

THE TOPIC OF THE ISSUE

Determining the fate of missing persons in post-conflict society: role of judiciary, ad hoc bodies, and international actors. Case study.

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1. On June 30, 2006, a consignment of 110 body bags containing bodies and body parts exhumed in Batajnica, a suburb of Belgrade, and Perucac, in 2001 and 2002, were repatriated to Kosovo. It was the last of 19 contingents of mortal remains of ethnic Albanians found in the remaining two of three mass grave sites recovered in Serbia proper. This last repatriation is the result of a five year long process which involved many actors, both national and international, in a joint effort to bring answers to the families of the missing. It also presents a successful case of cooperation between the Government, local courts, international organizations, scientists and advanced technology.
2. The so-called "Batajnica case" began developing in early April 1999, when several fishermen reported to police that there was something looking like a huge truck floating in the river. One witness determined that it was in fact a Mercedes freezer truck with markings indicating it belonged to a butcher based in Prizren, Kosovo. While the truck was being taken out of the water, human bodies began falling out through its cracked doors. Despite the fact that at least 200 people witnessed the operation, someone declared the event non-existent, that is, top secret. The next day the bodies were loaded onto two trucks with Belgrade license plates, and the trucks on a train. The story of a freezer truck full of dead bodies would not reach the public for the next two years, at which point it turned out that many people knew about this horrible secret. It became public in the spring of 2001, when an article about it was published in a local newspaper. After the case disappeared from the media, on May 18 Serbian Deputy Premier Zarko Korac said in Geneva that "the government is working hard so that a local indictment against the former Yugoslav president, Slobodan Milosevic, should be expanded to include war crimes." The Serbian Justice Minister Vladan Batic demanded the next day that the president of the Serbian Supreme Court and the Serbian public prosecutor "take steps to clarify a 'mysterious case' involving dead bodies discovered in a freezer truck dumped in the Danube," and that "the perpetrators be brought to justice irrespective of their present or former rank." On May 25, 2001, the deputy head of the Serbian Interior Ministry Crime Department, Dragan Karleusa, announced the first results of the investigation. On the eve of the new Police Day, June 2, 2001, the Minister of Police Dusan Mihajlovic announced that the excavation of one mass grave had started and repeated that several mass graves existed on the territory of Serbia. Police Captain Dragan Karleusa has testified in the meantime in The Hague.
3. Regardless of political motives and timing of the announcement (that is, coinciding with the extradition of Milosevic to The Hague), it was the first step of the newly elected Serbian Government in an effort to face the recent past and gross human rights violations which occurred. The discovery that the bodies from a freezer truck taken out of the Danube at the beginning of April, 1999, were buried near Belgrade as part of a systematic attempt to cover up crimes committed in Kosovo, has left the Serbian public to ask "Will the new authorities have enough strength to bring criminals to justice?" And for the record, the rear loading ramp of a Mercedes truck was recovered lying directly on top of the remains during the excavation of "Batajnica 3" undertaken in 2002.
4. Although the International Commission on Missing Persons, or ICMP, had been politically present and active in the then Federal Republic of Yugoslavia, or FRY, since 1996, in February 2001 it had just opened its offices in Belgrade. ICMP had also been active in Kosovo since June 1999. ICMP is committed not only to endeavouring to secure the cooperation of Governments in meeting their obligations to locate and identify persons missing as a result of armed conflicts, other hostilities or violations, but also to assist them in doing so. The recent conflicts in the former Yugoslavia illustrate the perils that result from a failure to address the past, in particular as regards the existence of mass graves. In the former Yugoslavia, especially in Bosnia and Herzegovina, the work of ICMP has made it possible to locate gravesites, identify recovered remains and commemorate thousands of victims, thereby opening the path to eventual closure and reconciliation for those war-torn societies.
5. With its broad experience in the work on the missing persons issue, ICMP began preparations for its active role in the exhumation and identification process firstly on the political level with a series of meetings with senior state officials. Through these meetings, ICMP began negotiations with the Federal Government to establish an agreement that would outline ICMP assistance in this process. While these discussions were ongoing, ICMP pursued a specific agreement with the then Federal Minister of Justice

Grubac to assist in the excavation of these particular grave sites. He forwarded this request to the Ministry of Justice of the Republic of Serbia for their approval. That approval was then sent to the District Court of Belgrade, which was legally in charge of the exhumation process. Both the President of the District Court, Ms. Vida Petrovic Skero, as well as the Judge in charge of the excavation of Batajnica 01, Mr. Dusan Cavlina, approved ICMP assistance at sites and also the provision of experts and technical assistance for any further Batajnica excavations.

6. The excavation of the mass grave Batajnica 01 began on June 2, 2001. ICMP experiences gained in Bosnia and Herzegovina have shown that the excavation of any mass graves is complex and can be, depending on the nature of the grave, a confusing mix of:

- skeletonized bodies;
- disassociated body parts;
- various foreign soil types;
- forensic evidence of many different types;
- the actual grave feature or features themselves;
- and all of this within the landscape of a specific area.

7. Investigations of these complex crime scenes are undertaken in an attempt to maximize the collection of forensic evidence, which includes the mortal remains, in order to maximize the recovery of as much of one individual as possible as they were deposited within the grave. Although law enforcement investigators, pathologists, anthropologists and archeologists have been active in the recovery of single buried human remains for years, the excavation of contemporary mass graves containing hundreds of bodies is a relatively new phenomenon which started in the 1990's with efforts to recover mortal remains from mass graves in the former Yugoslavia and Rwanda. The primary goal of mass grave excavation is therefore the recording and complete retrieval of all evidence, whether human remains or associated evidence, in their best possible physical condition. The more complete a body is upon exhumation the more information the forensic pathologist and/or anthropologist have available for identification purposes, cause and manner of death evaluation and related analysis. Given their training, knowledge, and interest in human hard and soft tissues, forensic anthropologists focus primarily on the hard tissue, or skeletal, evidence while pathologists focus on the individual body. The role of the archaeologist is to focus on recording and recovery from within a grave.

8. The mass graves on the grounds of the Special Anti-Terrorist Unit of the Ministry of Internal Affairs at Batajnica contained the bodies of over 800 Kosovo Albanians killed in Kosovo during the 1999 NATO intervention which were subsequently loaded in several trucks and transported across the country to finally be interred at Batajnica, Petrovo Selo and Bajina Basta. Within a matter of days, five mass graves including two related features were created at the northern end of a firing range during the spring of 1999 - the height of the NATO bombing of Serbia and Kosovo. The graves were constructed in such a way as to be located within a 50m by 30m area. They were constructed using heavy machinery with many of the remains being subject to attempts to destroy them through various fires that had been ignited in and amongst the various deposits of remains and debris. The mass grave identified as Batajnica 01 was excavated in 2001 by a combined team of forensic pathologists and anthropologists from the Belgrade Forensic Institute and Institute of Anatomy, together with archaeological expertise from the University of Belgrade, and was monitored by the International Criminal Tribunal for Yugoslavia (ICTY). The whole operation was assisted by ICMP. A second grave was exhumed by the Serbian Belgrade Forensic Institute and Institute of Anatomy in 2001 without the expertise of other professionals, including ICMP. Between June and November 2002 all of the remaining graves in the area were located and excavated by an expert team. The ICMP component of this team was led by a senior forensic archeologist. Recovered remains were autopsied on the site by a team of pathologists and anthropologists from the Belgrade Forensic Institute. ICMP did not oversee or assist in the autopsies of human remains exhumed but conducted spot monitoring throughout the process; DNA samples were taken at site by forensic pathologists, and forensic evidence was turned over to the local Serbian court officials at the sites.

9. In 2001, the Batajnica exhumations were monitored not only by ICMP, but also by representatives of ICTY and Humanitarian Law Center (HLC), while in 2002 additional monitoring was conducted by OSCE and sporadically by ICRC.

10. In October 2001, ICMP signed an agreement with the Coordination Centre for Kosovo and Metohija (Coordination Centre) of the Federal Government of Yugoslavia and the Government of the Republic of Serbia, at that time relevant to missing persons from the Kosovo conflict. This agreement also called for a DNA-led identification process and allowed ICMP forensic archaeologists and anthropologists to assist in the excavations in Serbia proper (between 2001 and 2002) of persons missing from the Kosovo conflict.

11. The Batajnica excavations were conducted over a period of approximately two years, with a break during winter months. However, by early November 2002 the Belgrade Forensic Institute and ICMP were

deciding whether to "open" another grave in this case Batajnica 07, despite inclement weather. It was thought that this would be the last grave at the training grounds in Batajnica, and limited geophysical investigations of the area combined with careful archaeological controlled machine stripping of the area revealed this to be the case. The geophysical results indicated that its dimensions were similar in size to Batajnica 03 and would take several weeks to complete. The then President of the Coordination Centre and Deputy Prime Minister of the Republic of Serbia, Mr. Nebojsa Covic, following consultations with the Belgrade Forensic Institute and ICMP forensic experts, and in coordination with the competent Court, made the final decision that the excavation should continue. The last Batajnica mass grave, Batajnica 07, was finished in early December 2002.

12. ICMP's assistance to governments in the region and the accompanying ICMP Standard Operating Procedures for a DNA-led identification system, includes the collection and DNA analysis of biological reference samples (blood) from living family members of the missing who voluntarily gave blood samples to help identify their missing relatives. ICMP has mobile teams for blood sample collection. In addition, ICMP receives biological samples from exhumed mortal remains (bone and tooth) from the local authorities. ICMP compares genetic information from the blood references and bone samples, produces DNA reports and submits them to the authorities. Bone and teeth samples taken during autopsy from exhumed bodies were handed over to ICMP through a court order and have undergone DNA analysis.

13. The term "bone sample" does not necessarily refer to the number of bone samples, or specimens, received in a sample. Also, often more than one bone sample per body or "case" ends up being taken due to the disassociated state of the remains. A sample often contains more than one specimen, or discrete piece of skeletal material (e.g., femur and tooth or skull and tibia). The reason for this is that if one specimen fails to yield results, then the other can be tested and the need for requesting reserves samples is reduced. In order to produce a DNA Match Report confirming the identity of a missing person or an exclusion report excluding the possibility of a familial relationship, DNA reference samples must be collected from living families members putatively related to a missing person, as well as from a missing person's remains. In order to accurately conduct nuclear DNA identification, blood samples from several different relatives of a single missing person are required, ideally the mother and father. When ICMP matches a profile obtained from a bone sample to DNA profiles in its Family Reference Database, it is able to issue a DNA Match Report. A DNA Match Report is issued whenever a familial link is found and confirmed between the Bone Database and the Family Reference Database and the statistical probability is high enough..

14. ICMP issues DNA Match Reports that indicate a 99.99 % probability of identity. It is up to the governmental authorities to legally close a case. They are responsible for conducting ante-mortem and post-mortem data comparison that draws upon osteological and genetic indicators and for closing the case, issuing a death certificate, and returning mortal remains to the family in question. The courts in Serbia issue death certificates when they close a case and declare that individual legally dead. However, under a protocol signed between FRY and UNMIK, OMPF reserves the right to re-examine the bodies once they have been transferred back to Kosovo and to issue its own death certificates. Therefore, Batajnica cases are considered closed only once the bodies have been repatriated to Kosovo and custody transferred to OMPF. OMPF has the responsibility of re-examining the bodies and issuing its own death certificates.

15. ICMP has received 801 of bone samples from Batajnica. It has produced and submitted 715 corresponding DNA Reports, representing 632 individuals. From the first repatriation from Serbia in November 2002, authorities of Serbia returned to Kosovo 729 identified persons in 19 consignments. Some 10% of the mortal remains were as of yet unidentified upon repatriation, and the DNA technology of ICMP will continue to be applied such that they too should be identified.

16. The successful completion, or closure, of the Batajnica case would not have been possible without transparent and close cooperation between all the factors involved. Let me stress these factors out in chronological order:

- In 2001 Djindic's Government exhibits political will to address the issue of mass graves in Serbia;
- ICMP commences diplomatic and political engagement in addressing the issue;
- The Belgrade District Court issued a court order for exhumations, allowing monitoring by both national and international observers;
- Cooperation between national and international teams of forensic experts (anthropologists, archeologists and pathologists) in conducting excavations;
- Support provided by the Coordination Centre for Kosovo and Metohija, led by Mr. Covic, including the decision to complete the excavation in 2002;
- ICMP engages in diplomatic activity to fundraise such that excavations can be completed;
- Bone samples released to ICMP for purposes of identification;
- Cooperation with family members of the missing and their associations;
- Collection of blood samples from family members of the missing conducted by ICMP;

- DNA testing of bone and blood samples and subsequent generation of DNA matching reports by ICMP;
- Local authorities complete identifications and issue death certificates;
- The Commission on Missing Persons of the Council of Ministers of SCG provides logistical and political support to the identification and repatriation process. The Commission has been in charge of missing persons issue starting from November 2003.

17. Both Serbia and Kosovo-based media printed numerous articles about the discovery and excavation of these mass grave sites. There was wide speculation about who these victims were, and what was rumor and what was fact. Depending on the source, victims could be anyone - from bodies from WWII to known individuals from Suva Reka. It is interesting that a local newspaper from Zajecar published as far back as the fall of 1999 a "covered up" version of the story, without citing the sources, "speculating" that the corpses in question were actually Kurds. It should be noted that at least two articles, one published in "Vreme" in July 2001 and the other published in "Politika" in October 2003, approached Batajnica excavations seriously and professionally, leaning on facts.

18. It should also be noted that, with the approval of the competent judge, ICMP published summary and full reports on all of the excavations and exhumations undertaken at Batajnica in Serbian, Albanian and English. These have been distributed publicly and placed on the ICMP web page, allowing access to the broader public.

19. The concept of the right to the truth owed to the victims of human rights violations and their families has taken on increasing importance in recent decades; one only has to look at the work undertaken in Argentina between 1984 and the present day, June 2006 adoption by the United Nations Human Rights Council of the United Nations Draft Convention on the Protection of All Persons from Enforced or Involuntary Disappearances. This concept finds its roots in international humanitarian law in regard to the right of families to know the fate of their relatives, together with the obligation of parties to armed conflict to search for missing persons. In terms of the human rights violations for which the question of the right to truth arises, international human rights bodies have recognized the right to truth in cases of gross violations of human rights, in particular enforced disappearances. However, the right to truth of victims of human rights violations and their relatives has not generally been explicitly recognized in national legislation. Even though, for many countries the right to truth is implicitly recognized in national legislation. National human rights institutions can play an important role in ensuring the right to truth for victims, their relatives and the society. Truth finding investigations and public reports can contribute to exposing the truth, or sometimes confirming the truth. Although many special commissions and investigative bodies do not produce the intended results.

20. A failure to properly address the existence of mass graves and large numbers of persons missing from the Kosovo conflict could therefore pose a fundamental problem for further peace building and reconciliation efforts in the region. This was noted by Kai Eide in his report to the Security Council of October 2005.

21. The surviving family members of the victims buried in the mass grave at Batajnica and recovered from other gravesites in Serbia, have a fundamental right to know the fate of their relatives, and deserve to know who killed their loved ones, removed their bodies from Kosovo and reburied them in undignified and without funeral rights 400 km away, as well as who ordered these crimes.

22. Moreover, all citizens of Serbia are entitled to know who took it upon themselves to kill innocent civilians in their name, load them into refrigerator trucks and transport them over hundreds of kilometers throughout their country. Determining the individuals who are guilty of the crimes should be imperative in order to assist the process of reconciliation.

23. The work of ICMP as a whole can be seen as a significant factor that contributes to the process of States moving towards truth, justice and reconciliation. Using sound, internationally recognized forensic science as a human rights tool to resolve cases of disappearances has been successful not only in bringing individual closure to families of the missing, but in accurately documenting crimes against humanity, in other words producing an historical record that can not be manipulated for political goals. ICMP hopes that by using, amongst other techniques, DNA technology we are providing empirical evidence of a person's identity, so that governments can be held to account for atrocities committed.

24. Further, such efforts encourage and assist States in embedding into domestic legal and administrative infrastructures the body of norms and standards articulated by the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and other human rights instruments. For example, the European Court has determined that the suffering of surviving family members who seek information about missing loved ones can be a continuing violation of Article 3 of the European Convention on Human Rights; i.e. that the suffering of these family members has a dimension and character distinct from the emotional distress caused to relatives of other victims of serious human rights violations. By translating provisions of these human rights instruments that address missing persons into operating legal mechanisms at the state level, ICMP encourages and assists states, such as

the Republic of Serbia, in meeting their obligations toward those who have gone missing as a result of gross violations of human rights and to their surviving family members.