the armed forces and victims. During the period surrounding the anniversaries of events from the 1990s wars, such as Operation Storm and the NATO Bombing, the state ceremonies are accompanied by a large quantity of information about these events in the media, greater than ever before. Day after day, the website of public broadcaster Radio Television Serbia (RTS) reports on the events, providing photos and video material from the wars, as well as commentary.

With the assistance of the national television, state institutions invest significantly in the memory industry and its accessibility to the general population of Serbia. The anniversaries also represent occasions for which documentary films are produced and aired, while the commemoration ceremonies are broadcast live on RTS and YouTube. Some of the commemorations are travelling or take place simultaneously across the country, and are therefore no longer limited to certain sites of memory or to the capital city. For the 20<sup>th</sup> anniversary of the NATO Bombing, every evening the RTS aired some documentary films about the bombing, and about the battles of Košare and Paštrik. These films are also

available on YouTube, with 1.5 to 5 million views, and they had very high ratings when they premiered on television. This is especially the case with the film *War Stories from Košare*, co-produced by the RTS and the Serbian Ministry of Defence, which has nearly 5 million views on YouTube, with record ratings when it was first broadcast on the RTS. In addition to the films, many television stations have produced daily shows on the NATO Bombing and Košare, and several exhibitions about the NATO Bombing were held during 2019.

The publishing activities of the Serbian Ministry of Defence, through its publishing house *Odbrana* (Defence), are dedicated to memory politics and the production of heroic myths about the 1990s wars. In addition to different monographs on military history, *Odbrana* also publishes the *Ratnik* (Warrior) series. The series includes memoir literature about the war in Kosovo, including books of testimonies about the battles of Košare and Paštrik, and war memoirs of convicted war criminals such as Dragoljub Ojdanić and Nebojša Pavković.

The example of the Battle of Košare demonstrates the success of populist narratives and the state-sponsored memory industry, which is not limited only to the extremely high ratings of the films about the Kosovo battles. T-shirts with a “Heroes of Košare” motif can be seen in the streets across Serbia, and murals dedicated to them are on walls in several cities. Football supporters’ groups have adopted the myth of the heroes from Košare as their own, perpetuating the memory industry on stadium terraces and through the further production of T-shirts. One should also bear in mind that up to a few years ago the Battle of Košare was completely unknown to the majority of the population in Serbia, until state actors started producing memories of these battles and their participants.

Where are the victims in this memory industry? The answer is simple: in this context, only Serbian victims exist. The only way to obtain public recognition for the victims of the Serbian forces is for it to serve a political purpose. , Aleksandar Vučić therefore stood up for the moment of silence for the Albanian victims from Kosovo, but this occurred during a meeting behind closed doors. On the other hand, his reaction to the discovery of another mass grave in late 2020 was to draw attention to the Serbian victims and their graves in Kosovo. The duty to remember has become the central discourse of the official memory politics in Serbia, but it applies solely to Serbian victims and heroes—who also include perpetrators of war crimes against non-Serb populations during the armed conflicts of the 1990s. In such a politics of memory—where war criminals are heroes—a public and sincere recognition of their victims is impossible.

XIII FORUM FOR TRANSITIONAL JUSTICE  
IN POST-YUGOSLAV COUNTRIES

Organised by the RECOM Reconciliation Network and the Humanitarian Law Center  
21-22 December 2020



RECOM  
Reconciliation Network

22 December 2020

10.30-12.15 Panel III

THE ISSUE OF MISSING PERSONS -  
THE PRIORITY OF REGIONAL COOPERATION

Manfred Nowak, University of Vienna:  
Enforced Disappearances in the Former Yugoslavia

Ivan Jovanović, Coordinator of the UNDP's Regional War Crimes Project:  
Challenges in the Search for Missing Persons in the Region

Ivan Grujić, President of the Commission of the Government of the  
Republic of Croatia for Detainees and Missing Persons from 1993 to 2016:  
The Experience of Searching for Missing Persons, with the Focus on  
Cooperation in the Region and with International Organisations

Nataša Kandić, Founder of the HLC and Coordinator of the RECOM  
Reconciliation Network: Political Determination, Facts and  
Spreading Empathy - The Case of Kosovo

Moderator: Thomas Osorio, ekspert za tranzicionu pravdu u zemljama bivše Jugoslavije

### III THE ISSUE OF MISSING PERSONS - THE PRIORITY OF REGIONAL COOPERATION

#### Disappearances in the Former Yugoslavia

*Manfred Nowak*<sup>24</sup>

They come at night, heavily armed, some in uniform, others not, wearing masks and force their way into your home. They are searching for your sons, drag them out of their beds, force them to put on clothes and take them away in a car without number plates. You are terrified, try to find out who they are and what will happen to your sons. The next day, you inquire at various police stations or military barracks in the surroundings, but nobody seems to understand what you want: "Your sons are not here!!!".

This is the description of a typical scenario, how **enforced disappearances** happened in Argentina, Chile, Uruguay and other **Latin American military dictatorships** during the 1970s. In reality, disappeared persons were kept in secret detention places, usually tortured to extract information, and later killed and buried in mass graves or thrown from death planes into the ocean. The authorities, however, pretended to have no idea about their fate and whereabouts and denied any responsibility. Victims of this horrible human rights crime are the disappeared persons in the first place, but also their **families** who usually do not give up hope, search for their loved ones by all means and are forced to live with this uncertainty, between hope and despair, for many years.

The **United Nations** reacted by establishing in 1980 the **Working Group on Enforced or Involuntary Disappearances**, the first thematic Special Procedure of the UN Commission on Human Rights, and by adopting the **International Convention for the Protection of All Persons from Enforced Disappearance** in 2006. Article 2 defines a disappearance as the "arrest, detention or abduction or any other form of deprivation of liberty by agents of the State or by persons or groups acting with the authorization, support or acquiescence of

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<sup>24</sup> Manfred Nowak was UN Special Rapporteur on Torture, UN expert on enforced disappearances and judge at the Human Rights Chamber for Bosnia and Herzegovina. He is Professor of International Law and Human Rights at Vienna University, and Co-Director of the Ludwig Boltzmann Institute of Human Rights in Vienna.

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 person outside the protection of the law."

In 1993, I was elected to the five members UN Working Group. The Group had received many thousand complaints from families, associations of families and other NGOs in Latin America, but also in many other countries around the globe, most notably in Sri Lanka, Iraq and Morocco. We communicated these cases to the respective authorities, requested them to conduct investigations and tried by diplomatic means to **clarify the fate and whereabouts of the disappeared persons**. Sometimes this helped, prisoners were released from secret detention and dead bodies were identified. In most cases, our efforts were not successful.

The Group had also received thousands of complaints from families and NGOs in Croatia and Bosnia and Herzegovina. As the Working Group does not deal with soldiers missing in combat and other persons who are unaccounted for in times of international armed conflict (to trace them is primarily a responsibility of the ICRC), the Working Group proposed, and the Commission accepted in 1994 to establish a **"Special Process on Missing Persons in the Territory of the Former Yugoslavia"**. I was appointed to carry out this mandate in spring 1994 and conducted my first **fact finding mission** to Zagreb, Eastern Slavonia and Sarajevo in July 1994. In **Croatia**, the armed conflict between Serbs living in the Krajina region, supported by the Yugoslav National Army (JNA), and the newly established State of Croatia, and ethnic cleansing operations by Serb paramilitary groups against Croatian civilians living in the Serb dominated Krajina region, dated back to 1991, and a UN peace-keeping force (**UNPROFOR**) had been established in 1992 to prevent further violence and ethnic cleansing. I had received at that time almost 3,000 cases of missing persons in Eastern and Western Slavonia as well as in Sectors North and South (area around Knin) of the Serb dominated Krajina region. In **Bosnia and Herzegovina (BiH)**, the war and ethnic cleansing operations had started in April 1992 and were ongoing when I took up my mandate and my search for roughly 20.000 missing persons, most of them Muslims (Bosniaks), but also Bosnian Croats and Bosnian Serbs. I was supported by UNPROFOR, which was a classical peace-keeping "Blue Helmet" operation with light weapons only to be used in self-defence, operating however in an environment of full-fledged armed conflicts between the Army of Bosnia and Herzegovina, Bos-

nian Serb forces supported by the JNA and Bosnian Croat forces supported by the Croatian Army, as well as many paramilitary groups.

My mandate was of a **humanitarian character**, namely to clarify the fate and whereabouts of up to 30.000 missing persons in the territory of the former Yugoslavia. This means that I engaged in **negotiations** between the associations of families of missing persons, such as the "Mothers of Vukovar" or later the "Women of Srebrenica" on the one hand and the military and civilian authorities of all parties on the other. All parties in Croatia and BiH had **established special commissions on missing persons**, and I engaged in negotiations between them aimed at exchanging prisoners and later dead bodies. It soon became clear that most of the missing persons had been killed by targeted ethnic cleansing operations and were to be found in up to **300 mass graves** which we had identified by means of satellite surveillance. During 1995, the military situation had changed considerably by the Croatian Army's Operations "Flash" and "Storm", which brought three of the four sectors of the Serb Krajina region back under the control of Croatia, thereby facilitating the advances of the combined Bosniak-Croat armed forces against those of the Bosnian Serbs in the North-Western part of BiH. On the other hand, the seizure of the Bosniak enclaves of Srebrenica and Zepa by Bosnian Serb forces in July, which was acknowledged as the **first genocide in Europe after the Nazi Holocaust**, and the mortar attack on a Sarajevo market in August finally led the US Government of Bill Clinton to react by authorizing NATO air raids against the military infrastructure of the Bosnian Serbs and thereby facilitating the Dayton Peace Agreement for BiH and the Basic Agreement on Eastern Slavonia of December 1995. The latter established a **Transitional Administration in Eastern Slavonia (UNTAES)** and the former led to a robust **peace-building operation in Bosnia and Herzegovina** with 60.000 heavily armed troops under NATO command (IFOR), 1.700 UN police officers and many civilian actors to be coordinated by the High Representative for BiH.

After my visits to Vukovar, Srebrenica, the Prijedor region of the Republika Srpska and the Croat dominated regions of BiH in January and February 1996 and after many negotiations with all stakeholders in the region, I decided that I had to radically **change my working methods**, if I wanted to make a difference and have a real impact on the search of missing persons. In my report to the UN Commission on Human Rights of March 1996 (UN Doc E/CN.4/1996/16), I proposed to start a comprehensive **forensic programme of excavating mass graves**, exhuming the mortal remains of persons buried in

these graves, identifying them by means of post-mortem investigations and matching these results with a comprehensive ante-mortem database to be established on the basis of interviews with family members of missing persons. Ideally, DNA analyses would have made this task much easier, but was at that time still a very expensive forensic method for which the United Nations was not willing to provide the budgetary resources. In addition, I proposed the establishment of a high-level **Multilateral Commission on Missing Persons**, consisting of representatives from the State of BiH, the Federation of BiH, the Republika Srpska, the Republic of Croatia, the Federal Republic of Yugoslavia (Serbia and Montenegro), the High Representative, the Ombudsperson for BiH, UNTAES, the ICRC and myself.

Unfortunately, the UN Commission on Human Rights only reacted lukewarmly to these proposals, but authorized me nevertheless to start a programme of forensic activities and to raise voluntary funds. With the support of Finland, the Netherlands, France, the European Union and the Ludwig Boltzmann Institute of Human Rights in Vienna, I started an Ante Mortem Data Base, and a team of **22 Finnish forensic experts** commenced **exhumations** in the surroundings of Srebrenica. However, due to the lack of support by the High Representative (Carl Bildt) and IFOR to provide the necessary security to our forensic experts and to guard mass graves, we soon had to abandon this project, but continued to cooperate with the forensic work conducted under the auspices of the Prosecutor of the International Criminal Tribunal for the former Yugoslavia (ICTY), Richard Goldstone.

In July 1996, at the G-7 Summit in Lyon, **US President Bill Clinton** took up my proposal of a multilateral commission by announcing the formation of an "international blue-ribbon commission on the missing in the former Yugoslavia", which was soon realized in the form of the "**International Commission on Missing Persons in the Former Yugoslavia**" (**ICMP**). With the financial backing of the US, the ICMP held its first meeting already in October in Geneva with former US State Secretary Cyrus Vance in the chair, and high-level members including former British Foreign Secretary Lord Carrington, High Commissioner José Ayala Lasso, ICRC President Cornelio Summaruga, former French Minister of Justice Robert Badinter, former Dutch Minister of Foreign Affairs Max van der Stoep, Pakistani Minister of Foreign Affairs Yaqub-Khan, FRY Minister of Foreign Affairs Milan Milutinovic, Croatian Minister of Foreign Affairs Mate Granic, Bosnian Prime Minister Haris Silajdzic, Bosnian Croat Minister of Foreign Affairs Jadranko Prlic and the Chairman of the RS Assem-

bly, Dragan Kalinic. I took part in this meeting as special advisor and advocated that **exhumations** should play an important part in the future work of the Commission. Already in November, the ICMP established an office in Sarajevo and soon started with negotiations between all the parties involved as well as with a comprehensive programme of excavating mass graves and exhuming mortal remains. The ICMP still exists today, has been successful in so far as more than two thirds of the missing persons in BiH could actually be found, exhumed, identified and buried in individual graves or in memorial sites, such as the Srebrenica grave site and memorial near the barracks of the former Dutch UNPROFOR Battalion Potocari.

Taking these developments into account, I formally **resigned** in spring 1997 in my function as Independent Expert in charge of the "Special process on missing persons", but I continued to support the search for missing persons as Director of the **Ludwig Boltzmann Institute of Human Rights** in developing an Ante Mortem Database on all missing persons in Srebrenica. Since I had been appointed in early 1996 by the Committee of Ministers of the Council of Europe as one of the eight international judges of the **Human Rights Chamber for Bosnia and Herzegovina**, which was established under Annex 6 of the Dayton Peace Agreement, I travelled for eight years every month to Sarajevo and could supervise the work of our teams in Sarajevo, Tuzla and Mostar. In the Chamber, we dealt with **individual complaints** of human rights violations in the State of BiH and its two Entities, which were alleged to have occurred after the entry of force of the Dayton Peace Agreement on 14 December 1995. This means that we had no mandate to decide about ethnic cleansing, enforced disappearances, torture, rape and killings of persons during the time of the armed conflicts. However, many family members lodged complaints to the effect that the authorities in the Republika Srpska (RS) and in the Federation had not fulfilled their obligations to investigate these crimes and to provide the families with all relevant information about the fate and whereabouts of their loved ones. In fact, our first judgment concerned the Roman Catholic priest **Tomislav Matanovic**, who had been arrested by Bosnian Serb police officers in August 1995 in Prijedor and whose name had appeared on an official list of prisoners dated 16 December, who were offered by the RS in exchange for Serb prisoners held by Federation authorities. The Chamber found a violation of the right to personal liberty by the RS (Case CH/96/1). Another well-known complaint had been submitted by Esma Palic in her own right and on behalf of her husband, **Colonel Avdo Palic**, who had

been a military commander of the Army of BiH in the Zepa enclave in July 1995. He had been negotiating with the Bosnian Serb Army on UN premises about the evacuation of civilians, when he was forcibly taken away by Bosnian Serb soldiers in the direction of Bosnian Serb General Ratko Mladic's command position. Despite many efforts by Esma Palic to urge information by the RS authorities about the fate of her husband, no investigation had been carried out until the case was finally decided in 2001. The Chamber found a violation of the rights of Colonel Palic to personal liberty, personal integrity and life, and in addition found that his wife was a victim of the right to respect for her family life and the right not to be subjected to inhuman or degrading treatment (Case CH/99/3196).

Thousands of further cases were submitted by family members and their associations relating to ethnic cleansing operations and massacres committed against Muslim civilians by Bosnian Serb forces in towns and villages of the Eastern RS, such as Srebrenica, Zepa, Bratunac, Rogatica, Visegrad, Vlasenica and Foca. In most of these **systematic disappearance cases**, the Chamber found various human rights violations and ordered the RS, as a remedy, to carry out a thorough investigation, to disclose all information to the families and to pay compensation for the harm suffered by both the disappeared persons and their families. Most well-known is the **case of the Srebrenica genocide** in July 1995, in which the Chamber ordered the RS to pay a total of 4 million KM (2 million €) as a collective compensation to the Foundation of the **Srebrenica-Potocari Memorial and Cemetery** (Case CH/01/8365 et al). This was, of course, not an adequate reparation for the immense suffering of the family members of more than 8.000 men and boys, who had been murdered during this genocide, but it constituted a major contribution facilitating the construction of this important memorial site. Our judgment dates from 2003, the last year of the Chamber's existence before it was shut down by the international community. I have been back to Srebrenica on several occasions since then and have been glad to see that the vast majority of the victims of the genocide have in the meantime been exhumed, identified by means of DNA analysis, and buried in accordance with Islamic rites in individual graves at the Cemetery. I sincerely hope that the Srebrenica-Potocari Memorial and Cemetery will finally contribute to a situation in which this genocide will no longer be denied and when future generations will understand how dangerous it is to stir up ethnic and religious hatred.

## Experience in Searching for Missing Persons, with a Reflection on Cooperation within the Region and with International Organizations

*Ivan Grujić<sup>25</sup>*

In the 1990s we encountered a large number of missing persons, different ways in which they were recorded, and unknowns related to what happened to these persons. That is how we realised that we had to take a step forward in the search for missing persons, and in order to take it, we had to know how many missing persons there were. Not only because of the number, but in order to collect the data that could be important for finding them, as well as to have data that the international community would recognise as relevant. It was precisely the arrival of Mr. Manfred Nowak in Zagreb that the process we are considering began to progress. He offered us the UN questionnaires on missing persons, which were the foundation for the further development of questionnaires in the search for missing persons that were practically the key to finding these missing persons. Another important thing related to Mr. Manfred Nowak, which has been etched in my mind all these years is: in 1994 the families of missing persons started coming together in associations, and he came with his team to one such meeting, and practically gave these people hope. He couldn't tell them "we'll handle/solve it", but he gave them hope, which actually eased those people's burden of current uncertainty and raised hopes of finding their loved ones. So, that is when the development of the system started.

I think that we must all agree that the issue of missing persons is not only a humanitarian issue. This is an issue that is very closely related to the processing of war crimes and justice. This issue is very important and is linked to coexistence in the areas where such bloody events took place. It is also clear to us that resolving such an issue requires the existence of political will.

At that time, we had several different numbers, including around 18,000 missing persons in the territory of Croatia, which fits the number of around 40,000 missing persons that Mr. Nowak mentioned. The first thing was to try to determine the state of the matter, and it was precisely the UN question-

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<sup>25</sup> Ivan Grujić was the President of the Commission of the Government of the Republic of Croatia for Detainees and Missing Persons from 1993 to 2016.

naires on missing persons, which were included in the model that we had been developing, that led to us going from those 18,000 to some 7,500, and in fact we came close to the number that was verified by the international community, i.e., by the International Committee of the Red Cross.

The first and primary matter was the issue of defining missing persons. It is a person about whom there is no information or no proof of death. It was clear that, at the time, a missing person could have been detained, and we couldn't have known anything about them, because they had been hidden or had not been registered. And so this part of the process started with bilateral talks—with support from the international community, with support from the UN. Without them we couldn't meet, couldn't establish contact—we couldn't enter a territory without some minimal level of safety. It was precisely here that the UN provided very important support, and through this process a large number of people—several thousands—were released, exchanged, from Bosnia, from Serbia, from the temporarily occupied regions of the Republic of Croatia. And this is when we got to the saddest part—and that was, the discovery of missing persons as dead, in mass and individual graves, in the regions of the conflicts. That is when that part of the system started to develop and we decided to go our own way.

I must say that in addition to the UN, we also had some support from the OSCE, and continual cooperation with the International Committee of the Red Cross, which also played a very important role in registering prisoners, in their exchange and being recorded and information collected about them.

Later, sometime in 1996, the International Commission on Missing Persons appeared, and later developed into an institution that took over the technical issues. The goal of the international community was to help us develop our own resources, and to withdraw after that, which is what happened with the International Committee of the Red Cross. The cooperation with the UN and the UN Commission still continued in a fashion, through the processes that were also handled by the International Criminal Court. This is what [I meant when] I mentioned that it was something also related to justice.

The data which was collected through the processes of searching for missing persons, i.e., finding mass and individual graves, was in practical terms the material evidence that was used in international cases, before the International Criminal Court, but also before national courts. If we look at such cases, more than 50 percent of the material evidence that had been used in these

cases is precisely the evidence that had been collected through this process. This is work that is exceptionally high-risk, but it gave results. I must say that the UNDP also brought very important shifts in this process. Everyone had their role in this process—by which I mean, the international community.

The culture of remembrance is very important, because in that way people have tried to be brought together. The fact that it did not fully take root is a different issue, although it is my opinion it is a process that should be continued, which would provide new developments. This is, I would say, a network that is intertwined, made up of very fine pieces of information that ultimately yield results. Every international organisation has played an important role in what was created. I must say that a huge job has been done, but we certainly cannot be satisfied by this.

And finally, let me just mention the nongovernmental organisations which, I would say, were very important. They were important in the very beginning, because until nongovernmental organisations applied that pressure, it was clear that politics/politicians didn't react to this issue that much. As soon as the pressure was greater, we were enabled to work, because politics provided more resources and the possibility to do the work.

It is clear that the progress in the search for missing persons stems from the influx of information on missing persons, i.e., unfortunately, on the places of possible mass and individual graves. This information can come from several sources: from international organisations that were in the field and which dealt with other issues, but through whom it is possible to find in their archives some information that would shed light on certain cases or open up other avenues. Further information can come from the authorities of certain countries where [the cases] are located, and the exchange of such information is important, of course. Also, there is the information from individuals who were witnesses to these events. The key to the solution is in the basic thing—and that is trust. We have to develop the trust of both those individual and state institutions, so that this information can start being exchanged. We have had very positive developments: for instance, observation of exhumations in other states, and this process worked, and this trust has led to results in the exchange of information. Here we get to political will. Political will was expressed back in Dayton, where it was said that the sides would provide all information without delay. But it has not been provided to this day. Political will was expressed declaratively, it was expressed through a series of confer-

ences, through the signing of memoranda at the highest levels—from primer ministers to state presidents—but the issue is the implementation of that political will. We have still not achieved that. We must strive for this - for implementation to start on the foundation of the trust that we will create between the subjects who are involved in this process. Without it there will be no progress.

## The Challenges in the Search for Missing Persons in the Region

*Ivan Jovanović*<sup>26</sup>

Political will is a key precondition in the search for missing persons—regardless of whether we perceive it purely as a humanitarian process or as part of the rule of law and taking accountability for crimes from the past—because the majority of the missing persons, both those who have been discovered and those still being searched for, are victims of war crimes. This is why the lack of political will is closely tied to the level of success of regional cooperation and the processing of war crimes. A lack of political will leads to information not being disclosed as to where organized concealment of bodies took place—especially their transportation from primary to secondary, tertiary and other graves—and where the government or a section of the people in power and from the state apparatus are in possession of information on the locations of graves and bodies, despite the fact that there is an obligation for the state to disclose such information. This obligation is contained in the International Convention for the Protection of All Persons from Enforced Disappearance, as well as in the Geneva Conventions which supersede it, and certainly in obligations based on national legislation – on the penal code and other laws. And it is in any case a moral obligation that none of the states denies. The only thing being denied is that the state or state authorities, or anyone from those authorities or with close ties to them, has information on where the bodies were buried or taken. The lack of sufficient political will also leads to the creation of a climate in society throughout the region that those individuals who have information pertaining to the locations of

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certain mass graves do not have the courage to come forward and provide such information. A single individual even can make a crucial contribution to the resolution of the issue of the missing persons by providing information to the authorities in different ways, including anonymously, by notifying the police, filing a report through the International Commission on Missing Persons (ICMP) website, calling the phone number that is posted on the Missing Persons Institute in BH website, etc. This happens very rarely, however — i.e. it doesn't happen often enough—because there are still mass graves that are waiting to be discovered. The division of victims into 'ours' and 'theirs' is still at the root of this.

I would like to draw attention to another part of the challenge and problem in resolving the issue of missing persons—the passage of time. It has happened that even when there are individuals—regardless of whether it is as an 'ordinary person' or someone who was or is part of the government—who have information about the location of a grave and want to reveal where certain mortal remains are located, and they take the police or other authorities to show the spot, it may turn out that the location is not right, i.e. that there is nothing at the place they have indicated. The passage of time means memories fade, and Nature also takes back its own—greenery changes and spreads, and it is sometimes impossible to recognise places that today look different from how they looked twenty or twenty-five years ago, when the bodies were buried somewhere in or near the forest. So, witnesses come forward or are identified, and they lead the investigators to a certain place but cannot precisely point out the microlocation of the grave. In practice, this happens most often in Bosnia and Herzegovina, where the number of unsolved cases still outstanding is the greatest, and where the largest number of mass graves are believed to lie. In some instances, even when the state authorities have been involved since the beginning—such as in the case of the recently discovered mass grave in Kiževak, southern Serbia—digging took more than a year: even though the site was known, it took time to find the precise location, because since 1999, the tailings from the mine had accumulated and spread out.

It is necessary to exchange information and detailed analytics, including new approaches to the problem. This is where we come to the crucial role of regional cooperation, as well as the role of war crimes trials. Therefore, the states in the region and their institutions for addressing the issue of missing persons must exchange information among themselves - from their official

archives, as well as what they come across in contact with witnesses, whether they be witnesses involved in criminal proceedings or persons who in the course of their operational work have acquired and could share information that might help find an individual, group or mass grave.

Steps have been taken towards regional cooperation, such as the 2018 Western Balkans Summit in London, an element of the Berlin Process, and the Declaration in which all the prime ministers in the region committed to better cooperation in the search for missing persons. The workgroup for missing persons, which is part of the Berlin Process, with the coordination of the ICMP, has stepped up this multilateral cooperation, as well as bilateral cooperation in the region.

As far as the prosecution of war crimes is concerned, court cases can, on the one hand, be a source of information, i.e. war crimes investigations may lead to the location of mass or individual graves and the discovery of the fates of missing persons. On the other hand, war crimes cases can also act as an obstacle or danger to someone considering disclosing information that may lead to the discovery of a grave or the solution of cases of missing persons in a different manner, especially if they were involved in the removal of bodies, because they might fear that disclosing such information may expose them to criminal prosecution as a former accomplice. However, in situations when someone has become involved in criminal proceedings—as a suspect or a defendant—there is the possibility that by providing information leading to the discovery of the bodies of missing persons, this person may also help themselves in the criminal proceedings—and consequently help the community too. In a way, this may be achieved through the implementation of the Agreement on recognition of criminal acts, which has already been implemented in some cases in Bosnia and Herzegovina and in Serbia, where information obtained in this manner and the agreements concluded with defendants have led to the discovery of bodies of missing persons. There is also the possibility of the prosecutor deciding not to initiate or resume proceedings against a suspect who decides to provide valid information about graves. Therefore, a type of compromise is necessary here— sparing someone accountability, if that can lead to the discovery of mass graves. Such practices of making compromises between justice and the resolution of important humanitarian matters and achieving broader social goals, is common in many post-conflict societies, and in criminalistics in general.

On the other hand, the issue of the accountability of those behind the concealment of the bodies is raised, especially when it was organised and systematic. This matter can be especially complicated in cases when bodies have been moved to secondary graves. Primary graves—dug immediately after the crime had been committed—were most often made by those who were also responsible for the murders that had been committed, as well as for the concealment and transfer of the bodies to other graves after a certain period of accountability had passed and the circle of people involved had dispersed. In such situations, the legal challenges are no small matter. One possibility is to prosecute someone for abetting war crimes—because concealment is aiding—but this is an option only if it is possible to prove that concealing and moving the body had been agreed upon in advance, before the murder was committed. There is also the special crime designated as aiding a perpetrator following the commission of a crime, but its statute of limitations expires after several years, and in practice it is no longer possible to apply it to cases from the 1990s. There is also the possibility of considering treatment of mortal remains in an undignified manner as an inhumane act and therefore a war crime, guidance for which could come from the permanent International Criminal Court and the comments of the International Committee of the Red Cross. From past experience, however, it seems that most prosecutors in the region—the BH Prosecution is a significant exception—are not likely to propose nonstandard legal interpretations. The best legal solution would be enforced disappearance as a crime—because anyone in the chain of persons who have abducted and killed someone, without then providing information about the fate of such a person, is committing an international criminal act. However, we come to the fact that even though the Convention for the Protection of All Persons from Enforced Disappearance requires all states that have ratified it to prescribe this as a separate crime, this has not been done anywhere in the region - with the exception of Bosnia and Herzegovina, and at the BH national level, not at the entity level, and only for cases where the perpetrator is a member of an authority of the Bosnia and Herzegovina state. It is possible to prosecute enforced disappearance as a crime against humanity everywhere in the region, but here we have a legal obstacle, because—with the exception of the Prosecution of Bosnia and Herzegovina in cases before the BH Court—no judiciary in the region is prosecuting crimes against humanity. I am convinced that the majority legal interpretation in the region—that crimes against humanity can-

not be prosecuted—is not in accordance with national regulations or international law. For this reason, if forced disappearance were to be introduced as a special crime—which is something that the Workgroup for Enforced Disappearances and other United Nations bodies have often proposed—this would provide an indisputable possibility for someone still to be prosecuted now for concealing bodies in the 1990s, because it would then be treated as an extended or continuous crime: as long as you do not provide information about the fate of a missing person, i.e. information on the location of the mortal remains of the missing person in the event that the person is deceased, you are still committing that crime. This would provide legal certainty that some persons could be charged in court for concealment i.e. hiding bodies and creating mass graves. Perhaps then some people would be more motivated to disclose information, in order to preclude criminal proceedings against themselves, or to fare better in such proceedings.

## Missing Persons Related to the War in Kosovo

*Nataša Kandić<sup>27</sup>*

Starting in December 2019, the RECOM Reconciliation Network (formerly the Coalition for RECOM) resumed documenting war victims in a political climate where it no longer has the support of leaders and institutions for the establishment of an interstate commission for creating a list of victims and war crimes (RECOM). In the past year, our focus has been on the documentation of human victims in the war in Croatia, of abductions and disappearances in Kosovo, and of detention facilities in BH, which are listed in various sources but have not been encompassed in the trials before the ICTY and national courts; as well as on the creation of a record of the detention facilities whose existence has been established in court judgements.

In 2020, the Humanitarian Law Centre (HLC) and Humanitarian Law Centre Kosovo (HLCK) decided to restrict the scope of their research into the human victims in Kosovo to persons who disappeared between 1998 and 2000, for three reasons: to use data on each individual missing person in order to de-

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<sup>27</sup> Nataša Kandić is the Founder of the HLC and the Coordinator of the RECOM Reconciliation Network that has been working on the research and documentation of war crimes and other serious violations of human rights committed on the territory of the former Yugoslavia.

mystify the political story about missing persons as being solely about the number of ethnic victims; to arouse public solidarity and compassion with the families of all the missing persons, both in Serbia and in Kosovo; and additionally to apply pressure on institutions to disclose the locations of mass graves and information related to the relocation of bodies. The results of the research show unambiguously that the basic reason why the number of missing persons has not decreased in recent years – especially in cases of group disappearances – is political in nature: currently in power in Serbia are political parties (the SNS and SPS) that are concealing information about mass graves, and thereby protecting from criminal liability VJ and MUP generals – members of the SNS and SPS, or with close ties to those parties – in whose zones of responsibility mass crimes were committed during the NATO bombing; whilst in Kosovo, Hashim Thaçi, who was indicted for war crimes by the Prosecution of the Kosovo Specialist Chambers in November 2020, has until recently been president.

The research into the abductions, illegal arrests and disappearances indicates that the majority of missing persons were last seen in larger groups at specific locations, controlled by certain armed units.

This included 32 men, unarmed farmers, who were last seen by their families on 29 March 1999 in Xhafer Zukaj's house, in the village of Beleg/Beleg in Dečani/Deçan. Judging by evidence based on VJ documents, the information about the fates of these men is held by the units that were deployed in this region at the time of the event: from 2 March 1999, a manoeuvre support company from the 21<sup>st</sup> and 22<sup>nd</sup> detachments of the PJP MUP, and a territorial company from the 72<sup>nd</sup> Detachment of the PJPJ, were in the territory of Dečani/Deçan, and as of 27 March 1999, the 177<sup>th</sup> Military Territorial Detachment, in coordinated action with the forces of the 12<sup>th</sup> Motorised Brigade of the VJ and MUP forces, were tasked with "protecting the Serbian population in the city of Dečani, establishing combat control of this territory and cutting off Dečani-Peć communications."

The residents of the village of Goden/Goden, which is located 3 km from the border with Albania, were forced out by members of the 53<sup>rd</sup> Border Battalion of the VJ on 25 March 1999, who kept hold of 20 men, none of whom were armed. On returning from exile, the residents found that the houses in front of which the Serbian soldiers had detained the 20 men had been torched. They also discovered a few bones. International forensic pathologists deter-

mined that the bones belonged to four men whose identities they could not determine. The village buried the bones that were found and erected a monument with the names of the 20 men, but there has still been no explanation as to what happened to the mortal remains of the other 16 detained men.

The mortal remains of 48 civilians, mostly from Klina/Klinë and the surrounding villages, have still not been found, even though there are serious indications that they are still in Lake Perućac, from where the bodies of 19 victims, last seen on 4 April 1999 in the village of Kraljane/Kralan, were pulled out. On orders from the Joint Command for Kosovo and Metohija and the Pristina Corps, dated 1 and 2 April 1999, the 5<sup>th</sup> Combat Group of the 125<sup>th</sup> Motorised Brigade of the VJ was tasked with "occupying the broader region of the [village of] Kraljane," as well as "to support the MUP forces in smashing and destroying the [Šiptar terrorist forces] between [the village of] Kraljane and [the village of] Jablanica." The 24<sup>th</sup> Detachment of the PJP was supported by the 5<sup>th</sup> Combat Group.

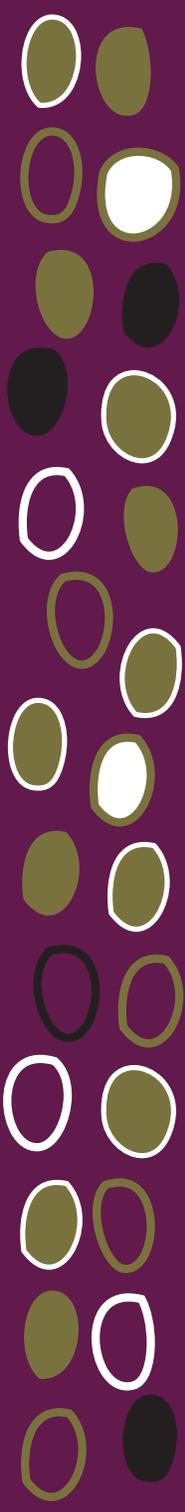
The research also showed that the missing persons include a large number of persons over the age of 60. The attack by the Serbian forces on KLA positions in the city of Dečani/Dečan on 19 May 1998, was followed by an attack on the villages in the municipality of Dečani/Dečan along the border with Albania. The population fled, but around 50 elderly persons remained in the villages of Pobrđe/Pobergjë, Loçane/Lloçan, Vokš/Voksh, and Huljaj/Hulaj. After entering the villages, the police rounded up some of them and put them in Sylë Cacaj's house, where they were kept in inhumane conditions until their families collected them. But the fates of 30 elderly men and women are still unresolved.

In the Serbian village of Dojnice/Dojnicë, which is located 5 kilometres from Prizren/Prizren, it was only older people who remained in the village after the NATO forces entered Kosovo. KLA Commander Ekrem Rexha - "Drini", who grew up in the neighbouring village of Skorobište/Skorobishtë -, called a meeting with them and in the name of good neighbourly relations invited them to stay. However, a group of members of the KLA from the surrounding villages raided Dojnice/Dojnicë on 27 June 1999 and killed 15 elderly persons whom they encountered. The UNMIK unit for investigating war crimes investigated the event in 2005, but failed to determine what had happened to the bodies of the slain Serbs.

Significant findings on missing persons include evidence that at least 40 Serbs over the age of 60, including ten women, and at least 10 Roma and some ten refugees from Croatia, disappeared in the city of Đakovica/Gjakovë after the arrival of NATO forces. The city headquarters of the KLA had full control of the city until at least September 1999; therefore, that is the first place to inquire about the locations of the mortal remains that have still not been found.

The Streočke planine/Bjeshkët e Strellcit mountains, which are located above Peć/Pejë and Dečani/Deçan, still conceal secrets related to what happened to the more than 20 civilians who on 7 April 1999 fled the village of Raušić/Rqashiq before the VJ units, and took refuge in the mountains above the village. The research by the HLC and HLCK shows that government commissions, of both Serbia and Kosovo, have not checked information on the missing persons whose disappearances have been reported by their families to the ICRC. The ICRC records include several persons whose disappearances are not related to the war, and at least 15 persons for whom it is no longer possible to obtain reference blood samples because they have no living relative. And the records do not contain the names of missing persons whose families are still afraid to report their disappearance, as well as of a large number of Roma whose families are scattered across Europe and still fear to deal with the past in Kosovo, which has brought them nothing good.

The RECOM Reconciliation Network will publish the results of the HLC and HLCK research in the form of a special edition of *The Kosovo Memory Book*, containing narratives on each individual victim, which will certainly help trace possible locations of mass graves, as well as contribute to the development of a remembrance of those victims who do not have a grave as a physical symbol of their existence and death.



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