

Key questions

- *Albania: What is the relationship between truth and justice ?*
- *What are the main challenges ahead of truth-telling process in the country and how concretely tackle them?*
- *What measures could be taken for increasing the search of missing persons? What obstacles need to be overcome in the short and long-term?*
- *How to enhance cooperation and synergies between the different actors?*
- *Why a gender-inclusive approach is necessary to tackling the issue of missing persons?*
- *How to include a gender approach in truth-telling and justice processes?*
- *Does Albanian Government involve the families of the Missing persons?*
- *Does Albania have a law on Communist regime Victims' Rights?*

Albanian Rehabilitation Centre for trauma and torture

is an organization represents the first non-profit organization in Albania, established to assist the post traumatic stress disorders happening to thousands of former political persecuted and hundreds of thousands family relatives – right after the fall of communist regime – and the amnesty granted by the Albanian Parliament (1991).

For 22 years, ARCT has been trying to give a meaning to the relationship of truth and justice for the victims. As a victim-approached organization, ARCT has been able to provide rehabilitation to former political persecuted through medical, psychological and psychiatric assistance. For many years, the concept of direct services has been attractive to many donors who supported the Centre. After the President of the Republic award in 2010, It was obvious that the work performed by ARCT was filling the Government' gap to such services. With years and experience, we understood that in the difficult Albanian transition, the approach of immediate support to victims could become stronger with an added legal component. And, through such component, we have identified many shortcomings with regards to transitional justice. Apparently – this is the challenge that a post-dictatorship country like Albania –would SIMPLY need to guarantee to victims of the communist past.

Certainly, the violent and repressive acts of the communist regime in Albania often met the reference criteria under the international law to qualify them, in accordance to the relevant circumstances and the context, mainly as crimes against humanity (e.g., massive killings, torture and persecutions, deportations/ forced displacements). In today's Albanian society there is no doubt whether the communist regime had committed such atrocities.

Ironically, since the 1991 changes, there is no recorded data to confirm any investigated or prosecuted case of enforced disappearance/ missing persons. In a unique context of **no war or conflict** – enforced disappearance was identified during the communist regime and according to official data are resulting 5,157 missing persons during the period from 30.11.1944 until 1.10.1991.

Law "On the compensation of former political prisoners of the communist regime", and several bylaws **provide** the compensation of former political persecuted for the following categories: convicted with prison; capital punishment by court decision; extrajudicial killings; insulation at investigating offices; hospitalization to a medical institution; exile. Pursuant to this law is

adopted the decision of the Council of Ministers (DCM) "For the determination of the administrative review procedures related the claims, and financial compensation for the families of the victims unjustly executed without trial, for political reasons, from 30.11.1944 until 1.10.1991".

The inclusion "of enforced disappearance" in the Albanian Criminal Code came as a specific criminal offense with the amendments of 2013 and apparently offers only preventive approach. To date victims of the communist regime in Albania- *well defined and identifiable through international standards, but not regulated in domestic legislation* - receive unstructured and extremely low and incomplete [due to state budget restrictions] reparations which basically are calculated based on a different legal reference, i.e. unjust punishment, instead of crimes against humanity. This may be a call for the authorities to address the terminology and communist crime typology.

In Albania, the international law enjoys a privileged position in relation to domestic law, by prevailing over it: Article 122 of the Albanian Constitution determines this obligation. In this respect, the international community can easily ask for full application of the International Convention for the Protection of All Persons from Enforced Disappearances, as it is ratified by the Republic of Albania in 2007 (by the law No. 9802, dated 13.09.2007), along with the CAT Convention (1996), the European Convention of Human Rights (Right to life) (1995) = as legally binding instruments. After all, the Nuremberg Principles and their universal validity are perfectly known to Albania, as a member state of the United Nations (UN) since 1955.

Assuming that political will to condemn communist crimes is inevitable, necessary and healthy for a society, investigations into human rights abuses **may take** various forms: from official, well-resourced state-sponsored exhumations to unofficial searches and own-sponsored exhumations by family members, along with memorialization and historical efforts.

Legislation initiatives/reviews/completion are needed to ensure efficient prosecution of crimes during the communist regime in line with international standards, namely applicable instruments/proceedings to adopt all measures necessary to combat impunity and to set up comprehensive reparation programmes.

The complicated and difficult process of exhumation requires also for support dedicated to the family relatives (be it medical, moral or material/financial support). Such support has not been addressed so far by any mechanism or legislation. Considering the advanced age of some relatives, we raise the concerns regarding the factual enjoyment of access to complaint against state institutions on their right to truth. In order for this right to be implemented, ARCT will push for court enforcements as part of the determination of responsibilities of the relevant organ or institution.

Combined with (hopefully) positive outcomes of the Agreement of the Albanian Government with the ICMP, we hope to have clear response to the large issue of those missed during the dictatorship.

ARCT still believes that there is still time and need to address these issues through an inclusive approach, where victims and family relatives have voice and faces. After all, only the victims have the right to forgive for what they have suffered. Only them have the right to draw a thick black line under the past, and always only for the injustices that have been done to them. Nobody else has this right! And if someone appropriates this right, then accounts still remain to be settled.

After so many years of silence, we believe that this might be the last chance to develop an institutional reform and legislation to this category of Victims of the Communist regime.