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## Ending enforced disappearances on the territory of the Council of Europe

### Report<sup>1</sup>

Committee on Legal Affairs and Human Rights

Rapporteur: Mr André GATTOLIN, France, Alliance of Liberals and Democrats for Europe

### Summary

The Committee on Legal Affairs and Human Rights deeply regrets that enforced disappearances remain even today a frequent criminal practice in Europe. It recalls its previous resolutions on “Disappeared persons in Belarus”, on “Humanitarian consequences of the conflict between Armenia and Azerbaijan/the Nagorno Karabakh conflict” and on “Missing refugee and migrant children in Europe”. Enforced disappearances violate essential human rights, including Articles 2 and 3 of the European Convention on Human Rights, and States have an unconditional obligation to investigate all serious allegations of such violations and to punish them. Enforced disappearances are equally prohibited under international human rights law and international humanitarian law.

The uncertainty in which the relatives of those missing live has a harmful psychological, social, legal and economic impact. In the context of warfare, disappearances also threaten stability and prevent lasting reconciliation. The increase of cases of disappearances in armed conflicts is alarming.

The committee strongly supports the International Convention for the Protection of All Persons from Enforced Disappearance, which codifies the fundamental principles of action against enforced disappearances and it stresses the importance of the role of civil society in this area. It finally addresses specific recommendations to all the member and observers States aimed at eradicating enforced disappearances.

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1. Reference to committee: [Doc. 14816](#), Reference 4437 of 12 April 2019.



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## A. Draft resolution<sup>2</sup>

1. The Parliamentary Assembly deeply regrets that enforced disappearances remain even today a frequent criminal practice in the geographical area covered by the Council of Europe and all over the world. It recalls its [Resolution 1371 \(2004\)](#) “Disappeared persons in Belarus” and deplores the fact that the four cases of enforced disappearances examined by the Assembly in 2004 still remain unpunished. The Assembly also recalls its [Resolution 2391 \(2021\)](#) and [Recommendation 2209 \(2021\)](#) “Humanitarian consequences of the conflict between Armenia and Azerbaijan/the Nagorno Karabakh conflict”. Finally, the Assembly refers to its [Resolution 2324 \(2020\)](#) and its [Recommendation 2172 \(2020\)](#) “Missing refugee and migrant children in Europe” in which it had previously expressed concern over the recent rise in cases of disappearances of migrants, especially minors.
2. The Assembly reiterates that enforced disappearances violate numerous non-derogable and essential human rights and is equally prohibited under international human rights law and international humanitarian law, regardless of the nature and qualification of the armed conflict. It reaffirms that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances and that the widespread or systematic practice of enforced disappearances constitutes a crime against humanity under general international law.
3. The Assembly recognises that the uncertainty in which the family and relatives of those missing live has a harmful psychological, social, legal and economic impact on both the relatives and the wider communities to which they belong. It emphasizes that the practice of enforced disappearances is equally alarming in times of peace and during armed conflicts, but when occurring in the context of warfare it also threatens stability and prevents lasting reconciliation between the parties to a conflict, even when that conflict has long ceased.
4. The Assembly is alarmed with increasing cases of enforced disappearances in the context of armed conflicts when *hors de combat* captured by adversary forces are placed outside the protection of the law and disappear, instead of receiving appropriate protection under international and domestic law.
5. The Assembly notes that, despite the efforts of the international community and some local players, co-operation between the countries concerned leaves something to be desired. In addition, investigations at national level have often long been inactive. It points out that the passage of time does not prevent the identification of bodies with modern DNA-based methods.
6. The Assembly points out that, in accordance with the case-law of the European Court of Human Rights, reflected in the Guidelines adopted by the Committee of Ministers in 2011, States have an unconditional obligation to investigate all serious allegations of violations of Articles 2 and 3 of the European Convention on Human Rights (ETS No. 5, the Convention) and to punish such violations. Yet several Council of Europe reports have highlighted the slow and incomplete execution of the numerous judgments of the Court finding “procedural” violations of Article 2 on the grounds that there has been no serious investigation into enforced disappearances in several States, particularly in the North Caucasus region in the Russian Federation..
7. The Assembly welcomes the entry into force, on 23 December 2010, of the International Convention for the Protection of All Persons from Enforced Disappearance (CED), which codifies the fundamental principles of action against enforced disappearances. The Committee on Enforced Disappearances created by the CED has a power of injunction, under the urgent action procedure, and may receive “communications” from individuals or another State against States Parties who have made a declaration under Articles 31 and 32.
8. The Assembly considers that the CED, in conjunction with the Working Group on Enforced or Involuntary Disappearance (WGEID) and also the International Commission on Missing Persons (ICMP), the International Committee of the Red Cross (ICRC), regional mechanisms such as the Committee on Missing Persons (CMP) in Cyprus and the European Court of Human Rights case law form a well developed institutional and normative framework. Rather than adding a new convention at the level of the Council of Europe, steps should be taken to reinforce the existing legal framework, and better implement the good practices recommended in those instruments in all the member States.
9. The Assembly also stresses the importance of the role of civil society in this area, and in particular the strong solidarity and vital psychosocial support provided by the associations of families of missing persons. These deserve all the moral and financial support that the international community can provide, and they must be protected against pressure exerted by certain States.

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2. Draft resolution adopted by the committee on 5 November 2021.

10. The Assembly believes that the Council of Europe and its member and observer States must play a major role in this context. European States should exert their influence at international level and set a good example, by ratifying the CED and effectively implementing the preventive and repressive measures provided for in the aforementioned instruments, in national legislation and practice. The Council of Europe should support its member States in this endeavour, by co-ordinating efforts and providing the necessary technical support.
11. The Assembly therefore invites all the member and observers States not yet having done so to:
  - 11.1. sign and ratify the CED and make declarations under Articles 31 and 32, enabling the Committee on Enforced Disappearances to examine individual and inter-State communications, and promote universal ratification of this convention, *inter alia* by joining the Group of Friends of the CED launched by France, Argentina and Morocco or by setting up a Group of European Friends of the CED;
  - 11.2. implement the preventive and repressive measures recommended in the CED, including while ratification of this instrument is pending, *inter alia* by:
    - 11.2.1. making the crime of enforced disappearance a stand-alone offence within their national criminal legislation and providing for sanctions commensurate with the extreme seriousness of the crime;
    - 11.2.2. introducing an effective means of *habeas corpus*;
    - 11.2.3. undertaking measures to prevent cases of enforced disappearance based on racial or any other form of discrimination and duly investigating them;
    - 11.2.4. providing effective measures to identify perpetrators of enforced disappearance;
    - 11.2.5. creating centralised detention registers;
    - 11.2.6. making prison release protocols mandatory;
    - 11.2.7. prohibiting secret and incommunicado detention and clandestine detention centres;
    - 11.2.8. establishing protocols for documenting unidentified human remains;
    - 11.2.9. avoiding sending people back to countries where they risk becoming victims of enforced disappearances;
    - 11.2.10. providing suitable training for members of the security and armed forces;
    - 11.2.11. ensuring that their laws on adoption do not provide a means of gaining control over missing children or children of missing persons;
  - 11.3. join the ICMP or support it in another way in its efforts to provide technical assistance to any States requiring it;
  - 11.4. sign and ratify the optional protocol to the Convention against Torture (OP-CAT) and the Rome Statute of the International Criminal Court, which cover certain aspects of the crime of enforced disappearance.
12. The Assembly also invites all the Council of Europe's member States and, where applicable, observer States to:
  - 12.1. co-operate with one another in criminal investigations into disappearances, using the relevant conventions of the Council of Europe;
  - 12.2. declassify documents and make available all relevant information conducive to locating mass graves and clarifying the fate of missing persons;
  - 12.3. make the greatest possible use of the universal jurisdiction authorised *inter alia* by the CED, the Convention against torture and the Rome Statute, to prosecute the perpetrators of crimes of enforced disappearance committed in other countries;
  - 12.4. place special emphasis on execution of the Court's judgments relating to cases of enforced disappearances, and relevant provisional measures indicated by the Court, taking all the individual and general measures required to resolve the cases concerned and prevent further cases arising;
  - 12.5. protect associations of families of missing persons from any threats and provide them with financial backing in their efforts to sustain mutual psychosocial support, combat impunity and promote remembrance;

12.6. support the idea of holding a world conference in 2022 on the topic of enforced disappearances, which would also provide an opportunity for States to announce new ratifications of the CED.

## **B. Draft recommendation<sup>3</sup>**

1. The Parliamentary Assembly refers to its Resolution ... (2022) “Ending enforced disappearances on the territory of the Council of Europe” and stresses how crucially important it is for human rights and the rule of law that fresh impetus be given to international efforts to put an end to enforced disappearances in Europe and elsewhere in the world.
2. With this aim in mind, the Assembly recommends that the Committee of Ministers:
  - 2.1. promote ratification of the International Convention for the Protection of All Persons from Enforced Disappearance (CED) by all the Council of Europe's member States and recognition of the full competence of the Committee on Enforced Disappearances as well as the transposition into national legislation of all the preventive and repressive measures foreseen by the CED;
  - 2.2. provide technical assistance, with the co-operation of the States that are already parties to the CED, to all interested States in order to help them implement the CED, on the basis of in-depth analysis of the existing legislation of the States concerned;
  - 2.3. set up, within the Council of Europe, a task force on enforced disappearances responsible for co-ordinating the aforementioned activities and monitoring the progress of legal protection against this crime in the Council of Europe's member States and fostering better prevention, with the involvement of civil society;
  - 2.4. place special emphasis on execution of the judgments of the European Court of Human Rights relating to cases of enforced disappearances as well as to the implementation of the relevant provisional measures indicated by the European Court of Human Rights;
  - 2.5. support the idea of holding a world conference on the topic of enforced disappearances, which would also provide an opportunity for States to announce new ratifications of the CED.

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3. Draft resolution adopted by the committee on 5 November 2021.

## C. Explanatory memorandum by Mr André Gattolin, rapporteur

### 1. Introduction

#### 1.1. The issues at stake

1. Enforced disappearances remain even today a frequent criminal practice in the geographical area covered by the Council of Europe, in the territory of both member and observer States. Thousands of people are still reported missing in Ukraine as a result of the armed conflicts in Donbass and the Russian occupation of Crimea; in Chechnya and other constituent entities of the Russian Federation in the North Caucasus region; in the territory of the former Yugoslavia since the conflicts in Croatia, Kosovo<sup>4</sup> and Bosnia and Herzegovina; in Cyprus, before but mainly after the Turkish military intervention in 1974; finally, the four cases of disappearances in Belarus examined by our former colleague and expert on enforced disappearances, Christos Pourgourides,<sup>5</sup> remain unpunished.

2. The uncertainty in which the family and relatives of those missing live has a harmful social, legal and economic impact on both the relatives and the wider communities to which they belong. This threatens stability and prevents lasting reconciliation between the parties to the conflict, even when that conflict has long ceased.

3. Despite the efforts of the international community and some local players, it has to be recognised that there is a lack of co-ordination and co-operation between the countries concerned. In addition, investigations at national level have often long been closed or inactive.<sup>6</sup> The passage of time makes it more difficult, but not impossible, to identify the bodies, as was explained by the forensic archaeologists invited by our colleague Frank Schwabe (Germany, SOC) for his report under preparation on the situation in the North Caucasus.

4. In accordance with the case-law of the European Court of Human Rights, reflected in the Guidelines adopted by the Committee of Ministers in 2011,<sup>7</sup> States have an unconditional obligation to investigate all serious allegations of violations of Articles 2 and 3 of the European Convention on Human Rights (ETS No. 5) and to punish such violations. However, the report of 22 February 2017 of the Council of Europe's Commissioner for Human Rights highlights the slow and incomplete execution of the many judgments of the European Court of Human Rights finding "procedural" violations of Article 2 on the grounds that there has been no serious investigation into enforced disappearances in several States, particularly in the North Caucasus region in the Russian Federation.<sup>8</sup>

5. A new issue in this field is the "disappearance" of persons living in a Council of Europe member State, often enjoying political refugee status, who have been abducted by the special services of a foreign State, in many cases outside Europe, with or without the collusion of the host country's services. Such abductions (or "extrajudicial extraditions" in the event of collusion) are obviously illegal and a violation of human rights. I feel it necessary to assess the extent of this phenomenon and to reflect on how such practices can be eradicated. This will be the task of our colleague Christopher Chope (United Kingdom, EC/DA), rapporteur on "Transnational repression as a growing threat to the rule of law and human rights".

6. With large waves of migration, particularly since 2015, another kind of disappearance has taken on worrying proportions, involving migrants, and notably migrants of minor age who are not accompanied by their parents. These young people, often sent on difficult and hazardous routes by their families who hope to be able to join them once they have been taken into systems for assessing minors in difficulties operated by European States, are easy prey for traffickers in human beings. Many of them disappear into networks operated for the purposes of slavery, sexual exploitation or even organ trafficking. On the basis of two reports by the Committee on Migration, Refugees and Displaced Persons, the Parliamentary Assembly has already expressed its views on this topic in 2020, in its [Resolution 2324](#) and its [Recommendation 2172 \(2020\)](#) "Missing refugee and migrant children in Europe" as well as in [Resolution 2354 \(2020\)](#) "Effective guardianship for unaccompanied and separated migrant children".

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4. \* All reference to Kosovo whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

5. [Doc. 10062](#) of 4 February 2004, "Disappeared persons in Belarus", and [Resolution 1371 \(2004\)](#), rapporteur: Christos Pourgourides (Cyprus, EPP/CD).

6. "Missing persons and victims of enforced disappearance in Europe; round table with human rights defenders", Strasbourg, 22 February 2017, p. 6, [www.refworld.org/docid/58c684db4.html](http://www.refworld.org/docid/58c684db4.html).

7. "Eradicating impunity for serious human rights violations", <https://rm.coe.int/1680695d6e>.

8. Round table, 22 February 2017, op. cit., page 6.

## 1.2. Previous Assembly work

7. The Assembly has always strongly condemned enforced disappearance as a “very serious human rights violation on a par with torture and murder”.<sup>9</sup> On numerous occasions, it has expressed its deep concern about the high number of missing persons, particularly in certain regions.<sup>10</sup> [Recommendation 1056 \(1987\)](#) “National refugees and missing persons in Cyprus” noted that many cases of disappearances following the Turkish intervention in 1974 had not yet been resolved. This is still the case, despite several judgments of the European Court of Human Rights (hereinafter “the Court”)<sup>11</sup> and some progress since the establishment of the Committee on Missing Persons (CMP).<sup>12</sup> [Resolution 1553 \(2007\)](#) “Missing persons in Armenia, Azerbaijan and Georgia from the conflicts over the Nagorno-Karabakh, Abkhazia and South Ossetia regions” focuses on the humanitarian aspects of enforced disappearances in conflict areas and their negative impact on the prospects for lasting reconciliation. In 2013, the Assembly took up this question again, which sadly is still a topical issue, in its [Resolution 1956 \(2013\)](#) “Missing persons from Europe’s conflicts: the long road to finding humanitarian answers”. In that text, the Assembly set out five priorities for solving the problem of missing persons: (i) placing the families concerned at the centre of all action, (ii) developing appropriate national legislation, (iii) obtaining the support of national and regional mechanisms, (iv) making information on missing persons accessible, and (v) using advanced technical means to locate and identify the human remains of missing persons and register their identities. [Resolution 2067 \(2015\)](#) “Missing persons during the conflict in Ukraine” expressed alarm at the high and still increasing number of reported disappearances in the military areas of operations in parts of the Ukrainian regions of Donetsk and Lugansk and in occupied Crimea.

8. In addition to these resolutions which have a primarily geographical focus, the Assembly has also given an undertaking to strengthen the legal framework for the fight against enforced disappearances, at both international and national levels. In its [Resolution 1463 \(2005\)](#) and [Recommendation 1719 \(2005\)](#) “Enforced disappearances”, the Assembly defines “enforced disappearance” as covering “deprivation of liberty, refusal to acknowledge the deprivation of liberty or concealment of the fate and the whereabouts of the disappeared person and the placing of the person outside the protection of the law”. The definition must also take into account such acts “committed by non-State actors, such as paramilitary groups, death squads, rebel fighters or organised criminal groups.” The Assembly considers the fight against enforced disappearances to be first and foremost the responsibility of the States concerned. However, “in view of the inability, and in rare cases the unwillingness of some States to provide effective protection, a well-defined international legal framework is also of utmost importance.”<sup>13</sup> For this reason, the Assembly urged all member States of the Council of Europe to support, within the United Nations, the adoption of a binding instrument – the International Convention for the Protection of All Persons from Enforced Disappearance, which at the time was at the drafting stage (see section 2.1 below). In the same resolution, the Assembly listed the following points to be taken into account in the future binding legal instrument to combat enforced disappearances: (i) a precise definition of enforced disappearance which was wide enough to also cover non-State actors; (ii) recognition of the families of disappeared persons as independent victims and granting them a “right to truth”; (iii) effective safeguards against the impunity of perpetrators of enforced disappearances; (iv) appropriate preventive measures; (v) a comprehensive right to reparation, including restitution (effective investigations to locate the victim or his or her mortal remains), the rehabilitation of surviving victims, just satisfaction for non-pecuniary damage and full compensation for dependants for all the economic consequences of the disappearance; and (vi) an effective international monitoring mechanism, including an urgent intervention procedure.

9. In its [Resolution 1868 \(2012\)](#) “The International Convention for the Protection of all Persons from Enforced Disappearance” (hereinafter: “CED”), the Assembly welcomed the entry into force of this convention on 23 December 2010 and noted that it represented a significant step forward. It therefore called on Council of Europe member States that had not yet done so to sign and ratify this instrument and to recognise the competence of the Committee on Enforced Disappearances to examine communications from individuals claiming to be victims of violations of this convention, following the example of Belgium, Spain, France, Montenegro, the Netherlands and Serbia. The Assembly nevertheless expressed regret that some of the recommendations made in [Resolution 1463 \(2005\)](#) had not been taken into account in this convention, in particular because it (i) did not fully include in the definition of enforced disappearances the responsibility of non-State actors; (ii) made no reference to the need to establish a subjective element (intentional) as a component of the crime of enforced disappearance, (iii) refrained from placing limits on amnesties or

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9. See paragraph 2 of [Resolution 1463 \(2005\)](#) “Enforced disappearances”, [Doc. 10679](#) of 19 September 2005, rapporteur: Christos Pourgourides (Cyprus/EPP).

10. [Resolution 2067 \(2015\)](#).

11. See the case of *Cyprus v. Turkey* and *Varnava and others v. Turkey*, see also paragraphs 30, 33 and 34 below.

12. See paragraph 34 below.

13. [Resolution 1463 \(2005\)](#), paragraphs 3 and 5.



jurisdictional and other immunities; and (iv) severely limited the time frame within which the Committee on Enforced Disappearances had jurisdiction. The Assembly therefore called on the Committee of Ministers to consider launching the process of preparing the negotiation, within the Council of Europe, of a European convention for the protection of all persons from enforced disappearance ([Recommendation 1995 \(2012\)](#))<sup>14</sup>. In its reply to the Assembly<sup>15</sup>, the Committee of Ministers considered this request to be premature, but undertook to closely monitor the functioning of the International Convention in practice.

## 2. International mechanisms and national legislation concerning victims of enforced disappearances

### 2.1. The International Convention for the Protection of all Persons from Enforced Disappearance

10. The most important international legal instrument in this field is the [International Convention for the Protection of all Persons from Enforced Disappearance](#) (CED). It is the result of long-term efforts in the United Nations by non-governmental organisations and a number of States, particularly France. The convention is a binding instrument for all States Parties to combat enforced disappearances. It requires States, among other things, to ensure that enforced disappearance constitutes a specific offence under their national criminal law (Articles 4 and 6) and to lay down “appropriate penalties” which take into account the “extreme seriousness” of this crime (Article 7); and it provides that “[n]o order or instruction from any public authority, civilian, military or other, may be invoked to justify an offence of enforced disappearance” (Article 6.2).

11. The crime of enforced disappearance is defined in this convention as “the arrest, detention, abduction or any other form of deprivation of liberty committed by agents of the State or by persons or groups of persons acting with the authorisation, support or acquiescence of 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 a person outside the protection of the law” (Article 2). This definition therefore also includes non-State actors such as “death squads” provided that their activities are *de facto* tolerated by the State concerned, but not “ordinary” criminal organisations (for example mafia groups).

12. The States Parties must also take a number of preventive measures, including: the prohibition of all secret detention;<sup>16</sup> the setting up of a clear legal framework for any deprivation of liberty, including specifying the authorities having the power to deprive persons of their liberty and creating a register of the places of deprivation of liberty which must be officially recognised and monitored; the guarantee for any person deprived of his or her liberty to have the possibility to communicate with his or her family, counsel or any other person of his or her choice and to receive visits from them; an effective right of appeal against deprivation of liberty; and the creation of an official register of detained persons with all the necessary data to monitor their health and locate them, including, where appropriate, the time of release or transfer to another place of detention, the destination and the transferring authority (Article 18).

13. The convention also regulates the right of the victim to obtain compensation and the right of the families affected to know the truth (Article 24, paragraph 2). The State has an obligation to promptly open a thorough and impartial investigation as soon as serious evidence comes to light that an enforced disappearance has occurred (Article 12). The convention also expressly recognises the continuous nature of the crime of enforced disappearance, meaning that the limitation period does not begin to run until the crime has ceased (Article 8).

14. The greatest innovation brought by the CED is the creation of the Committee on Enforced Disappearances (Article 26) tasked with implementing the provisions of the convention. This Committee is composed of ten experts of high moral character, with recognised competence in the field of human rights, independent, serving in their personal capacity and acting in a completely impartial manner. Of the current members, four are European as shown below (with expiry dates of their terms of office):

<a href="#">Mr Olivier de FROUVILLE</a> (Vice Chairperson)	France	30 June 2023
<a href="#">Ms Milica KOLAKOVIC-BOJOVIC</a> (Vice Chairperson)	Serbia	30 June 2025
<a href="#">Ms Barbara LOCHBIHLER</a>	Germany	30 June 2023
<a href="#">Mr Juan José LOPEZ ORTEGA</a>	Spain	30 June 2023

14. Based, like [Resolution 1868 \(2012\)](#), on the report by Christos Pourgourides ([Doc 12880 \(2012\)](#)).

15. Adopted at the 1159<sup>th</sup> meeting of the Ministers' Deputies on 16 January 2013.

16. See for example the report by Dick Marty (Switzerland, ALDE) “Secret detentions and illegal transfers of detainees involving Council of Europe member States: second report” of 11 June 2007 ([Doc. 11302](#)).

15. This committee has unprecedented powers under international law (with the exception of the European Convention on Human Rights system). In particular, it has, under the so-called urgent procedure, a genuine power of injunction, which is not optional,<sup>17</sup> and therefore not subject to express acceptance by the State Party as is the case with the power to receive “communications” (complaints) from individuals against a State (see Article 30 on the urgent procedure and Articles 31 and 32 on individual communications or communications by another State Party). The urgent procedure, which makes it possible to report a presumed enforced disappearance promptly, within 48 hours, and to obtain answers from the authorities of the country concerned, is a real step forward. On the other hand, for other communications from individuals (or by another State Party) to be admissible, the State concerned must have made a declaration recognising the Committee’s competence to deal with such cases.

16. Unfortunately, the CED applies only to enforced disappearances that have occurred since its entry into force or following its ratification by the State concerned.

17. Ultimately, the convention includes most of the proposals put forward by the Assembly in its resolutions mentioned above. It is therefore urgent to ensure that all Council of Europe member States, as well as observer States or States whose parliaments enjoy a special status with the Assembly, sign and ratify this convention and accept the jurisdiction of the Committee on Enforced Disappearances for individual and inter-State communications.

18. The following are the Council of Europe member States that have signed and/or ratified the convention and accepted the competence of the Committee on Enforced Disappearances for individual and inter-State communications (Articles 31 and 32); the States Parties to the Convention are shown in **bold**:

Country	signature	ratification	declaration
<b>Albania</b>	+	+	31, 32
<b>Armenia</b>	+	+	-
<b>Austria</b>	+	+	31, 32
Azerbaijan	+	-	-
<b>Belgium</b>	+	+	31, 32
<b>Bosnia and Herzegovina</b>	+	+	31, 32
Bulgaria	+	-	-
Croatia	+	-	-
Cyprus	+	-	-
<b>Czech Republic</b>	+	+	31, 32
Denmark	+	-	-
Finland	+	-	-
<b>France</b>	+	+	31, 32
<b>Germany</b>	+	+	31, 32
<b>Greece</b>	+	+	-
Iceland	+	-	-
Ireland	+	-	-
<b>Italy</b>	+	+	-
Liechtenstein	+	-	-
<b>Lithuania</b>	+	+	31, 32
Luxembourg	+	-	-
<b>Malta</b>	+	+	-
Monaco	+	-	-
<b>Montenegro</b>	+	+	31, 32
<b>Netherlands</b>	+	+	31, 32
North Macedonia	+	-	-
<b>Norway</b>	+	+	-
Poland	+	-	-

17. See Bérangère Taxil, “A la confluence des droits: la Convention pour la protection de toutes les personnes contre les disparitions forcées”, *Annuaire français de droit international*, LIII – CNRS Editions, Paris 2007, available at: [www.persee.fr/doc/afdi\\_0066-3085\\_2007\\_num\\_53\\_1\\_3972](http://www.persee.fr/doc/afdi_0066-3085_2007_num_53_1_3972).

Country	signature	ratification	declaration
<b>Portugal</b>	+	+	31, 32
Republic of Moldova	+	-	-
Romania	+	-	-
<b>Serbia</b>	+	+	31, 32
<b>Slovakia</b>	+	+	31, 32
Slovenia	+	-	-
<b>Spain</b>	+	+	31, 32
Sweden	+	-	-
<b>Switzerland</b>	+	+	31,32
<b>Ukraine</b>	+	+	31, 32

19. This means that, unfortunately, there are still 26 Council of Europe member States that are not yet States Parties to the Convention, while 21 are. Seventeen others have signed the CED but have not yet ratified it. Of the European States Parties, 5 (Armenia, Greece, Italy, Malta, Norway) have not yet made the declaration provided for in Articles 31 and 32. It is urgent therefore to call on all these member States to sign or ratify the convention as soon as possible or to make declarations enabling the Committee on Enforced Disappearances to receive individual and inter-State communications.

## **2.2. The Working Group on Enforced or Involuntary Disappearances**

20. The Working Group on Enforced or Involuntary Disappearances (WGEID) was set up in 1980 by the Commission on Human Rights (meanwhile replaced by the Human Rights Council), an inter-governmental body within the United Nations system. The WGEID is composed of five members elected in their personal capacity by the Commission (and subsequently by the Human Rights Council). Its remit is to help the families of those who have disappeared to find out what happened to their relatives. To this end, the WGEID receives and examines communications from the families of missing persons or from human rights organisations acting on their behalf. The Working Group forwards these individual cases to the governments concerned, asking them to carry out investigations and then to inform it of the results. The WGEID deals with cases brought to its attention on a purely humanitarian basis, regardless of whether or not governments have ratified the existing legal instruments providing for a procedure for the submission of individual complaints.

21. The adoption by the UN General Assembly of the [Declaration on the Protection of All Persons from Enforced Disappearance](#) was an undeniable step forward, reflecting the international community's consensus against enforced disappearances. The declaration unequivocally condemns enforced disappearances and summarises in a fairly comprehensive manner the obligations incumbent on States to prevent and punish perpetrators of enforced disappearances and to provide assistance to the victims and their relatives. However, the declaration does not include an implementation and monitoring mechanism. The WGEID has partially assumed this role by assessing the progress made by States in fulfilling their obligations under the Declaration and assisting governments in their implementation. As such, the Working Group plays a preventive role, helping States to overcome obstacles to the achievement of the declaration. It may carry out country visits and provide advisory services upon request.

22. Since the entry into force, on 23 December 2010, of the CED and the setting up of the Committee on Enforced Disappearances (see above), the Committee established under the CED and the WGEID coexist and strive to collaborate and co-ordinate their activities for the common purpose of preventing and eliminating enforced disappearances.

## **2.3. International Commission on Missing Persons (ICMP)**

23. The International Commission on Missing Persons (ICMP) works with governments, civil society organisations, judicial institutions, international organisations and other players throughout the world to tackle the issue of persons missing as a result of armed conflict, human rights violations, natural disasters, organised crime, irregular migration and other causes. It is the only international organisation solely tasked with this issue. Of the European States, only Belgium, Cyprus, Luxembourg, the Netherlands, Serbia, Sweden and the United Kingdom are full members and the Czech Republic, Denmark, Germany, Ireland, Norway and Switzerland hold observer status, together with certain international bodies such as the European Union, the International Criminal Court, Interpol and the International Organization for Migration (IOM).

24. The ICMP provides capacity-building support for the competent institutions together with technical expertise for locating and identifying missing persons. It helps governments to develop specific legislation aimed at safeguarding the rights of families of missing persons and proposes training and education programmes.

25. The ICMP has participated in the excavation of over 3 000 hidden mass graves and successfully fostered the use of advanced forensic techniques to locate and recover missing persons. The organisation has an Online Inquiry Center (OIC) and an Identification Data Management System (iDMS) for managing all the data underpinning its work to find missing persons. It operates the world's leading large-scale DNA identification system. To date, over 20 000 missing persons around the world have been identified through their DNA thanks to the ICMP.

#### **2.4. The national legal framework in member States**

26. On 30 June and 1 July 2016, the Council of Europe's Commissioner for Human Rights organised a round table on the subject of enforced disappearances in Europe, focusing on victims' rights and existing legislation. A report published on 22 February 2017 highlighted the ineffectiveness of some countries' legislation, including the inadequate codification of the crime of enforced disappearance. In early 2017, only 15 Council of Europe member States recognised the competence of the Committee on Enforced Disappearances set up by the CED to examine individual complaints.<sup>18</sup>

27. One participant at the round table suggested that it might be better to have legal provisions concerning missing and forcibly disappeared persons and their relatives included under different pieces of legislation, rather than have a single law that might not be applied as a whole. An effective, comprehensive and harmonised legal framework for dealing with enforced disappearances does indeed require provisions to be adopted at least in criminal, civil, administrative and family law.<sup>19</sup> The participants believed that political considerations, lack of resources and insufficient co-operation with civil society stakeholders, including human rights defenders and specialist associations, had undermined the effectiveness of the work of national bodies dealing with disappearances.<sup>20</sup> The report reiterates the need to codify enforced disappearance as a separate and continuous criminal offence in national criminal law. The continuous nature of the crime is of particular importance in order to inhibit the limitation period and safeguard the rights of relatives over time. The report also recommends that a system of notification of cases of disappearance be established at national level and that an official certificate of absence of the disappeared person be issued to the families affected in order to help them to regularise their legal situation.<sup>21</sup>

### **3. Examples of enforced disappearances: overview of the situation in Europe**

28. **Ukraine** is one of the Council of Europe member States that ratified the CED back in 2015 and accepted the competence of the Committee on Enforced Disappearances. But the latter, in its report of 20 June 2018<sup>22</sup>, pointed out that, in the intervening three years, the Convention had not been transposed into Ukrainian law. In 2015, the Assembly expressed its concern over the situation in this country on account of the numerous armed conflicts.<sup>23</sup> The situation regarding missing persons is particularly worrying. Between 2014 and 2017, there were 2 727 persons, soldiers and civilians, reported missing. An investigative report broadcast by the independent Ukrainian television channel Hromadske on 15 March 2016 reported the secret detention of several people by the SBU (Security Service of Ukraine) in Kharkiv. In July 2016, Human Rights Watch and Amnesty International published a joint report on nine cases of arbitrary and prolonged detention of civilians by the Ukrainian authorities, including enforced disappearances. The two organisations also documented nine cases of arbitrary and prolonged detention of civilians by Russian-backed armed groups.<sup>24</sup> According to a report by the Kharkiv Human Rights Protection Group, 1 148 people were still missing in May 2018, of whom 998 were civilians.<sup>25</sup>

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18. Round table, 22 February 2017, op. cit., para. 12.

19. Ibid. para. 13.

20. Ibid. para. 24.

21. Ibid. para. 21.

22. United Nations Office of the High Commissioner for Human Rights: "Disappearances in Ukraine: Concerns and challenges in the current context": [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23228&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23228&LangID=E).

23. See Doc. 13808 (2015) "Missing persons during the conflict in Ukraine", rapporteur: Jim Sheridan (United Kingdom, SOC).

24. See Human Rights Watch, "Ukraine, Justice Needed for Former Secret Prison Detainees (2018)": [www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=5b39f1fb4&skip=0&query=enforced%20disappearances&searchin=fulltext&sort=date](http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=5b39f1fb4&skip=0&query=enforced%20disappearances&searchin=fulltext&sort=date).

29. Also in 2018, the International Committee of the Red Cross (ICRC) delegation in Ukraine estimated that there were over 1 500 persons reported as missing as a result of the conflict in eastern Ukraine.<sup>26</sup> In Crimea, since its illegal annexation by Russia in 2014, many cases of suspicious disappearances, including Tatar activists and other groups loyal to Ukraine, have been reported.<sup>27</sup> According to the NGO CrimeaSOS, 44 people fell victim to enforced disappearances since the annexation of Crimea. The fate of 15 of them is still unknown.<sup>28</sup>

30. Since 2014, and with the help of the ICMP, Ukraine has taken major positive steps in respect of missing persons. An inter-agency centre was set up as of September 2014 to assist the families and draw up a unified list of missing persons. A law on the legal status of missing persons entered into force in August 2018, followed by two implementing decrees, one of them setting up a Commission on missing persons. On 2 July 2021, that commission and the ICMP signed a memorandum of understanding aimed at reinforcing the commission and establishing the central registers recommended by the CED.

31. With regard to the **Russian Federation**, since 2017, the European Court of Human Rights has handed down more than 150 judgments concerning human rights violations in the North Caucasus, most of them in Chechnya, of which 60% are related to enforced disappearances.<sup>29</sup> In this context, the Court found that the Russian Federation was responsible for violations of Articles 2 (right to life), 3 (prohibition of torture), 5 (right to freedom and security) and 13 (right to an effective remedy).<sup>30</sup> In its report on the human rights situation in the North Caucasus,<sup>31</sup> the Assembly noted that the process of implementing these judgments has not ended the climate of impunity for perpetrators of enforced disappearances in this region.<sup>32</sup> This is all the more incomprehensible since, according to the established practice of the Committee of Ministers, which supervises the execution of the Court's judgments, the enforcement measures required in the event of a "procedural" violation of Articles 2 and 3 (violation in the form of a failure to carry out an effective investigation) include "catching-up" on the investigations not carried out. Despite the large number of enforced disappearances in Chechnya (estimates range from 3 000 to 5 000 people disappeared during and after the two armed conflicts),<sup>33</sup> Chechnya apparently does not even have a forensic laboratory capable of identifying human remains using DNA.

32. A report by the Organisation for Security and Co-operation in Europe (OSCE)<sup>34</sup> noted that the practice of enforced disappearances continued in Chechnya, in the form of unlawful detentions followed either by "legalisation" of the detention through "confessions" obtained under torture or by extrajudicial executions, as in the "case of the 27" in January 2017. The OSCE rapporteur added that extraditions of Chechen refugees to Russia had led to persecution in Chechnya, including disappearances.

33. The Assembly, in its [Resolution 2157 \(2017\)](#) and [Recommendation 2099 \(2017\)](#) "Human rights in the North Caucasus: what follow-up to [Resolution 1738 \(2010\)](#)?" commented that the implementation of the 247 judgments in the group of cases concerning a range of human rights violations by members of the security forces in the North Caucasus (the *Khashiyev and Akayeva* group of cases) was "highly unsatisfactory" and that the situation "with regard to safeguarding human rights and upholding the rule of law still remains one of the most serious in the entire geographical area covered by the Council of Europe". In [Recommendation 2099 \(2017\)](#), the Assembly called on the Committee of Ministers to "continue paying the utmost attention to the development of the human rights situation" in this region and, with regard to the execution of the

25. Kharkiv Human Rights Protection Group, "Enforced disappearances in Ukraine and disappearances during the war conflict in the east in 2014-2018", Kharkiv 2018, available at: <http://khpg.org/files/docs/1528705418.pdf>.

26. See <http://ua.icrc.org/2018/10/04/international-experts-gather-in-Kyiv-to-catalyze-action-for-missing-persons-eng>.

27. Office of the United Nations High Commissioner for Human Rights: Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine): [www.ohchr.org/Documents/Countries/UA/Crimea2014\\_2017\\_EN.pdf](http://www.ohchr.org/Documents/Countries/UA/Crimea2014_2017_EN.pdf).

28. See "Enforced disappearances in Crimea: new research attempts to shed light on what happened", UACRISIS.ORG (with the names of the missing persons).

29. See [Doc. 12276](#), 4 June 2010, "Legal remedies for human rights violations in the North-Caucasus region".

30. See: *Israilova and others v. Russia* (appl. 4571/04), *Vakayeva and others v. Russia* (no.2220/05), *Bitiyeva and others v. Russia* (2009), *Ilyasova v. Russia* (no. 26966/06), *Chitayev and Chytayev v. Russia* (2007) etc.

31. See [Doc. 12276](#).

32. See [Doc. 12276](#), para. 32.

33. See Amnesty International, "Russian Federation: What justice for Chechnya's disappeared?", AI Index: EUR 46/015/2007", Index AI: EUR 46/015/2007 Available at: [www.amnesty.org/download/Documents/64000/eur460152007fr.pdf](http://www.amnesty.org/download/Documents/64000/eur460152007fr.pdf).

34. OSCE special rapporteur Wolfgang Benedek (Austria), report under the Moscow Mechanism on alleged Human Rights Violations and Impunity in the Chechen Republic of the Russian Federation (21 December 2018): [www.osce.org/odihr/407402?download=true](http://www.osce.org/odihr/407402?download=true), pages 10-11; see also Human Rights Watch, Events in Russia 2017: [www.hrw.org/world-report/2018/country-chapters/russia](http://www.hrw.org/world-report/2018/country-chapters/russia).

aforementioned judgments, encouraged it to “continue insisting on individual and general measures to end the climate of impunity, and in particular to continue resisting the Russian authorities’ attempts to make use of statute of limitations and amnesty laws to cement the impunity of the perpetrators of even the most egregious human rights violations”. I regret that we are obliged to once again address a recommendation to that effect to the Committee of Ministers.

34. In the countries of the **South Caucasus (Armenia, Azerbaijan and Georgia)**, acts of war have had a devastating impact on the civilian population, with numerous human rights violations, including enforced disappearances. The regions of Nagorno-Karabakh, South Ossetia and Abkhazia, in particular, look like “black holes” where the Council of Europe’s monitoring mechanisms have only very limited access. As early as 2007, the Assembly highlighted in [Resolution 1553 \(2007\)](#) its concern about allegations of the secret detention of missing persons in these three regions of the South Caucasus. The armed conflict between Georgia and the Russian Federation in 2008 caused a real humanitarian crisis, which included enforced disappearances.<sup>35</sup> In 2013, the Assembly noted the lack of progress in resolving the issue of enforced disappearances. In particular, almost 5 000 people were still missing as a result of the first conflict over the Nagorno-Karabakh region.<sup>36</sup>

35. During the second conflict in this war-torn region, in autumn 2020,<sup>37</sup> in which Azerbaijan retook some of the territories lost during the first conflict, there were more reports of missing persons, in particular prisoners of war who should have been released under the ceasefire agreement. In February 2021, the experts mandated by the UN’s Special Procedures<sup>38</sup> issued a joint call for the prompt release of prisoners of war and other captives from the recent conflict and for the return of bodies to families:

*“Everyone deprived of their liberty for reasons related to the conflict should be returned to their homes, and relatives of those killed must be able to receive the mortal remains of their loved ones, in line with the ceasefire agreement signed on 9 November 2020 [...]. Failure to disclose information on the fate and whereabouts of missing persons and refusal to hand over the remains of the deceased may amount to enforced disappearance, which both Azerbaijan and Armenia have committed to preventing”<sup>39</sup>*

36. Concerning **Turkey and Cyprus**, the Assembly welcomed the efforts made by the Committee on Missing Persons in Cyprus in its [Resolution 1628 \(2008\)](#).<sup>40</sup> The problem of missing persons dates back to the inter-community clashes in the 1960s that led to Turkish military intervention in 1974. A total of 1 510 Greek Cypriots and 492 Turkish Cypriots have been reported missing. The Committee on Missing Persons (CMP) established in 1981 under the auspices of the United Nations launched a bi-community project on the exhumation, identification and return of the remains of missing persons. Under its terms of reference, it does not seek to establish responsibility for the deaths of missing persons and does not rule on the cause of death. By 31 October 2021, the CMP had found the mortal remains of 1 180 people and identified 1 020 individuals belonging to the two communities (729 Greek Cypriots of the 1 510 who were missing from that community; and 291 Turkish Cypriots of the 492 who were missing).<sup>41</sup>

37. The Committee of Ministers is looking at the question of missing persons following the Turkish military intervention in 1974, as part of its examination of the execution of judgments in the cases of *Cyprus v. Turkey* and the *Varnava and others v. Turkey* group. When it last considered this question in March 2021 (1398th meeting (DH), 9-11 March 2021), the Committee of Ministers called once again on the Turkish authorities to provide the CMP with all necessary assistance for it to continue to achieve tangible results as quickly as possible. It stressed that the CMP should have unhindered access to all areas that could contain the remains of missing persons, including military zones and that, given the time that had elapsed, there was an urgent need for documentary evidence in order to be able to continue to identify possible burial sites. Accordingly, the Turkish authorities were asked to provide the CMP with any information from the relevant archives in their

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35. [Resolution 1553 \(2007\)](#) “Missing persons in Armenia, Azerbaijan and Georgia from the conflicts over the Nagorno-Karabakh, Abkhazia and South Ossetia regions”.

36. See [Doc. 13294 \(2013\)](#).

37. See Congressional Research Service Reports, Azerbaijan and Armenia: the Nagorno Karabakh Conflict, 7 January 2021, available at: <https://crsreports.congress.gov/product/pdf/R/R46651>.

38. Those experts are: Nils Melzer, Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Tae-Ung Baik (Chair-Rapporteur), Henrikas Mickevičius (Vice-chair), Aua Balde, Bernard Duhaime and Luciano Hazan, of the Working Group on Enforced or Involuntary Disappearances; Agnès Callamard, Special Rapporteur on extrajudicial, summary or arbitrary executions.

39. [Nagorno-Karabakh: captives must be released – UN experts](#).

40. [Resolution 1628 \(2008\)](#) “Situation in Cyprus”.

41. [Statistics – CMP \(cmp-cyprus.org\)](#).

possession, including military archives, on burial sites and places of possible relocation of remains. The Committee of Ministers also noted with interest the information provided by the Turkish authorities on the progress of the investigations conducted by the Missing Persons Unit (MPU) and on the completion of the investigations relating to one of the missing persons in the *Varnava and others* case. It reiterated its call on the Turkish authorities to ensure the effectiveness of the MPU's investigations, as well as their rapid completion.

38. Notwithstanding some recent progress, I am shocked that the Court's judgment, which dates from 2001 and relates to events of 1974 which constitute extremely serious human rights violations such as mass enforced disappearances has still not been fully implemented in 2021.

39. For its part, the WGEID also noted that Turkey had not taken the measures required to deal with the disappearances and that many families still did not know the truth about the fate of their loved ones.<sup>42</sup> It noted that the number of missing persons in Turkey had further increased as a result of the migration crisis, especially since 2015. The WGEID is concerned about the disappearance of children and women in trafficking networks<sup>43</sup> and criticises Turkey for there being no autonomous criminal offence of enforced disappearance, which is treated as a mere element of other criminal offences.<sup>44</sup>

40. In the Balkans, thousands of people disappeared in the course of armed conflicts following the dissolution of the former Yugoslavia. Progress on the identification of missing persons has been made in **Serbia**, according to a report by the WGEID following its visit to Serbia and Kosovo.<sup>45</sup> Approximately 6 600 out of a total of 8 100 missing persons have been identified using their DNA.<sup>46</sup> In 2006, the Serbian Government set up a Department for the Search for Missing Persons, which noted however that some citizens had not been registered on the lists of missing persons. As it had not codified enforced disappearance in the 2011 Criminal Code, there is no provision for compensation for the families affected. In the same report, the WGEID drew attention to the difficulty of accessing information and identifying missing persons in **Kosovo**,<sup>47</sup> citing political reasons, as the problem had serious consequences for peacekeeping in the region.<sup>48</sup> The United Nations Representation in Kosovo has taken active steps to engage in dialogue with the WGEID. The Commission on Missing Persons in Kosovo stated that it is extremely difficult to work on this subject given the poor documentation provided by the authorities<sup>49</sup> and the lack of co-operation from the Albanian authorities. Nevertheless, in 2015, the WGEID took note of the efforts made by the Commission on Missing Persons in Kosovo. The WGEID was informed that the principle of non-discrimination would be applied, with the Commission aiming to guarantee the rights of all families of missing persons, regardless of their ethnic origin, religion or civil status.<sup>50</sup> In addition, in the 2018 report, the WGEID welcomed the efforts of the local authorities that had drawn up a work programme to resolve the problem of missing persons. It further noted that the authorities had set up a working group to amend the legal framework so as to provide appropriate compensation to all victims.<sup>51</sup> Another project welcomed by the WGEID is a regional initiative (with the participation of Croatia, Kosovo and Montenegro) to create a database to keep a record of active cases of missing persons.<sup>52</sup> With regard to **Albania**, the WGEID welcomed the classification of enforced disappearance as a separate criminal offence, in accordance with the CED, and subject to appropriate penalties. But the WGEID also pointed out that this country had not yet developed a clear strategy to deal with

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42. General Assembly A/HRC/33/51/Add.1; Report of the Working Group on Enforced or Involuntary Disappearances on its mission to Turkey (27 July 2016), <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/33/51/Add.1&Lang=E>.

43. *Ibid.* para. 14.

44. *Ibid.* para. 15.

45. General Assembly A/HRC/30/38/Add; Report of the Working Group on Involuntary Disappearances – Mission to Serbia, including Kosovo (17 August 2015), [www.ohchr.org/Documents/Issues/Disappearances/A-HRC-30-38-Add1\\_en.pdf](http://www.ohchr.org/Documents/Issues/Disappearances/A-HRC-30-38-Add1_en.pdf).

46. See *Doc. 12880* (2012) "The International Convention for the Protection of all persons from Enforced Disappearances, para. 9.

47. General Assembly A/HRC/30/38/Add; Report of the Working Group on Involuntary Disappearances – Mission to Serbia, including Kosovo (17 August 2015) para. 62, [www.ohchr.org/Documents/Issues/Disappearances/A-HRC-30-38-Add1\\_en.pdf](http://www.ohchr.org/Documents/Issues/Disappearances/A-HRC-30-38-Add1_en.pdf).

48. *Doc. 12880*, op. cit., para. 10.

49. *Doc. 12462* (7 January 2011), "Inhuman treatment of people and illicit trafficking in human organs in Kosovo".

50. General Assembly A/HRC/30/38/Add; Report of the Working Group on Involuntary Disappearances – Mission to Serbia, including Kosovo (17 August 2015), para.65, [www.ohchr.org/Documents/Issues/Disappearances/A-HRC-30-38-Add1\\_en.pdf](http://www.ohchr.org/Documents/Issues/Disappearances/A-HRC-30-38-Add1_en.pdf).

51. General Assembly A/HRC/39/46/Add.2; Report of the Working Group on Enforced or Involuntary Disappearances-Missions to Croatia, Montenegro, Serbia and Kosovo (10 September 2018), para. 69, <https://reliefweb.int/sites/reliefweb.int/files/resources/G1827207.pdf>.

52. *Ibid.*, page. 152, <https://reliefweb.int/sites/reliefweb.int/files/resources/G1827207.pdf>.

its totalitarian past. As a result, no progress had been reported with regard to the exhumation of the remains of approximately 6 000 missing persons during the period from 1944 to 1991.<sup>53</sup> According to the ICMP, in July 2021, there were 11 684 people listed in the regional database of active cases of persons who went missing during the conflicts on the territory of the former Yugoslavia, comprising case files submitted by Bosnia and Herzegovina, Croatia, Kosovo, Montenegro and Serbia. Around 18 000 people had been found by the authorities on the basis of DNA analysis by the ICMP and with assistance from the ICMP in locating and exhuming mass graves.<sup>54</sup> These 18 000 resolved cases are perhaps the first fruit of the Western Balkans Summit held in London in July 2018, during which those countries' prime ministers pledged to ensure impartial and effective missing persons investigations; to resolve as many cases as possible in the following five years; to ensure the active involvement of families in the process; and to refrain from any politicisation of the issue of missing persons. Accordingly, in November 2018, these countries signed a framework plan with the ICMP and set up the Missing Persons Group (MPG) to implement that plan – which defines concrete actions for addressing the remaining missing persons cases.<sup>55</sup>

41. Regarding **Belarus**, an Assembly rapporteur, Christos Pourgourides (Cyprus, EPP/CD), had investigated a series of disappearances of opponents in Belarus, noting that senior government officials, including the Prosecutor General and former head of the presidential administration, Mr Sheyman, former Interior Minister, Mr Sivakov, and a special forces (SOBR) officer, Colonel Pavlichenko, were strongly suspected of having been involved in these cases.<sup>56</sup> In [Resolution 1371 \(2004\)](#), the Assembly endorsed the rapporteur's conclusions and called for the named suspects to be prosecuted by the competent national authorities. In [Resolution 1671 \(2009\)](#), the Assembly noted that investigations into these disappearances had still not progressed, despite the information provided by the Assembly.<sup>57</sup> The European Union has included the four persons implicated by the Assembly in its list of "targeted sanctions".<sup>58</sup> The case took a spectacular turn of events in 2019, when a former SOBR member, Mr Garavski, said that he was prepared to make a witness statement against Mr Pavlichenko.<sup>59</sup> *Deutsche Welle* published an investigative report on this case, in which Mr Pourgourides and I, as the competent Assembly rapporteurs, appeared. The report immediately attracted massive public interest, including in Belarus.<sup>60</sup>

42. In September 2021, I was informed that a key witness living in exile in Germany had received death threats coming from Belarus, judged to be "credible" by the German authorities. That witness was Mr Alkayev, former governor of Minsk central prison. Mr Alkayev had raised the alarm when the pistol used to carry out the death penalty in Belarus, stored under his responsibility, had been borrowed by the Minister of the Interior at the time of these disappearances, as explained by Mr Pourgourides in his report.<sup>61</sup> After informing the investigators of the public prosecutor's office of his suspicions, Mr Alkayev left his country and travelled to Germany, taking certain pieces of evidence with him, after being scared when the Prosecutor General fled Belarus and was replaced by one of the chief suspects, Mr Sheyman.

#### 4. Brief overview of the case-law of the European Court of Human Rights on enforced disappearance

43. The European Convention on Human Rights and the Court's case-law remain an essential source of protection against enforced disappearances. The Court handed down its first decision in a case of enforced disappearance in 1998, *Kurt v. Turkey*.<sup>62</sup> Since then, the number of complaints on this subject has increased considerably. The vast majority of cases in the first decade concern Turkey, with most relating to Kurds who had "disappeared" in the Turkish authorities' fight against the PKK. Subsequently, the great majority of cases

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53. General Assembly A/HRC/36/39/Add.1 (18 July 2017).

54. Reply given by the ICMP to the FEMED in July 2021 (quoted from the report submitted by Mr Ewoud Plate).

55. See Gabriella Citroni, *Missing persons and victims of enforced disappearances in Europe*, Council of Europe, 2016, page 19.

56. See [Doc. 10062](#) op. cit.

57. See [Resolution 1671 \(2009\)](#), paragraph 5, and [Doc. 11960](#), opinion of the Committee on Legal Affairs and Human Rights.

58. See the Council of the European Union press release of 24 September 2004, [https://europa.eu/rapid/press-release\\_PRES-04-269\\_en.htm?locale=EN](https://europa.eu/rapid/press-release_PRES-04-269_en.htm?locale=EN).

59. [Officials in Belarus, Germany react to SOBR killings report, DW, 17 December 2019.](#)

60. [www.dw.com/en/assassination-in-minsk-a-witness-speaks-out/av-51695009.](http://www.dw.com/en/assassination-in-minsk-a-witness-speaks-out/av-51695009)

61. Mr Alkayev even made a statement before an ad hoc investigative sub-committee of our committee, prompting me to fully support the initiative to prepare a specific report on the issue of transnational repression. I am pleased to see that a rapporteur, Sir Christopher Chope, was appointed for this topic at our committee meeting on 27 September 2021.

62. *Kurt v. Turkey*, Application No. 24276/94, judgment of 25 May 1998.



have concerned the Russian Federation, in particular Chechnya, resulting first from the two armed conflicts, and then from the particularly harsh methods used by the regional security forces, supported by the federal authorities, in the fight against Islamist terrorism.

44. The Court generally examines cases of enforced disappearance in the light of Articles 2 (right to life), 3 (prohibition of torture), 5 (right to freedom and security) and 13 (right to an effective remedy) of the Convention. In some cases, the Court has also found a violation of Article 8 (right to respect for private and family life). In all enforced disappearance cases tried so far, the Court has found a violation of Article 5 of the Convention.<sup>63</sup>

45. It is normally for the applicants to prove that it is the authorities of the respondent State that are responsible for a disappearance. But since the *Kurt v. Turkey* case, the Court, under certain conditions, applies a “factual presumption” that the State is responsible for a disappearance if the applicant can prove that the victim was indeed in the custody of the authorities before disappearing. It is then up to the respondent State to present another plausible explanation for the victim’s fate.<sup>64</sup> It is also in cases of enforced disappearances that the Court frequently applies its doctrine of the so-called “procedural” violation of Articles 2 and 3 of the Convention. Even if the responsibility of the respondent State cannot be proven or presumed, a violation of these articles is found when the State has not fulfilled its positive obligation to carry out an impartial and effective investigation when there are substantial indications of murder, enforced disappearance or torture.

46. In the *Cyprus v. Turkey* case, the Court found a continuing violation of Article 2 of the Convention on the grounds that the Turkish authorities had failed to carry out an effective investigation into various cases of enforced disappearances. It also found a continuing violation of Article 5 and a violation of Article 3 with regard to the families of the disappeared, since the authorities’ failure to address the families’ real concerns constituted treatment of such gravity that it could be described as inhuman.<sup>65</sup> In 2014, the Court ordered Turkey to pay €30 000 000 for the non-pecuniary damage suffered by the families of the disappeared persons. The Court reiterated the need to end impunity and stressed the continuing obligation to investigate the established or presumed deaths of persons in the *Varnava and others v. Turkey* case, as the lack of evidence resulting from a long delay in investigations did not dispense the State from its obligation to investigate.<sup>66</sup>

47. The Court also made the point in the *Aslakhanova and others v. Russia* case that the Russian Federation showed shortcomings in the investigation of cases of enforced disappearances, particularly those occurring in Chechnya. Among the most pressing needs in this connection, the Court referred to “large-scale forensic and scientific work on the ground, including the location and exhumation of presumed burial sites, and the collection, storage and identification of remains and [...] systematic matching through up-to-date genetic databanks.”<sup>67</sup> While the Court does not explicitly mention the return of the remains to the families, it recognises the need for exhumation and identification of the remains. The Court recommended creating “a single, sufficiently high-level body in charge of solving disappearances in the region, which would enjoy unrestricted access to all relevant information and would work on the basis of trust and partnership with the relatives of the disappeared. This body could compile and maintain a unified database of all disappearances”. In the *Suleymanov v. Russia* case, the Court concluded that the lack of appropriate legislation and the failure of investigations also constituted a violation of Article 3 (inhuman and degrading treatment) in relation to the complainant, a relative of the disappeared person in the case in question.<sup>68</sup> Furthermore, it can be seen that over the course of the dozens of dreadfully similar cases involving the same region, of enforced disappearances not followed by serious investigations, the tone used by the Court has become considerably harsher. Unfortunately, as successive rapporteurs who have examined the execution of the Court’s judgments

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63. Council of Europe Commissioner for Human Rights, Issue paper: Missing persons and victims of enforced disappearance in Europe: <https://rm.coe.int/missing-persons-and-victims-of-enforced-disappearance-in-europe-issue-16806daa1c>.

64. In the *Kurt* case, the victim, a Kurdish fighter, had lost both legs in the exchange of fire before his arrest, not disputed, by the security forces. The explanation offered by the Turkish authorities – that Mr Kurt had escaped by running away, a few days after his arrest – did not convince the Court.

65. European Court of Human Rights, ECHR 131, *Cyprus v. Turkey*, Application No. 25781/94 (2014).

66. European Court of Human Rights, ECHR, *Varnava and others v. Turkey*, Applications Nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90 (8 September 2019).

67. European Court of Human Rights, ECHR, *Aslakhanova and others v. Russia*, Applications Nos. 2944/06, 8300/07, 50184/07, 332/08, 42509/10, Judgment, 18 December 2012, paragraph 226.

68. European Court of Human Rights, ECHR, *Suleymanov v. Russia*, Application No. 32501/11.

have noted,<sup>69</sup> progress in this area, if any, is extremely slow, to the point that the question arises whether the Russian authorities have been playing for time to ensure the effective impunity of the perpetrators of these crimes.<sup>70</sup>

## 5. Is the creation of a European Convention against enforced disappearances to be proposed?

48. In view of the conclusions of the Assembly's most recent report on this subject in 2012 (see para. 8 above), a position should be adopted on the case for drawing up a European Convention against enforced disappearances, following an assessment of how the now well-established UN system is working.

49. It is certainly the case that, in the field of torture prevention, a European instrument (the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)) works very well in parallel with the SPT (Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) based on the OPCAT (the Optional Protocol to the UN Convention against Torture). The two organisations co-ordinate and share the work in order to optimise the use of resources, which are never sufficient to eradicate torture in Europe and throughout the world.

50. It is also true that the criticism voiced in [Recommendation 1995 \(2012\)](#) in respect of the CED (see paragraph 9 above) sadly remains topical. It is equally the case that the very process of negotiating a new European instrument could help to place the scourge of enforced disappearances at the top of the political agenda in Europe. This is why the Assembly, in 2012, invited the Committee of Ministers to launch such a process. The Committee of Ministers was fairly reticent in its reply at the time<sup>71</sup> and has not followed up since by launching a negotiation process.

51. The experts who spoke at the committee's hearing on 14 September 2021 – Professor Emmanuel Decaux, eminent international law specialist and one of the spiritual fathers of the UN system in place, and Mr Ewoud Plate, who presented the viewpoint of a broad coalition of non-governmental organisations specialising in this field,<sup>72</sup> including associations of families of missing persons, were in complete agreement on this point: given the limited resources available for combating this scourge, it is imperative to avoid any “duplication of effort” that could result from the creation of a new European mechanism. Codifying the *status quo* in a convention-style instrument could also halt or even reverse the development of the case-law of the European Court of Human Rights in this sphere. The Court is well on the way to resolving the problems left pending by the CED, at least where the States Parties to the Convention are concerned (see para. 18 above).

52. To drive forward action against enforced disappearances and the search for the truth, the experts asked us to promote the signature and ratification of the CED within the Council of Europe's member States and provided us with a wide palette of proposals for non-normative concrete measures for clamping down on impunity and strengthening prevention.

53. In my opinion, this is both the most constructive and the most realistic approach, given the normative and institutional structure that already exists in this area, which should not be undermined by the launching of negotiations for a new legal instrument within the Council of Europe.

## 6. Proposals for non-normative measures to eradicate the scourge of enforced disappearances in Europe

54. I would like to start with special thanks to our expert, Mr Ewoud Plate, and the FEMED. Their proposals, borne of impressive experience on the ground, have been a great source of inspiration. These proposals can be grouped as follows: firstly, those seeking to strengthen the existing international mechanisms; secondly, those aimed at improving repressive and preventive measures at national level; and thirdly, those that can provide concrete assistance for victims and in particular the families of missing persons.

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69. See the reports by Christos Pourgourides ([Doc.12455](#) (2011)), Klaas de Vries ([Doc. 13864](#) (2015)) Pierre-Yves le Borgn' ([Doc. 14340](#) (2017)), and the recent information notes by Evangelos Venizelos AS/Jur(2019)02 and (2019)19.

70. At its 1411th meeting (14-16 September 2021), the Committee of Ministers once again noted the lack of progress in implementing the general and individual measures aimed at elucidating the fate of the missing persons and preventing new disappearances; it merely closed examination of pecuniary damages in certain cases. This group of judgments has been awaiting execution for 15 years now. (links to the interim resolution of the Committee of Ministers: [Khachiev and Akaieva v. Russia \(Coe.Int\)](#)).

71. See [Doc. 13098](#) of 21 January 2013.

72. The Euro-Mediterranean Federation against Enforced Disappearances (FEMED) and the International Coalition Against Enforced Disappearances (ICAED).

### **6.1. Strengthening the existing international mechanisms**

55. As we have seen only 21 of the Council of Europe's 47 member States have ratified the CED since 2007. Some cynics would be quick to point out that these are above all the countries that least needed to do so. A campaign is therefore needed to encourage as many European States as possible to make use of this instrument. Similarly, only one third of the 63 States Parties to the CED worldwide have recognised the competence of the Committee on Enforced Disappearances to receive individual or inter-State communications (23 for each type of communication, 16 of them Council of Europe member States). The low level of acceptance of this competence substantially weakens the committee by depriving it of one of the most important and effective follow-up measures for protecting missing persons and their families against violations of rights protected by the convention. To secure more ratifications and declarations, the "Group of Friends of the CED" (France, Argentina, Morocco) should be reinforced by a "Group of European Friends of the CED" committed to encouraging Europe to set an example. To really kickstart the process, the Council of Europe should organise a world conference on enforced disappearances which – why not – could be held in Strasbourg.

56. The third line of action for strengthening international mechanisms entails transposing the principles laid down by the CED into national legislation as explained in the next section.

### **6.2. Improving repressive and preventive measures at national level**

57. The first step is to identify and then eradicate the causes of the impunity that encourages future perpetrators of such crimes. The perpetrators of enforced disappearance crimes are notoriously difficult to bring to justice. One of the obstacles is that, in many countries, enforced disappearance is not a crime in its own right in the criminal code, as stipulated in the CED. In the States Parties to the Rome Statute of the International Criminal Court, enforced disappearance is recognised as a crime against humanity, but only if it is part of a generalised attack on the civilian population. The factors paving the way for impunity include the high number of suspects, the relative scarcity of human and financial resources and also the fact that "in many processes of transition important figures from the previous regime retain influence".<sup>73</sup> Amnesty laws (such as the 1977 law in Spain) and statutes of limitation that fail to take account of the continuous nature of the crime of enforced disappearance (such as in Turkey) "makes justice for cases of enforced disappearance virtually impossible in both countries."<sup>74</sup> Putting an end to impunity will be the most important of the preventive measures.

58. The CED creates obligations to take numerous additional preventive measures, including effective *habeas corpus*, centralised detention registers, release protocols, the prohibition of secret detention and clandestine detention centres, the principle of not sending people back to countries where they risk being a victim of an enforced disappearance, suitable training for the security forces, laws on adoption ruling out the possibility of gaining control over missing children or children of missing persons, and finally protocols for documenting unidentified human remains. Obviously, these measures can also be adopted upstream of ratifying the CED. Our experts highlighted that, to date, there is no clear visibility, country by country, of preventive measures actually in place. A study on this topic could be one of the jobs of the task force against enforced disappearances which the FEMED recommends setting up within the Council of Europe. The findings of such a study could then be translated into concrete recommendations which the Committee of Ministers could address to the member States concerned. The Council of Europe can and must play a more proactive role in analysing the shortcomings of the system for preventing enforced disappearances and supporting its member States in their efforts to improve the functioning of this system in practice where necessary.

### **6.3. Stepping up remembrance and awareness-raising efforts**

59. In its expert's report, the FEMED found that there was a lack of awareness raising and therefore public interest regarding the issue of enforced disappearances. This is an obstacle to the campaign to promote ratification of the CED, conducted almost exclusively by France and Argentina. The lack of specific knowledge affects students, even those who specialise in human rights, and psychologists and psychiatrists despite being strongly in demand for psychosocial assistance to families of missing persons. When covered in the media, the topic of disappearances suffers from persistent framing which harks back to the 1980s and portrays enforced disappearances as a typically Latin-American problem of past dictatorships. Yet, as we have seen, this problem seriously impacts numerous European societies.

73. Gabriella Citroni, op. cit., page 48.

74. Idem.

60. Accordingly, it will be necessary to step up remembrance and awareness-raising efforts. On a symbolic level, there should be a stronger focus, within the Council of Europe, on “international day of the victims of the enforced disappearances” (30 August) recognised by the UN. In practice, work to promote remembrance requires *inter alia* involvement from civil society, and in particular associations of relatives of missing persons who are greatly in need of moral and financial support. These associations meet a vital need for solidarity and mutual psychosocial support; and they are the primary driving force behind campaigns at national level or within international organisations to elucidate cases, open criminal investigations and secure preventive and compensatory measures. The FEMED reminds us that these organisations are the target of repression in many countries, notably in Turkey (where their leaders are imprisoned) and in Russia, where organisations such as “Memorial”, “Russia Justice Initiative” and “Mothers of Chechnya” are subjected to ever greater pressure.

## 7. Conclusions

61. Undoubtedly, enforced disappearance is one of the most abominable violations of human rights, invented not only to make opponents of an authoritarian regime “disappear”, but also to spread terror throughout an entire community and in society as a whole.<sup>75</sup>

62. The excessively slow transposition into national law of the provisions of the International Convention for the Protection of All Victims of Enforced Disappearance in accordance with international standards, the lack of co-operation of the countries concerned and the passage of time before effective investigations are initiated often make it extremely difficult to allay the anxiety experienced by victims of enforced disappearances, including their relatives. The situation is further aggravated when national authorities fail to provide sufficient support to the families of those who have disappeared, who continue to live in uncertainty.

63. Council of Europe member States should set an example by signing, ratifying and transposing the CED into their national law and fulfilling their positive obligations to protect and defend all their citizens against enforced disappearances, including against non-governmental or non-European operators. Civil society must be able to contribute its experience and knowledge of the field by participating meaningfully in consultation and decision-making processes.<sup>76</sup>

64. It does not seem expedient to continue calling for the creation of a new normative instrument in this sphere within the Council of Europe, which would heavily duplicate the efforts of the existing structures. It would make more sense to promote universal ratification of the CED and the necessary declarations to open the way for the lodging of individual complaints with the Committee on Enforced Disappearances set up by the CED. The Council of Europe should play a major role in such a campaign. In the draft resolution and recommendation, I put forward constructive and pragmatic proposals, aimed at stronger protection against the scourge of enforced disappearances, including action to tackle impunity and support associations of families of missing persons.

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75. See, for example, the “Nacht und Nebel – Erlass” (“Night and Fog Directive”), issued by Adolf Hitler on 7 December 1941 against political activists and “helpers” of the resistance during the Second World War who were to be imprisoned or killed, while the family and population remained uncertain as to their fate or whereabouts.

76. Round table, 22 February 2017, op. cit., p. 6.

**Appendix – Dissenting opinion presented by Mr Aleksandr Bashkin (Russian Federation, NR), Ms Irina Rukavishnikova (Russian Federation, NR), Mr Shamsail Saraliev (Russian Federation, NR), and Mr Leonid Kalashnikov (Russian Federation), members of the Committee on Legal Affairs and Human Rights, pursuant to Rule 50.4 of the Rules of Procedure**

The draft resolution and recommendation proposed for consideration have the task of encouraging the Member States of the Council of Europe to accede to the International Convention for the Protection of All Persons from Enforced Disappearance and to express their consent to the application towards them the mechanism for the consideration of individual and inter-State complaints. The member States of the Council of Europe are indicated the need to join the Rome Statute of the International Criminal Court (ICC) in the form of ultimatum – ‘to sign and ratify’.

These calls contradict the sovereign right of States to independently determine the scope of international legal obligations of a contractual nature. In addition, the obvious politicization and anti-Russian orientation of the ICC precludes the intention of the Russian Federation to join this organization.