Parliamentary Assembly
Assemblée parlementaire
https://pace.coe.int

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Doc. 13808
08 June 2015

Missing persons during the conflict in Ukraine

Report[1]
Committee on Migration, Refugees and Displaced Persons
Rapporteur: Mr Jim SHERIDAN, United Kingdom, Socialist Group

Summary

This report presents an overview of the current situation with regard to missing persons during the conflict in Ukraine, including available numbers on missing civilians, volunteers and military personnel, as well as missing persons in Crimea and missing Russian soldiers. Special attention is given to the needs of the families of missing persons and the assistance which should be provided to them. It stresses the primary responsibility of the authorities of Ukraine and the Russian Federation, as well as of the separatist groups controlling the territories of the Donetsk and Luhansk regions, in helping the families of missing persons to find and, where appropriate, to identify the remains of their loved one's without delay.

The authorities should also create the necessary legal framework and national mechanisms to solve the problem of missing persons. Following the example of other European countries which have dealt with the problem of missing persons, it is of primary importance to establish a joint mechanism (working group) dealing with the issue of missing persons during the conflict in Ukraine and to ensure its efficient functioning. All sides of the conflict should accelerate the process of the identification of exhumed bodies using all available means, including DNA matching, the matching of ante and post mortem data and visual identification, as determined by forensic experts. They should also provide financial, medical and social assistance to the families of missing persons. The Council of Europe can also play its role in the ongoing process of clarifying the fate and whereabouts of missing persons in connection with the conflict in Ukraine, by offering relevant expertise especially in the framework of co-operation programmes.

1. Reference to committee: Doc. 13682, Reference 4107 of 30 January 2015.

Contents **Page**

A. Draft resolution 3
B. Draft recommendation 6
C. Explanatory memorandum by Mr Sheridan, rapporteur 7
1. Introduction 7
2. Current situation with regard to missing persons during the conflict in Ukraine 7
2.1. Missing civilians 8
2.2. Missing persons in Crimea 8
2.3. Missing Russian soldiers 9
3. Response and actions to identify missing persons 9
3.1. Ukrainian authorities' response 9
3.2. Legal situation 11
3.3. Response of civil society and volunteer organisations 12
3.4. Assistance to the families of missing persons 13
4. Necessary actions to be undertaken in identifying the fate of missing persons 14

A. Draft resolution[2]

1. The Parliamentary Assembly is seriously concerned about the growing number of cases of missing persons reported in the areas of military action in the Donetsk and Luhansk regions of Ukraine, as well as in Crimea.

2. Since the beginning of the conflict in these areas, in early 2014, more than 1 300 persons have been reported missing. This figure, which only takes into account data collected by the Ukrainian authorities, is in reality certainly higher. Among the missing persons are not only soldiers, but also civilians, including volunteers who were helping victims of the conflict. Their fate and whereabouts are unknown and difficult to determine as their most likely location is in the territory which remains under the control of separatist groups.

3. The Assembly welcomes the efforts undertaken by the Ukrainian authorities with a view to determining the fate and whereabouts of missing persons. In particular, it commends the establishment of an Interagency Centre for Assistance in the Release of Captives and Hostages and the Search for Missing Persons under the responsibility of the State Security Service of Ukraine and the creation of a unified register of pretrial investigations (including a database of DNA samples of unidentified bodies and the relatives of missing persons) within the Ministry of Internal Affairs, which have significantly facilitated the identification procedure of missing persons.

4. At the same time, however, the Assembly considers that the issue of missing persons requires a more comprehensive approach at governmental level and should include the co-ordination of the work of various volunteer and human rights organisations with regard to tracing and collecting information on missing persons. Furthermore, the medical, social and financial assistance offered to the families of missing persons is largely insufficient.

5. The Assembly emphasises that the problem of missing persons can only be solved through the joint efforts of all sides of the conflict. The Assembly therefore urges Ukraine, the Russian Federation and the separatist groups controlling the occupied territories of Donetsk and Luhansk region to:

5.1. provide an efficient response, in terms of investigation and support for families, to all reported cases of missing persons, in compliance with international humanitarian law;

5.2. share information on the fate and whereabouts of missing persons and return unidentified bodies, where appropriate, to the respective sides of the conflict;

5.3. establish a joint mechanism (working group) to deal with the issue of missing persons, and ensure its functioning, with a view to:

5.3.1. collecting and processing information on missing persons;

5.3.2. creating a consolidated list of missing persons;

5.3.3. introducing effective measures enabling tracing, recovery and identification of the human remains;

5.3.4. ensuring access to burial places;

5.3.5. providing exhaustive information to the relatives of missing persons on the progress on their cases;

5.3.6. involving and co-ordinating action of non-governmental and volunteer organisations dealing with tracing missing persons;

5.4. systematically collect post mortem data from unidentified bodies, as well as DNA samples from the families of missing persons;

5.5. accelerate the process of identification of exhumed bodies using all available means, including DNA matching, the matching of ante and post mortem data and visual identification, as determined by forensic experts;

5.6. provide financial, medical and social assistance to the families of missing persons;

5.7. facilitate access and the work of civil society and international humanitarian organisations tracing missing persons;

5.8. encourage the mass media to attract public attention to the problem of missing persons.

---

2. Draft resolution adopted unanimously by the committee on 3 June 2015.

6. The Assembly further urges the Ukrainian authorities to:

6.1. create a dedicated governmental mechanism, tasked with the co-ordination of the work of all governmental and non-governmental bodies working on the issue of missing persons, and in particular to:

6.1.1. ensure sufficient budgetary funds for its functioning;

6.1.2. create and maintain a unified data register with regard to missing persons during the conflict in Ukraine;

6.1.3. provide adequate funding for tracing operations;

6.1.4. elaborate a mechanism of State compensation and support to the families of missing persons and ensure that the families concerned are informed about the existence of this mechanism;

6.1.5. include in its work non-governmental organisations, volunteer associations and representatives of the families of missing persons;

6.2. introduce into the legislation a provision ensuring the right of families to know what has happened to relatives who remain unaccounted for in connection with armed conflicts and internal violence, in compliance with the relevant provisions of international humanitarian law;

6.3. strengthen legal measures dealing with the problem of missing person, in particular to consider the adoption of a specific law on missing persons which would introduce a legal status of “missing” and “war victim”, allowing the families concerned to benefit from financial, social and legal assistance, including a mechanism of State compensation;

6.4. address the needs of single heads of families of missing persons, taking into consideration specific needs of women and children;

6.5. further develop national capacities specialised in forensic and tracing expertise and encourage them to assimilate the experience of the International Committee of the Red Cross (ICRC) in this respect;

6.6. provide adequate legal and awareness-raising training for all officials concerned with regard to the implementation of legal provisions and administrative procedures when addressing the rights of the families of missing persons.

7. The Assembly urges the separatist groups which control the occupied territories in the Donetsk and Luhansk regions to:

7.1. release all captured prisoners and hostages;

7.2. create a local mechanism dealing with the issues of captured and missing persons;

7.3. work together with the Ukrainian side on identifying possible grave sites;

7.4. grant access for international humanitarian missions to places of detention of prisoners.

8. The Assembly further urges the authorities of the Russian Federation to:

8.1. release all prisoners illegally captured in Ukrainian territory;

8.2. conduct an effective investigation and prosecute perpetrators in cases of abduction, enforced disappearances, torture and politically motivated killings of Ukrainian activists and members of the Crimean Tatar community;

8.3. exercise pressure over the separatist groups which control the occupied territories in the Donetsk and Luhansk regions for the immediate release of all civilians held in custody on the territory under their control and for the exchange of prisoners;

8.4. create a national mechanism to deal with the issues of captured and missing persons during the conflict in Ukraine;

8.5. provide the families of missing Russian soldiers with accurate information on the fate and whereabouts of their missing relatives;

8.6. immediately grant access to the territory of Crimea to international human rights monitoring missions.

9. The Assembly also calls on the member States to provide:

9.1. financial and technical assistance to the Ukrainian authorities responsible for exhumation and the identification process;

9.2. necessary assistance to deal with the psychological effects on the families of missing persons;

9.3. financial assistance to the associations of families of missing persons and non-governmental organisations tracing missing persons.

10. The Assembly encourages the International Committee of the Red Cross (ICRC) to make available their expertise to Ukrainian institutions, in particular in:

10.1. training national specialists in the documentation of missing cases, the consolidation of lists and the assessment of and response to the needs of the families;

10.2. providing technical assistance, in particular in setting up the DNA laboratory in Dnipropetrovsk and supplying reagents for the DNA tests;

10.3. informing the Ukrainian population about the main aspects of international humanitarian law.

11. The Assembly invites the Council of Europe Commissioner for Human Rights to follow the problem of the missing persons during the conflict in Ukraine.

B. Draft recommendation[3]

1. The Parliamentary Assembly refers to its Resolution … (2015) on missing persons during the conflict in Ukraine.

2. The Assembly stresses that the issue of missing persons in Ukraine is a serious European problem which may hinder the prospects for a peaceful settlement in the region and have negative consequences on the process of reconciliation.

3. The Assembly therefore recommends that the Committee of Ministers identify possible contributions by the Council of Europe to the ongoing process of clarifying the fate and whereabouts of missing persons in connection with the conflict in Ukraine, and offer relevant expertise, especially in the framework of co-operation programmes.

3. Draft recommendation adopted unanimously by the committee on 3 June 2015.

C. Explanatory memorandum by Mr Sheridan, rapporteur

1. Introduction

1. In Resolution 2028 (2015) on the humanitarian situation of Ukrainian refugees and displaced persons, adopted in January 2015, as well as in the accompanying report (Doc. 13651), the Parliamentary Assembly expressed its major concerns about "the growing number of people who are reported missing on all sides of the military conflict in Ukraine".

2. As a rapporteur on the subject and the former rapporteur on Europe's missing persons, I made a statement, following the hearing held by the Committee on Migration, Refugees and Displaced Persons on 30 September 2014, in which I expressed my concern over the growing number of persons who are reported as being missing on all sides of the military conflict in Ukraine, and I called on the authorities of Ukraine and the Russian Federation to undertake all necessary measures aimed at helping the families of missing persons to find and, where appropriate, to identify the remains of their loved ones without delay.

3. The present report stems from a motion for a resolution on the missing persons tabled by the committee during the January 2015 part-session, which, given the urgency of the question, was referred to the committee for report as a follow up to the previous report on the humanitarian situation in Ukraine.

4. According to the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), the overall death toll during the conflict in Ukraine now exceeds 5 486 people, with another 12 972[4] wounded since mid-April 2014. Unfortunately, this number may be much higher as the fates of more than one thousand people missing during this conflict remain unknown.

5. Among those who have disappeared are not only soldiers, but also civilians, including volunteers who were assisting the population in the conflict areas. The information on their numbers and possible whereabouts is fragmented and spread between different governmental and non-governmental bodies and is hard to come by. The situation is further complicated by the fact that most of those who have disappeared – whether they are alive or not – remain in territory controlled by separatist groups.

6. I consider it a matter of primary importance to call on all parties of the conflict and relevant international organisations to deal with this acute humanitarian problem. In the present report, I intend to identify concrete measures to be taken and to define urgent recommendations with a view to discovering information about the fate of the missing persons.

7. The information contained in this memorandum is gathered from different available sources and publications, and from the hearing held on 23 March 2015 with the participation of representatives of the Ukrainian authorities as well as of civil society from Ukraine and the Russian Federation. I would also like to thank the Ukrainian authorities for having provided me with all the requested information needed for the preparation of the present report.

2. Current situation with regard to missing persons during the conflict in Ukraine

8. As a result of the Ukrainian authorities' decision to declare the military actions in the east of the country as an Anti-Terrorist Operation (ATO), the institution with the foremost responsibility for collecting data on the fate of the missing persons is, in legal terms, the Security Service of Ukraine. However, in practice, many other bodies, including the Ministry of Defence and all law-enforcement agencies in Ukraine, are collecting information on soldiers killed (Category 200), injured (Category 300) and missing or captured (Category 400) during the conflict. The numbers in brackets refer to the relevant category in military codes. Consequently, there are different lists of missing persons established by different bodies and the available information is fragmented.

9. A person is considered missing if his/her remains have not been found. Even if there are testimonies of the death of a person, if there are no remains, the person will still be added to Category 400 and would only be moved to Category 200 after six months. In practice, however, sometimes the same person's name appears in both categories on different lists at the same time.

4. Ukraine, Situation report No. 26, 6 February, OCHA.

10. Unfortunately, it happens quite often that there are no recovered bodies of killed soldiers, but they are reported by commanders as having been killed. In some cases, the bodies of soldiers are abandoned on the battle field, or they are burnt. In such situations, the missing soldiers could appear under either of the two lists, 200 or 400.

11. According to the information provided to me by the Security Service of Ukraine, during the period from 1 April 2014 to 12 May 2015, 1 330 persons were registered as missing. Of these, 3 were journalists; 43 Internal Affairs staff; 481 military personnel; 8 border guards; 14 fighters from volunteer regiments; 36 staff of the National Guard; 16 volunteers; 621 civilians and 108 unidentified persons. The highest increase in the number of missing was registered after the attacks in August 2014. The numbers of missing are changing every day, as many relatives especially on the occupied territories do not register the disappearance of their missing family. Some of them prefer not to do it for psychological reasons.

2.1. Missing civilians

12. As reported by the human rights activists working on the territories occupied by separatists, a large number of activists, journalists and civilians have been kidnapped by terrorist militants. Many of them were beaten, tortured and even used as slaves to dig trenches and erect roadblocks.[5] The relatives of missing civilians are terrified of repression by the occupants and are therefore afraid to report cases of missing persons.

13. I was very moved by the story of Lera Kulish from Luhansk: “At 4 in the morning on 8 August 2014, eight armed persons forced their way into the house of my parents in the town of Peremozhne in the Luhansk region. I was away, but my parents and my grandfather were at home. The terrorists were searching for weapons, but did not find any. So they took my mother, Elena Kulish, and my stepfather, Vladimir Alekhin, as well as two of our cars parked in the courtyard. My mother had created a web blog giving news from the town to the relatives living outside the occupied territory. I presume that it is because of this activity that my parents were abducted. In December, I was called by the LNR [Luhansk People’s Republic] authorities to identify the bodies, but it was impossible to do so, as the bodies were in a very poor condition. The authorities are not handling the bodies and will not take DNA samples. They promise to send them to Rostov oblast in Russia for the metric expertise, but nothing is happening.”

14. There are also some reports on the cases of abduction of Ukrainian civilians and their illegal transfer to the territory of the Russian Federation. One of the leaders of the UNA-UNSO party, Mykola Karpiuk, was kidnapped in Chernigiv Region (Ukraine) and moved to Russia on 21 March 2014. His family received information from the Russian Investigative Committee about criminal charges against him. They were informed that he had been convicted in Yesentuki (Russian Federation, North Caucasus) and prosecuted with so-called “banditism” charges for alleged participation in the Chechen military campaign in 1994-1996. Since his abduction, the family has received only one letter from him on 6 February 2015. In breach of Russian Federation legislation, a lawyer and Ukrainian Consul has not received permission to visit Mykola Karpiuk. On 14 May 2015, his lawyer, Mr Illia Novikov, stated that he did not believe Karpiuk was still alive.[6]

15. I consider that the separatist groups which control the occupied territories in the Donetsk and Luhansk regions should be called on to refrain from violations of human rights, in particular abductions, enforced disappearances, torture and politically motivated killings of Ukrainian citizens. They should conduct effective investigations and prosecutions of perpetrators in the cases of such crimes.

2.2. Missing persons in Crimea

16. Human Rights Watch (HRW) and local non-governmental organisations have reported several cases of missing persons in Crimea since May 2014.[7] According to the Ukrainian non-governmental organisation (NGO) the Centre of Civil Liberties, at least 20 civilians have gone missing since the occupation of the peninsula. The overwhelming majority of victims are representatives of the opposition to the illegal occupation of Crimea. Three of them were found dead, eight were released and the location of nine people is still unknown.

5. Hundreds of People have Disappeared in Eastern Ukraine, Christopher Miller, 30 June 2014: http://mashable.com/.
6. www.pravda.com.ua/news/2015/05/14/7067928.
7. Crimea: Enforced Disappearances, 7 October 2014, Human Right Watch.

17. At least six abducted persons were subjected to torture and inhuman treatment. For example, the Crimean Tatar activist Reshat Ametov was found dead with numerous traces of torture (his death was caused by a penetrating stab to the eye). This provoked fear amongst other members of the Crimean-Tatar community and drove a lot of people to leave their native land. Almost 20 000 people have been displaced from Crimea since its annexation by the Russian Federation, seeking protection in other parts of Ukraine and abroad.

18. As reported by the Russian Ombudsperson, Ms Ella Pamfilova,[8] in her annual report for 2014, since the establishment of the Russian jurisdiction over Crimea there have been 13 cases of missing Crimean Tatars, 24 missing Ukrainians and 119 missing Russians.

19. However, it is impossible to provide a real number of the missing persons in Crimea, as the occupying authorities are not investigating the cases of disappearances and are not permitting the international human rights monitors access to the territory of Crimea. Overall, the human rights situation in Crimea is extremely worrying, as confirmed by the recent report by the Council of Europe Human Rights Commissioner[9] and the United Nations High Commissioner for Human Rights[10].

2.3. Missing Russian soldiers

20. There is no official information on missing Russian soldiers provided by the Russian authorities, as so far, they do not recognise their involvement in this conflict. Nevertheless, Russian officials, in particular President Putin, has on several occasions recognised the existence of Russian "volunteers" helping their "brothers" in the east of Ukraine.

21. On the other hand, the Ukrainian Security Service has created a hotline for the relatives of missing Russian soldiers. Since its creation, it has received more than 20 applications from Russian families seeking information on Russian soldiers who have disappeared in Donbas. The Security Service of Ukraine informs the Russian Consulate in Kyiv about all cases of captured Russian citizens, so that they can inform their relatives about their present location.

22. Here is one story of a Russian soldier who disappeared in Ukraine, published in *Deutsche Welle* on 4 March 2015: "An orphan by the name of Petr Khokhlov signed a limited contract in 2014 with the Russian army. One day, he disappeared from his base, without saying a word to either his fiancee or his brother. Some time later, he surfaced again on a video made by Ukrainian authorities as a prisoner of war. Later, his brother learned that Petr had been exchanged for Ukrainian soldiers and had been handed to the separatists. But the Russian army representative didn't want to know about it. Officially, Khokhlov was a deserter. His trail went cold again until months later, when a *New York Times* reporter found Khokhlov at a separatist checkpoint in eastern Ukraine. He told the reporter that he was there voluntarily."[11]

3. Response and actions to identify missing persons

3.1. Ukrainian authorities' response

3.1.1. Co-ordination mechanism and lists of the missing

23. The Ukrainian authorities have created a specific structure tasked with co-ordinating and providing assistance in the search for captured and missing persons. On 2 September 2014, on the instruction of the President of Ukraine, an Interagency Centre for Assistance in the Release of Captives and Hostages and the Search for Missing Persons was set up under the auspices of the Ukrainian Security Service. The deputy head of the Ukrainian Security Service, Vitaly Yalovenko, has been appointed as Head of the Centre.

24. The Centre examines applications from Ukrainian and foreign nationals who are looking for missing persons and assists and advises them. It is also tasked with drawing up a list of missing persons during the conflict in Ukraine. As at 12 May 2015, the Centre had received 1 172 e-mail appeals, 1 390 hotline calls and 1 033 personal visits.

---

8. http://ombudsmanrf.org/; www/upload/files/docs/appeals/doklad2014.pdf.
9. Report by Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his mission in Kyiv, Moscow and Crimea, from 7 to 12 September 2014,CommDH(2014)19, 27 October 2014.
10. Report on the human rights situation in Ukraine, 15 May 2014, Office of the United Nations High Commissioner for Human Rights.
11. www.dw.de/evidence-mounting-of-russian-troops-in-ukraine/a-18294255.

25. In the Ministry of Defence of Ukraine, the Division of the general department of military forces of Ukraine has established a “hotline” for the exchange of information about military personnel killed or missing-in-action. This hotline is designed to assist military personnel, representatives of security forces and their families.

26. The Ministry of Internal Affairs has established several territorial working groups in the regions, in the city of Kyiv and at railway stations, whose main task it is to collect information on missing, abducted and imprisoned persons and to register it in the Unified register of pre-trial investigations. These groups also have a mandate to start operational investigation cases.

27. For the purpose of focusing the attention of the public and the mass media on searching for persons who have disappeared in the anti-terrorist operation region, the official web page of the Ministry of Internal Affairs published guidelines for those citizens whose relatives had disappeared in the anti-terrorist operation region, the procedure for identifying bodies, a list of missing persons, and phone numbers of the heads of working groups.

28. The main concern with regard to all the above lists is that they are partly established on the basis of oral or written reports from citizens without prior thorough verification. As a result, they are not totally reliable. As the relatives of missing persons often contact different institutions, the same names may be mentioned in different lists. Furthermore, it may happen that a person whose fate has been established still remains on one or more lists.

29. To my knowledge, there is no consolidated list of missing civilians during the conflict established by the central authorities. The names of missing civilians can be found in many different lists, including the lists of non-governmental and volunteer organisations working on this problem.

30. It is understandable that the Ukrainian central authorities, who have been confronted with the need for an emergency response, have reacted by instructing all relevant bodies to deal with the issue of missing persons in the frameworks of their respective competencies. However, some possible improvements in the current mechanisms and co-ordination system can be made. First of all, I consider that the co-ordinating body should be placed within the institutional framework and under the responsibility of the Cabinet of Ministers, in order to have the institutional capacity to work with all governmental bodies involved in the solution of the problem of missing persons. It should include representatives of civil society and the families of missing persons. This body should be given the necessary power and resources to carry out its work. It should also maintain a unified data register of all missing persons during the anti-terrorist operation.

3.1.2. Tracing, identification and management of human remains

31. A number of measures have been undertaken by the Ukrainian authorities aimed at enabling the tracing and identification of missing persons, both military and civilian. On 1 October 2014, the President of Ukraine designated the State Forensic Research Center of the Ministry of the Interior as the only institution tasked with maintaining a database of DNA cards containing genetic characteristics of unidentified bodies and of relatives of people who had disappeared in the anti-terrorist operation region.

32. The Ministry of the Interior is also in charge of a whole range of measures on DNA expertise of the remains of the missing soldiers. It has at its disposal seven modern laboratories for DNA analysis (in Vinnycka, Zaporizhska, Lvivska, Mykolaivska, Kyivska oblast and the city of Kyiv). The relatives of missing persons, both military and civilian, can address local police stations with information about a missing relative, where, after completing all procedural matters, they should obtain permission for a DNA test free of charge. The results of the test are added to the unified database.

33. Collection of samples and molecular genetic testing for the purpose of identifying a person killed in the anti-terrorist operation region on the motion of an investigator are completely free with all the associated expenses covered by the State. Since April 2014, the Interior Ministry agencies have launched over 5 000 criminal proceedings into the disappearances of citizens; DNA samples have been collected from over 1 130 relatives of missing persons, over 1 000 biological samples have been received from other law-enforcement agencies, and almost 652 DNA profiles of unidentified bodies have been entered into the database to conduct a comparative analysis. A total of 325 bodies have been identified.[12]

12. Data provided by the Ministry of Internal Affairs on 8 May 2015.

34. One of the significant problems is that of mass graves. After the Ilovaysk tragedy, where 243 Ukrainian soldiers were killed, the morgues were unable to accommodate such a huge number of corpses. According to the rules, if a body stays unidentified for more than 10 days it must be buried. Therefore, those bodies of unidentified soldiers were buried in three temporary mass graves (at Krasnopilsk cemetery in Dnipropetrovsk (more than 170 bodies), at the central cemetery in Kushugum (54 bodies) and in Starobilsk (37 bodies)). In each case, the DNA samples have been collected and registered in the unified data base. Among them, 47 bodies have been identified. To simplify and speed up the identification procedure of the unidentified remains, it would be necessary to create an additional DNA laboratory in Dnipropetrovsk.

35. One of the main obstacles in the identification of bodies of Ukrainian soldiers is the absence of military badges. Until recently, only officers of the Ukrainian army had them, and even now they are not commonly used.

36. It is also reported that several mass graves exist on the occupied territories in the Luhansk and Donetsk regions, but at this stage there is no possibility to conduct exhumation and identification of these human remains. According to NGOs, in the Donetsk region there is a Centre for return and search for missing under the so-called “ministry of defence of the DNR”, while in Luhansk region many bodies are sent to the Rostov oblast of the Russian Federation. It is clear that the agreement of all sides of the conflict is needed in order to co-ordinate the exchange of information on missing persons, at least at the level of humanitarian organisations.

3.2. Legal situation

37. International humanitarian law, in particular the Protocol I (1977) Additional to the Geneva Conventions (Articles 32 and 33) very clearly defines the right of families to know the fate of their missing relatives. All parties of the conflict have “to search for the persons who have been reported missing by an adverse Party, as soon as circumstances permit, and at the latest from the end of active hostilities”, “to facilitate the gathering of information necessary for such a research”, “to notify every arrest, transfer, release or death in captivity to the Central tracing Agency of the ICRC” and “to carry out a search for persons having died in other circumstances as a result of hostilities”.

38. The European Convention on Human Rights (ETS No. 5) imposes numerous obligations on its signatory States regarding missing persons. For example, according to the case law of the European Court of Human Rights, insufficient investigation into the fate of a missing person or the failure of the authorities to hand over the information in their possession may be considered as a form of torture of the missing person’s family and friends (Article 3). Likewise, any detention which is not officially recognised by the authorities and which is followed by the person’s disappearance constitutes a violation of the right to liberty and security (Article 5) and also of the right to life (Article 2). Finally, observance of the right to an effective remedy (Article 13) requires the authorities not only to pay damages but also to conduct a thorough and effective investigation with a view to identifying and punishing those responsible, if a relative claims, on reasonable grounds, that a member of his or her family disappeared when in detention.[13]

39. According to the Civil Code of Ukraine (Part 1, Article 43), a person can be recognised by the Court as missing if, during one year after his/her disappearance there has been no news of his/her location at the place of his/her permanent residence. The person can be declared dead if there has been no information about his/her whereabouts at the place of his/her residence for three years since his/her disappearance. In some situations, this period could be shortened to six months (if his/her disappearance can be linked to a situation threatening his/her death).

40. As regards people who go missing during military actions, Part 2, Article 46 of the Civil Code of Ukraine provides that such persons can be declared dead by the court in two years. However, in specific circumstances (during combat, missing in action), the person can be declared missing in six months’ time, but not before. The person is declared missing from the date of his/her probable death and not from the date of the court decision.

41. The Civil Procedural Code of Ukraine regulates the order of recognition of a person as missing or dead. According to its Article 246, it is necessary to submit a relevant application to the court in the last known place of residence of the missing person. After that, the court will start the investigation and will hand down its decision. If the person is recognised as missing, the notary will start the procedure to establish guardianship of

13. Missing Persons and European Convention on Human Rights, Alvaro Gil-Robles, Commissioner for Human Rights of the Council of Europe, Geneva, 19 February 2003.

the missing person's property. If a person is recognised as dead, the court will send its decision to a relevant organ of the State registration of civil acts and to the notary, who will define the beneficiaries of the property of the dead person.

42. The Law of Ukraine "On the pensions for the persons, demobilised from military service and some other persons", in its Part 2, Article 29 provides that the families of military personnel who have died in service will be equal to the families of soldiers killed in action. Therefore, if the person went missing during the military action, she or he could be recognised as having perished immediately, without being recognised as missing. Thus, the family of such a person will have a right to receive a pension for the missing serviceman or woman. To get this pension, the family member must make an application to the local department of the Pension Fund of Ukraine.

43. The main problem is that the families of missing persons are very often unaware of these legal provisions and also their implementation by the relevant authorities is unsatisfactory. Also, the system of the recognition of the rights of families for State support is very complicated and should be revised with a view to simplifying it. It should be recognised that Ukraine's legislation was not prepared for the situation of military actions on its territory and could not foresee all the different legal aspects of problems incurred. Therefore, the experience of other European countries which have lived through the situation of military conflict could be of help in adapting the national legislation to the current situation. The legal expertise of the International Committee of the Red Cross (ICRC) and its Model Law of Missing could be used by the Ukrainian lawmakers in strengthening the legal measures to deal with the problem of missing persons.

3.3. Response of civil society and volunteer organisations

3.3.1. Response of Ukrainian NGOs

44. A number of Ukrainian NGOs, human rights organisations and volunteer groups are working to identify and collect information on missing soldiers and civilians. They also provide logistical, legal and material assistance to the families of the missing.

45. The data base of the NGO "Good Action", created by a volunteer, Anna Mokrousova, includes missing persons mainly form the Luhansk and Donetsk regions. It includes 371 missing military personnel, 260 military hostages and 883 perished military personnel (who were considered as missing). It also has information on 239 missing civilians and 73 hostages.

46. Organisations such as the humanitarian mission "Black Tulip", "Donbas-SOS", "Crimean field mission" and "The Centre for Civil Liberties" are also collecting information on missing persons from their relatives. It should be stressed that not all relatives of missing persons go to NGOs for help, as many of them are living on the occupied territories and have no access to the Internet.

47. The main concern of these NGOs is that each organisation has a different list of missing persons and there is no systemic action on comparing and compiling these lists. This work should be ensured by the Ukrainian Government.

48. I would like to pay special tribute to the work of the all-Ukrainian organisation "The Union of People's Memory" and Mr Yaroslav Zhylkin, Head of the Board. Since the beginning of the conflict these courageous people have been dealing with the tracing, exhumation and evacuation of bodies from the occupied territory. More than 450 bodies of Ukrainian soldiers have been found and exhumed. In fact, they are doing the work which should be done by the State and do not even receive financial support from the State. Sometimes the Ministry of Defence provides them with petrol for the transportation of the bodies and the ICRC provides them with body bags. The monthly cost of such operations is around €20 000. For the moment, all tracing missions are financed by donations from private individuals.

49. Ukrainian volunteer organisations and NGOs try to respond to the immediate needs of the families of missing persons. On the initiative of Ms Olha Bohomolets, a Ukrainian member of parliament and adviser to the President of Ukraine, a charity Internet project "Public Platform People Help the People" (www.lpl.com.ua) was created. It aims to provide targeted assistance to the families of those who have died or gone missing during the conflict in eastern Ukraine. The disabled family members of the missing persons are also granted the right to take part in this programme, as under the current legislation they are not eligible to any social and financial support in the situation of the loss of a breadwinner.

3.3.2. Response of Russian NGOs

50. The Russian NGO "Soldiers Mothers of Saint Petersburg", which defends the rights of recruits and soldiers, has established a telephone hotline for relatives of missing Russian soldiers and has received information about at least 100 killed and 300 injured Russian soldiers. It has appealed to the Russian military authorities to investigate these cases.

3.3.3. Reactions of international organisation and NGOs

51. The ICRC has deployed its missions in Kyiv, Luhansk, Donetsk and Kharkiv. It has been active in documenting and compiling cases of missing persons together with the Ukrainian Red Cross Society and is currently following 300 individual cases of missing persons. Collaboration between the authorities on all sides is ongoing in order to clarify the fate of those persons. The ICRC has also delivered 500 body bags to the Civil-Military Directorate of the Ukrainian Armed Forces for their use in the east of Ukraine and materials for stock refilling.[14]

52. Human Rights Watch is actively involved in the monitoring of human rights abuses in Crimea and released a report "Rights in Retreat", in which a special part is dedicated to enforced disappearances in Crimea.

3.4. Assistance to the families of missing persons

53. This is only one short story of a family tragedy provoked by this conflict: "Tatiana Efremova got the first worrying call a few hours after the group left Poltava, when her 48-year-old mother, Irina Boiko, phoned to warn her daughter that they had been detained by rebels and accused of supporting the "enemy" Ukrainian army. A few hours later, a rebel called and said it was over: Efremova's mother had already been shot dead. But hours later came another call, this one saying Irina Boiko had been released. When Efremova asked frantically where she could come to collect her mother, the caller hung up. Another agonising dead end, and Efremova's seemingly endless nightmare of uncertainty dragged on."[15]

54. Ms Efremova said that the "government prioritises the release of journalists or military personnel, but hardly mentions the volunteers who are missing"[16].

55. The NGOs working with families of missing persons also claim that the State does not provide necessary support to the families of missing persons. Sometimes, the families of soldiers whose remains are returned have to collect money to organise a funeral.

56. The primary need of the families of missing persons is to get true information on the fate of their loved ones and the need for accountability. They also should be informed about all procedures to be taken to register missing persons.

57. Another main priority for the families of missing persons is to receive an official acknowledgement of the status of "missing person" and governmental support linked to it. The undefined legal status of a missing person's spouse or descendant may have consequences on property rights, the guardianship of children, inheritance and the possibility of remarriage.

58. Today, the families of missing civilians do not get any financial or other support from the government, while the families of missing military staff at least obtain the salary of their missing relatives. There is also a great need for psychological support for the relatives of missing persons. In the face of such tragedy, many of them refuse to give samples of their DNA, as they link this test to a sort of acknowledgement that their relatives are not alive. Almost all families of missing persons are facing the problem of fraud. They receive calls from unidentified persons claiming money from them for information on their loved ones. In such cases, they should be helped by law-enforcement agencies to stop such harassment.

59. Thirdly, in the case of people who are missing as a result of abduction or forced disappearances, or inaction by the State authorities or military groups, the families often want acknowledgment of the missing person's dignity and intrinsic value, of the crime, of the State authorities' or military groups' responsibility and the steps that need to be taken to address the crime.

---

14. ICRC Facts and Figures, Ukraine Crises, Overview of activities, January and February 2015.
15. Ukraine's disappeared: "What happens to them doesn't seem to matter", 7 August 2014, Sabra Ayres, *Al Jazeera.*
16. Ibid.

4. Necessary actions to be undertaken in identifying the fate of missing persons

60. International humanitarian law should be respected by all actors in the situation of armed violence. Nevertheless, the State authorities and the military groups participating in the conflict always bear primary responsibility for preventing people from going missing and for providing true information on their fates to their families. They are in charge of investigating the cases of disappearances which occurred on territory and/or by military groups under their control. They must determine the whereabouts or the fate of the person and inform and support the relatives. Where necessary, the authorities must ensure that criminal proceedings are initiated and reparation paid. The State authorities are thus also responsible for co-ordinating the work of all humanitarian organisations or other actors involved in the process of resolving cases of missing persons.

61. A ceasefire is the main condition for successful operations of exhumation and identification of the remains of missing persons. The August 2014 ceasefire allowed the NGOs and voluntary groups working in Donbas to speed up their work and to exhume and bring more bodies to the DNA laboratories for the identification procedure.

62. It is of primary importance that the authorities of Ukraine and the Russian Federation undertake all necessary measures to help the families of missing persons to find and, where appropriate, to identify the remains of their loved one's without delay. The authorities should also create the necessary legal framework and national mechanisms to solve the problem of missing persons.

63. It is very regrettable that there is still no unified list of persons who have gone missing during the military actions in Ukraine. The tracing of those who have disappeared is undertaken by various volunteer and human rights organisations and their work is not co-ordinated by the authorities. The relevant information on missing persons should be shared among those in the field, the morgues and the DNA laboratories of the Ukrainian authorities, but also between the Ukrainian authorities and separatists.

64. An important measure helping families faced with the disappearance of their relatives is the creation of hotlines in all regional and oblast centres, where they can obtain all available information about the situation in the combat zones of the anti-terrorist operation, namely about the soldiers and volunteers present there. All these services should be co-ordinated at regional and national levels.