



Fondi për të Drejtën Humanitare Kosovë
Fond za humanitarno pravo Kosovo
Humanitarian Law Center Kosovo

HUMANITARIAN LAW CENTER KOSOVO

BULLETIN ON TRANSITIONAL JUSTICE

WHAT IS TRANSITIONAL JUSTICE?

The notion of Transitional Justice comprises the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.¹ These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.²

Transitional justice is a response to human rights violations that have occurred in the past, whether during periods when societies face armed conflict or when they face authoritarian systems of government.

Armed conflicts and authoritarian systems are characterized by gross violations of human rights, such as murder, enforced disappearance, torture, including rape, arrests, forced displacement, and so on. An institutionalized and comprehensive response to such violations is therefore required.

Kosovo went through such a period during the 90s, especially during the period 1998-1999 when there was armed conflict between the Kosovo Liberation Army on one side and the Military Forces of the Federal Republic of Yugoslavia and the Police Forces of Serbia on the other side.³ Human rights violations also occurred immediately after the end of the war.

As of June 1999, with the end of the war, Kosovo entered an era of dual transition. On the one hand, the state of Kosovo is facing a bitter past of crimes as a result of the 1998-1999 conflict and is thus working to ensure a lasting post-conflict peace.

¹Report of the Secretary-General, The rule of law and transitional justice in conflict and post-conflict societies, (2004), UN Document, S/2004/616, para. 8

²Ibid

³Military responsibility was established as follows: military forces that operated in Kosovo during the war were part of the Yugoslav Army (the Federal Republic of Yugoslavia at that time consisted of Serbia and Montenegro); police forces were under the command of the Ministry of Interior of the Republic of Serbia; while paramilitary forces were organized armed groups logistically supported and also commanded by the Yugoslav Army and the Ministry of Interior of the Republic of Serbia.

While on the other hand, considering that during the period when Kosovo was an autonomous province of the former SFRY it featured a communist system of government, now Kosovo is going through another transitional process, one of state-building based on democratic values.

Considering the key role of transitional justice mechanisms in dealing with the past to build lasting peace after armed conflict and the democratization of authoritarian states, it is important that Kosovo institutions and Kosovo society in general engage in the implementation of such mechanisms.

But before we talk about how the implementation of transitional justice mechanisms contributes to peace and democratization, we must first acknowledge the past.

HOW DID THE WAR IN KOSOVO COME

BREAKUP OF YUGOSLAVIA

The Socialist Federal Republic of Yugoslavia (SFRY), as a federal state, was established on November 29, 1945. The SFRY consisted of six republics: Bosnia and Herzegovina, Croatia, Montenegro, Macedonia, Serbia, Slovenia, and two provinces: Kosovo and Vojvodina.

Following the death Josip Broz Tito, President of the SFRY, on May 4, 1980, and after the fall of communism a few years later, began an era of clashes between the ethnicities that made up this federal state.

Rivalries between the republics and the economic crisis led to the breakup of SFRY, with Slovenia being the first republic to secede and declare independence on June 25, 1991. The so-called ten-day war took place in Slovenia from June 27 to July 7, 1991, during which period 65 people were killed and about 320 others were injured.

Following in the footsteps of Slovenia, Croatia declared independence on June 25, 1991. But unlike Slovenia, the war in Croatia had already started in March 1991 and lasted until November 1995. According to some unconfirmed data, up to 22,000 people were killed and/or disappeared during this war.

In Bosnia and Herzegovina, the war started a year later than in Croatia, namely in April 1992, and ended in November 1995, a month after the end of the war in Croatia. During the war in Bosnia, over 95,000 people were killed and/or disappeared.



WAR IN KOSOVO

After the end of World War II, Kosovo remained part of Serbia in the Socialist Federal Republic of Yugoslavia (SFRY). Since then, Kosovo had consistently sought national, cultural, and educational rights, with efforts to become a Republic as part of the federal state and followed by a movement for full independence in the 90s. The volatile situation escalated during the 1968 demonstrations. At that time, the Albanian population in Kosovo galvanized around the rallying cry of demonstrations demanding an elevated national position, identity, and respect for Albanians in the federal system review. There were calls to ensure national rights, such as the right to equal use of the Albanian language, the right to use the national flag, and to have a university in the Albanian language. As a result of this pressure, the Yugoslav Constitution of 1974 granted Kosovo and Vojvodina the status of Autonomous Socialist Provinces within Serbia. As such, Kosovo enjoyed almost equal rights with the six constituent socialist republics of the SFRY. Through the 1974 Constitution, Kosovo was recognized as a constituent element of the SFRY.

At the beginning of 1981, student demonstrations erupted with a singular demand for a "Kosovo Republic", to subsequently turn into popular protests seeking full independence from the former Yugoslavia. These demonstrations were violently suppressed.

On March 23, 1989, the Assembly of the Socialist Autonomous Province of Kosovo under administrative coercive measures approved the draft amendments⁴ to the Constitution of Kosovo, which were adopted by the Assembly of Serbia on March 28, 1989, and effectively abolished the autonomy of Kosovo. To express their dissatisfaction, Albanians organized mass demonstrations against Milošević's policies, and 1,300 Trepça/Trepča miners went on a hunger strike. On July 2, 1990, the deputies of the Assembly of the Socialist Autonomous Province of Kosovo issued the Constitutional Declaration, declaring Kosovo an independent and equal entity within the SFRY. In September 1991, a popular referendum was held to officially declare Kosovo an independent and sovereign nation, while Ibrahim Rugova was unanimously elected President of the Republic in the following year and spearheaded the peaceful resistance against the Serbian coercive measures. However, unable to exercise effective power and persecuted by Serb forces, the Kosovo Government withdrew, failing to deliver results.

⁴These amendments included proposals of the Assembly of the Republic of Serbia in relation to its two Autonomous Provinces, Kosovo, and Vojvodina. The underlying requirement of these proposals included the abolition of the autonomy of these two autonomous provinces and their placement under full governance by the Republic of Serbia. This project was one of the first steps Slobodan Milošević took immediately after coming to power in 1989.

The situation of the Albanian population in Kosovo during the 1990s remained extremely difficult. Almost all public sector employees were fired, the University of Prishtinë/Priština and Albanian-language secondary schools were closed. The Albanian language press and radio and television broadcasts were also banned. To overcome this challenge, Kosovo Albanians organized a parallel system by offering their homes to conduct classes in the Albanian language and helping to open medical clinics. Meanwhile, thousands of Albanians were imprisoned and mistreated, and many of them lost their lives, while hundreds of thousands more were forced to leave the country and seek asylum in Western Europe.

The dissatisfaction of the Albanian population in Kosovo was expressed through protests and demonstrations until the beginning of the armed conflict between the Kosovo Liberation Army, on the one side, and the FRY Military Forces, the Serbian Police and Paramilitary Forces, on the other side.

The Kosovo Liberation Army (KLA) was established in the mid-1990s as a Kosovo Albanian military force. At the beginning of its operations, the KLA was characterized by covert armed attacks on the Serbian police in Kosovo, while on November 28, 1997, uniformed members of this military force appeared publicly in the village of Llaushë/Lauša in Skenderaj/Srbica, where they presented their goals and reasons underpinning the establishment of this military organization. The Kosovo Liberation Army continued its military operations until June 1999, when it underwent a process of disarmament, demobilization, and transformation, and on September 21 of the same year, the Kosovo Protection Corps was established.

The intensification of the armed conflict and the mass violation of human rights of the Albanian population in Kosovo garnered widespread international attention. The successive failures of the international community to broker a peace agreement with the President of the FRY, Slobodan Milošević, regarding the situation in Kosovo resulted in the military intervention of the North Atlantic Treaty Organization (NATO) against military targets of the Yugoslav army in Kosovo and in the territory of the FRY. NATO military intervention in Kosovo began on March 24, 1999, and lasted for 78 days until June 9, 1999, when the Kumanovo Agreement was reached, providing for the withdrawal of FRY and Serbian forces and the entry of NATO forces in Kosovo. The full withdrawal of these forces went on until June 20, 1999.

Also on June 10, 1999, the United Nations Security Council passed Resolution 1244, which provided a temporary solution to the status of Kosovo in this period. By Resolution 1244, the territory of Kosovo was placed under international administration through the UN Interim Administration Mission in Kosovo (UNMIK).⁵

while the responsibility for territorial security and the security of inhabitants was assigned to KFOR (Kosovo Force, comprised of security forces of NATO nations).⁶

As Albanians returned to their homes, thousands of Serbs, and a number of members of other minorities, fled their homes during the second half of 1999. This period provided conditions conducive to seeking “revenge” against non-Albanian communities, especially against Serb and Roma communities.

The reconstruction of Kosovo was assisted by a host of international organizations. The United Nations Mission in Kosovo (UNMIK) began work on establishing the rule of law and establishing institutions of self-governance. In 2001, UNMIK adopted the Kosovo Constitutional Framework and organized the first free elections in Kosovo’s history. During this time, key powers in the executive, legislative, and judiciary branches of government remained in the hands of UNMIK.

The United Nations, meanwhile, deployed envoy Martti Ahtisaari, who in 2007 came up with the Comprehensive Proposal for the Kosovo Status Settlement, which provided for internationally supervised independence with extended rights for national minorities, especially Serbs. Pursuant to this plan, the Assembly of Kosovo declared Kosovo’s independence on February 17, 2008. The Constitution of the Republic was adopted on April 9, 2008, and entered into force on June 15, 2008, when the full transfer of powers from UNMIK to local institutions took place. In the same year, under Resolution 1244, another international mission was installed in Kosovo, the European Rule of Law Mission (EULEX), with the mandate to strengthen the rule of law in Kosovo.

STATISTICS ON HUMAN CASUALTIES DURING AND AFTER THE WAR IN KOSOVO

The official start date of the war in Kosovo is February 28, 1998. In early 1999, following the failure of peace negotiations (Rambouillet and Paris), the North Atlantic Treaty Organization (NATO) and its allies launched airstrikes on Yugoslav military targets on March 24, 1999, which ran for 78 days. The war lasted until June 9, 1999, ending with the signing of the Kumanovo Agreement.

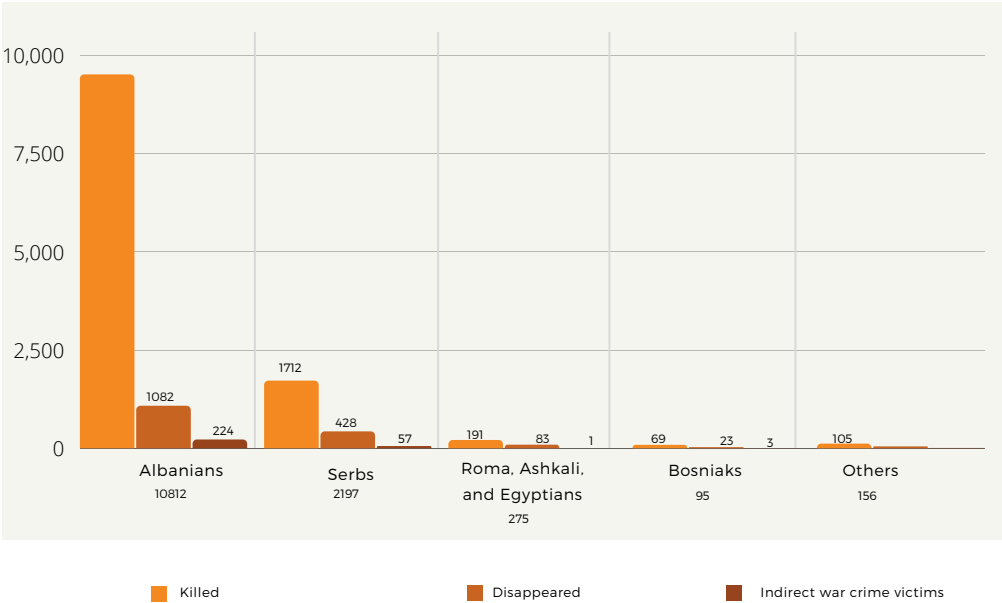
⁵United Nations Interim Administration Mission in Kosovo

⁶Security Council Resolution 1244, S / RES / 1244 (1999), available at: <https://unmik.unmissions.org/united-nations-resolution-1244>

During and after the War in Kosovo, over 1 million people were expelled from the country. Within nine weeks of the beginning of the NATO air strikes, nearly 860,000 Kosovo Albanians fled or were forced to leave Kosovo to neighboring countries: Albania (444,600), North Macedonia (344,500), and Montenegro (69,900). Immediately after the end of the war in June 1999, over 200,000 Serbs, Roma, and members of other minority communities fled Kosovo.

Humanitarian Law Center and the Humanitarian Law Center Kosovo have registered the killed and missing persons during and after the war in Kosovo, respectively from 1 January 1998 to 31 December 2000. Below are presented the statistics with preliminary data extracted from the Kosovo Memory Book.

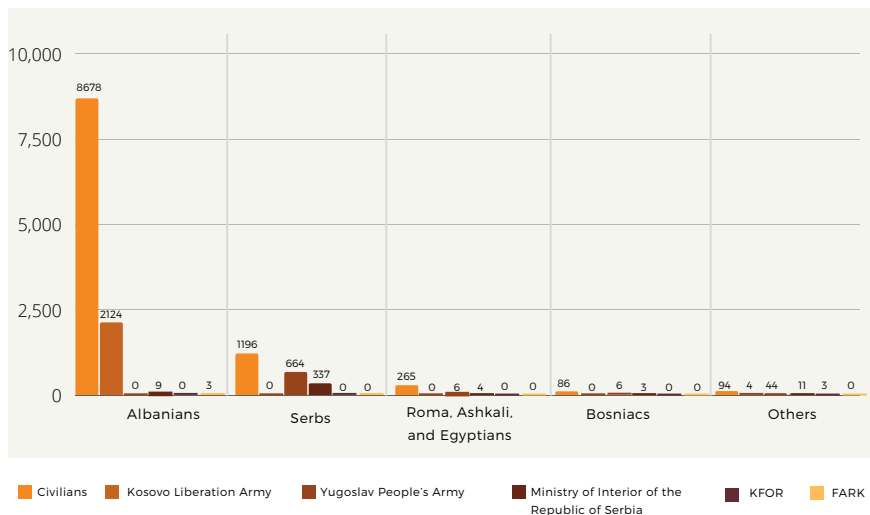
13,535 people were killed or forcibly disappeared in Kosovo during 1998-2000



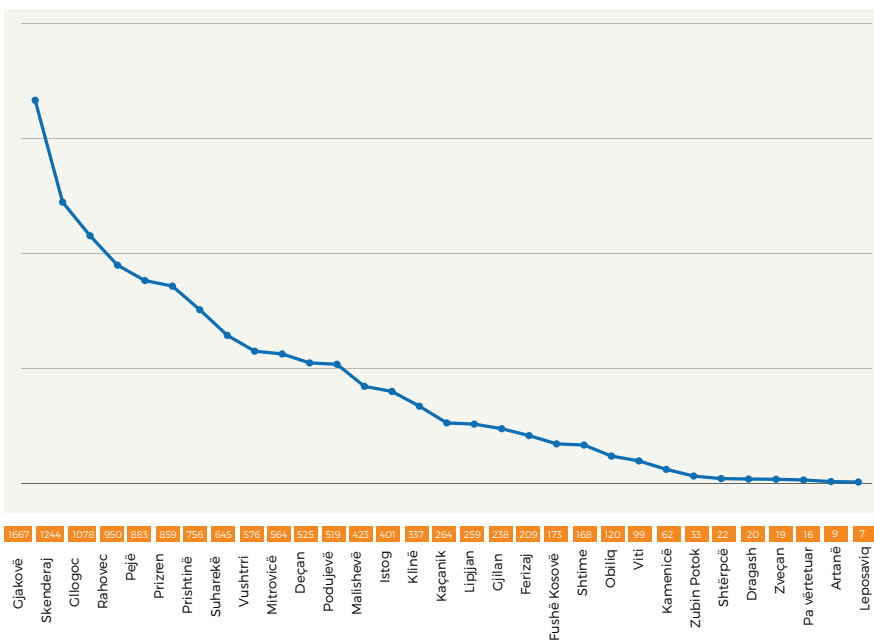
⁷UNHCR, The Kosovo Refugee Crisis, An independent evaluation of UNHCR's emergency preparedness and response, 2000, fq.6, e qasshme: <https://www.unhcr.org/3ba0bbeb4.pdf>

⁸UNHCR, Kosovo: One last chance, 1999, fq.7, e qasshme: <https://www.unhcr.org/3c6914bc5.pdf>

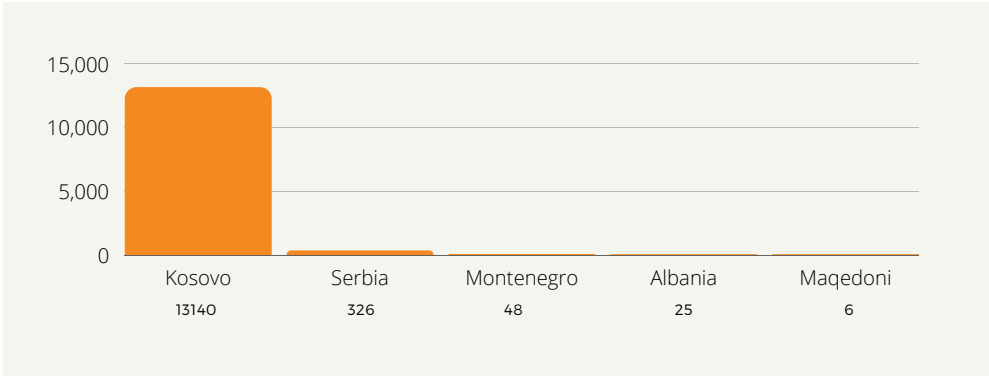
Statistical data on casualties in Kosovo



BY MUNICIPALITY



BY PLACE OF DEATH:



TRANSITIONAL JUSTICE MECHANISMS

Victims of gross violations of human rights in armed conflicts and authoritarian regimes have the right to see the perpetrators punished, to know the truth, to receive reparations for crimes committed against them, and to be offered guarantees of non-recurrence of violations. Therefore, post-conflict and post-authoritarian states, through judicial or non-judicial mechanisms, must guarantee:

- The Right to Justice
- The Right to Truth
- The Right to Reparations
- Institutional Reform

RIGHT TO JUSTICE

Putting to trial those responsible for gross violations of human rights is a state obligation towards the victims, therefore, relevant institutions must take concrete steps to ensure access to justice. Criminal trials contribute to restoring the dignity of victims as well as restoring the society's trust in the rule of law.

⁹The term victim in this Bulletin includes all forms of victimization, such as human harm (death, bodily injury, torture, loss of relatives, etc.) and material harm (destruction of property, loss of job, looting of valuables, etc.).

War crimes are prosecuted in and tried by regular courts and ad-hoc tribunals.

To date, the authority to prosecute and try war crimes in Kosovo rested with the following judicial institutions: International Criminal Tribunal for the former Yugoslavia (ICTY), regular Courts (in Kosovo, Serbia, and Montenegro), and Kosovo Specialist Chambers and Specialist Prosecutor's Office (KSC & SPO) located in The Hague (Netherlands).

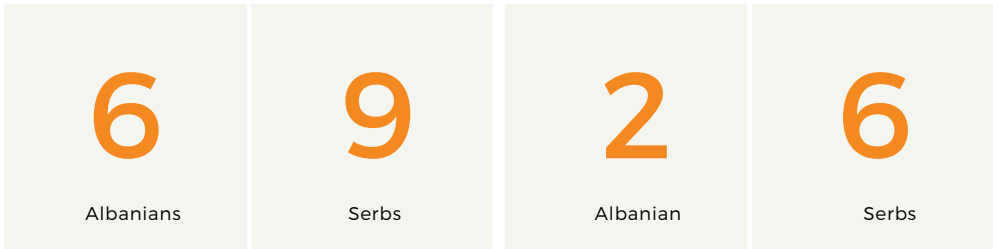
INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (ICTY):

The International Criminal Tribunal for the former Yugoslavia (ICTY) was established in 1993 by the United Nations (UN) in response to the many atrocities taking place in Croatia and Bosnia and Herzegovina.

Reports of horrific crimes, where thousands of civilians were killed and injured, tortured, and sexually abused in concentration camps and hundreds of thousands were expelled from their homes, sparked outrage around the world and prompted the United Nations to act. The ICTY is the first war crimes tribunal established by the UN and the first international war crimes tribunal since the Nuremberg and Tokyo Tribunals of World War II. This tribunal tried primarily high-profile political, military, and police leaders responsible for the crimes committed in the former Yugoslavia, including the war in Kosovo. The ICTY concluded its mandate in December 2017.

**Charged with war crimes in
Kosovo: 15 persons**

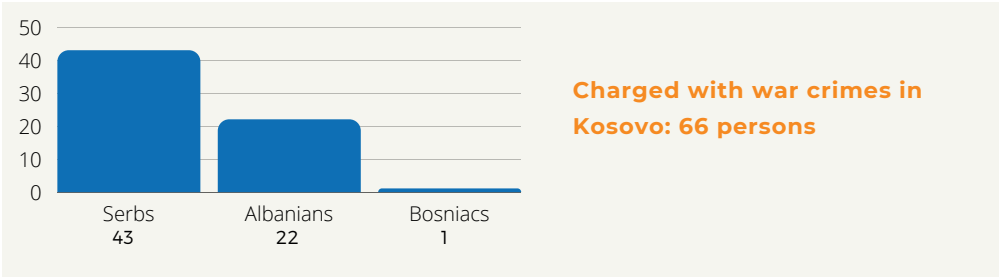
**Convicted by final judgment on war crimes
in Kosovo: 8 persons**



Slobodan Milošević passed away during the trial and there is no final judgment.

WAR CRIMES TRIALS BEFORE COURTS IN SERBIA:

Until 2003, war crimes trials were conducted in district courts. Since 2003, the Higher Court in Belgrade has been the only judicial institution to try war crimes committed in the territories of the former Yugoslavia.



WAR CRIMES TRIALS BEFORE COURTS IN MONTENEGRO:

Two cases of war crimes in Kosovo have been tried before regular courts in Montenegro. The first indictment against eight (8) defendants was filed in 2008.

Charged with war crimes in Kosovo: 9 persons



Convicted by final judgment:



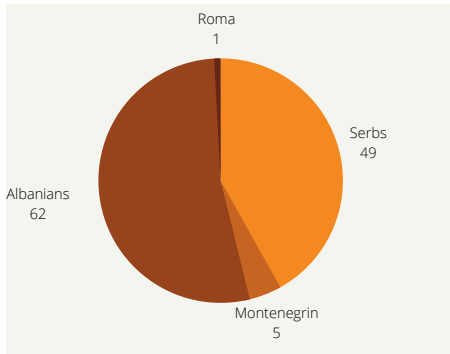
Currently, there are no war crimes cases pending before Montenegrin courts.

WAR CRIMES TRIALS BY LOCAL COURTS IN KOSOVO

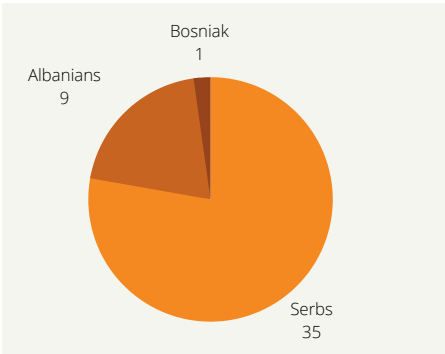
Pursuant to UNSCR 1244, UNMIK was responsible for organizing the judicial system in Kosovo and in the period 1999-2008, UNMIK held the exclusive authority for prosecuting and trying crimes committed during the war in Kosovo. Following Kosovo’s declaration of independence in 2008, UNMIK’s mandate to prosecute war crimes in Kosovo passed to the European Union Rule of Law Mission (EULEX). Thus, during the period 2009-2018, EULEX was responsible for prosecuting crimes committed during the war in Kosovo. Since June 2014, EULEX has gradually started to transfer its executive powers to the local judiciary, while the executive mandate of EULEX for the prosecution of war crimes ultimately came to an end in June 2018.

In May 2015, the War Crimes Department was established under the Special Prosecution of the Republic of Kosovo (SPRK). Until 2019, court proceedings were conducted in the Basic Courts of Kosovo, while with the amendment of the Law on Courts and subsequent establishment of the Special Department under the Basic Court of Prishtinë/Priština, all war crimes cases are now tried by this department.

Charged with war crimes in Kosovo:: 117 persons



Convicted by final judgment on war crimes in Kosovo: 45 persons



WAR CRIMES TRIALS BY KOSOVO SPECIALIST CHAMBERS AND SPECIALIST PROSECUTOR'S OFFICE

On August 3, 2015, the Assembly of the Republic of Kosovo voted in favor of constitutional amendments establishing the conditions for the creation of these chambers. These chambers are authorized to prosecute and try war crimes and crimes against humanity which occurred in the period 1998-2000 in Kosovo, and which are related to the report filed by Dick Marty. In addition to this area of criminal offenses, these chambers have the power to prosecute and try cases related to obstruction of the administration of justice that may occur in real time. This court is located in The Hague and holds a temporary mandate.

Charged with war crimes in Kosovo:

6

Albanians

Until June 2022 there are no convicts as there is no trial completed.

RIGHT TO TRUTH

Societies and individuals have the right to know the truth about the mass violation of human rights in armed conflict or authoritarian regimes. Knowing the truth is essential to achieving personal and collective healing. One of the most well-known mechanisms in truth-seeking processes are truth commissions.

¹⁰Council of Europe Parliamentary Assembly Report on "Inhuman treatment of people and illicit trafficking in human organs in Kosovo", 07 January 2011, Doc. 12462, available at: <https://www.scp-ks.org/en/documents/council-europe-parliamentary-assembly-report-inhuman-treatment-people-and-illicit>

WHAT ARE TRUTH COMMISSIONS?

Truth commissions are non-judicial mechanisms that aim to find the truth by collecting statements from victims on the one side and those responsible on the other side. These commissions are established by states with a clear mandate in terms of time and purpose and operate independently seeking to investigate and report on key periods of past human rights violations. Truth commissions, through recommendations, address the measures that should be taken by states to repair the harm caused during past periods of authoritarianism or conflict. At least 40 official truth commissions have been established worldwide since 1974.

One of the most well-known such commissions to date is the Truth and Reconciliation Commission, South Africa (TRC), a court-like body established by the new South African government in 1995 to help heal the country and bring about a reconciliation of its people by uncovering the truth about human rights violations that had occurred during the period of apartheid. The commission released a total of seven volumes of its final report, five in 1998, and the remaining two in 2003.

Initiatives in Kosovo:

RECOM – Reconciliation Network: RECOM is a regional civil society initiative launched in 2006 with the aim of establishing a regional truth commission. But due to the lack of cooperation from all the states of the former Yugoslavia, this initiative is yet to become operational. RECOM aims to establish the facts about war crimes and other gross violations of human rights committed in the former Yugoslavia from January 1, 1991, until December 31, 2001.

Kosovo Truth and Reconciliation Commission: In 2017, the former President of the Republic of Kosovo, Hashim Thaçi, set in motion the creation of a Truth and Reconciliation Commission for Kosovo. By 2020, a series of consultations with stakeholders, including representatives of academia, civil society, victim, youth, and other community groups, had been organized. Under this initiative, a preparatory team was set up to draft the legislation providing for the operation of this commission, but with the departure from office of former President Thaçi, the process for the establishment of such a mechanism has stalled.

In addition to truth commissions, there are commissions of inquiry and other fact-finding mechanisms, civil society, media, and other community initiatives that also play a significant role in truth-seeking.

RIGHT TO REPARATIONS

Reparations seek to redress the suffering caused by the systematic violation of human rights by state bodies or due to the lack of concrete state measures to prevent these violations by other non-state actors. Reparations can take the form of compensation for harm suffered, helping to overcome some of the consequences of abuse. Reparations contribute to acknowledging the status of victims and also provide for rehabilitation and a better life.

Types of reparations

By form of redress:

COMPENSATION: Compensation is the most common form of reparations and refers to monetary payments or other material forms to be made to victims in compensation for human rights violations they suffered.

REHABILITATION: Rehabilitation means provision of social, medical, and psychological care for victims, including legal services.

RESTITUTION: Restitution refers to measures which restore the victim to the original situation (return to the status quo ante). These measures include, as appropriate, restoration of liberty, enjoyment of human rights, citizenship, return of property, restoration of employment, and so on.

SATISFACTION: Satisfaction is a form of reparations that a State may provide to remedy an injury caused by a wrongful act for which it is responsible. Satisfaction may take a variety of forms, including an acknowledgment of human right violations, an expression of regret, a formal apology by authorized state officials, and so on.

By manner of delivery:

MATERIAL: Material reparations means provision of compensation in the form of monetary payments or through service packages which may include support for education, health care, and housing.

SYMBOLIC: Symbolic reparations refer to common non-material measures which may include official public apologies from state leaders, (re)burial of victims, national commemoration days, dedicated public spaces, such as: parks, museums, memorials, etc.

By provider of reparations:

ADMINISTRATIVE REPARATIONS: Reparations through administrative programs are dedicated to certain classes of victims and in this case the provider of reparations is not responsible for the violation of human rights suffered by these classes of victims. Such reparations are usually provided in the form of pensions and include pensions for families of civilian victims, veteran pensions, war disability pensions, and so on.

LIABILITY REPARATIONS: Reparations provided by those responsible for gross violations of human rights in armed conflict or authoritarian regimes. These may include compensation of damages, public apologies, community work for the benefit of victims, and other forms.

INSTITUTIONAL REFORM

Institutional reform refers to the transformation of public institutions that have contributed to the conflict or served an authoritarian regime. The process of institutional reform must transform those institutions to effective institutions that guarantee respect for human rights, maintain peace, and ensure the rule of law. Institutional reforms promote accountability and help prevent the recurrence of violence.

Types of institutional reform:

DISARMAMENT, DEMOBILIZATION AND REINTEGRATION: Disbanding various armed actors, such as guerrilla forces or paramilitary groups, as well as creating enabling conditions to help ex-combatants to reintegrate into their family and community life.

LEGAL FRAMEWORK TRANSFORMATION: Reforming or creating new legal frameworks, such as the adoption of constitutional amendments or international human rights treaties, to ensure the protection and promotion of human rights.

STRUCTURAL REFORM: Restructuring institutions to ensure they are independent, responsive, and representative and provide accountability, thereby improving their integrity and legitimacy.

VETTING: Vetting contributes to the removal from public institutions of all those civil servants who have served the repressive government and thus contributed to human rights violations or have been part of the state apparatus during armed conflicts and thus are, directly or indirectly, responsible for the crimes committed during the conflict. Accordingly, the vetting process helps to facilitate public institutions composed of civil servants who ensure the protection of human rights for all citizens without distinction and also guarantee non-recurrence.

OVERSIGHT: Establishing oversight bodies within state institutions to ensure accountability in civil service.

EDUCATION: Education during armed conflicts and especially under authoritarian regimes is used as a propaganda tool to advance state agendas and create divisions between different communities. Therefore, post-authoritarian and post-conflict states should adapt their education system and curricula to contribute to lasting peace. It is also important to have education and training programs for state officials related to international norms and standards for the protection of human rights.