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Resolution 2569 (2024)[1]

Missing migrants, refugees and asylum seekers – A call to clarify their fate

Parliamentary Assembly

1. The phenomenon of migrants, refugees and asylum seekers going missing is a tragedy largely underestimated and neglected as a human rights issue requiring policy responses across Europe and the world, in line with Objective No. 8 endorsed by the States Parties to the Global Compact for Safe, Orderly and Regular Migration.

2. The Parliamentary Assembly is convinced that concerted initiatives at the public policy level are needed to underpin and multiply the significant efforts already in place through a structured and adequately resourced vision and plan, rooted in the respect for international human rights and international humanitarian law.

3. The Assembly fully endorses the recommendations outlined in General Comment No. 1 (2023) on Enforced Disappearance in the Context of Migration (CED/C/GC/1) by the United Nations Committee on Enforced Disappearances, and in the report entitled "Unlawful death of refugees and migrants" (A/72/335) by the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions. It also endorses the recommendations in the report entitled "Protection of the dead" (A/HRC/56/56) by the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, including the need to develop universally applicable guiding principles, based on human rights, for a comprehensive protection.

4. The Assembly considers that human dignity should be ensured to all persons in life and in death, and that the obligation in law to treat the deceased with dignity should extend to situations where international humanitarian law is not applicable.

5. The Assembly recalls that, pursuant to Article 2 of the European Convention on Human Rights (ETS No. 5), member States have a duty to prevent violations of the right to life and to investigate any cases of unnatural death or unlawful killings; it is on this basis that they must define how they tackle the issue of missing migrants, refugees and asylum seekers.

6. The Assembly expresses its sympathy and solidarity with the families of the missing and acknowledges their legitimate quest for information. It recognises the right for adults to choose to not divulge their whereabouts to their families, but also the importance for families to know whether their relatives are dead or alive.

7. The Assembly considers that any initiatives conducted by State authorities to report, search for or identify a person should never involve the administrative checks or the criminalisation of that person or of any person providing support to them due to their irregular status.

8. On prevention, effective access to safe and legal migration routes, including for family reunion or reunification, must be a priority as well as the provision of humanitarian assistance along migration routes irrespective of the administrative status of the person on the move in need of support.

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1. *Assembly debate* on 1 October 2024 (27th sitting) (see Doc. 16037, report of the Committee on Migration, Refugees and Displaced Persons, rapporteur: Mr Julian Pahlke). *Text adopted by the Assembly* on 1 October 2024 (27th sitting).
See also Recommendation 2284 (2024).

9. Member States must conduct search and rescue operations at sea and on land according to international law, in full compliance with the European Convention on Human Rights and the consistent case law of the European Court of Human Rights. Pushbacks are illegal practices which may also lead to disappearance and which must stop immediately.

10. Reiterating the importance of fully abiding by the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126), the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197) and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210), the Assembly underlines the need to protect vulnerable people on the move who are or may be at risk of being victims of trafficking, victims of torture, victims of enforced disappearance or victims of gender-based and domestic violence, and thus to reduce their risk of going missing. Any person deprived of their liberty should be registered and should be able to communicate with the outside world as per the standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Immigration detention should only be a measure of last resort and for the shortest period possible, pending the enactment of a return procedure where deprivation of liberty is proven to be necessary as confirmed through the appropriate judicial oversight. Refugees should not be criminalised for crossing a border unauthorised, pursuant to Article 31 of the Convention relating to the Status of Refugees of the United Nations. The Assembly invites the relevant Council of Europe bodies such as the CPT, the Group of Experts on Action against Trafficking in Human Beings (GRETA) and the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) to pay particular attention to the impact which border management policies may have on their fields of expertise as regards missing migrants.

11. In line with Recommendation CM/Rec(2019)4 of the Committee of Ministers to member States on supporting young refugees in transition to adulthood and Recommendation CM/Rec(2019)11 of the Committee of Ministers to member States on effective guardianship for unaccompanied and separated children in the context of migration, the Assembly highlights the need for the systematic registration of unaccompanied children, for diligent search efforts when they go missing, and for a safe and child-sensitive referral to appropriate accommodation, educational facilities and, when applicable, to family reunification.

12. As regards reporting and search mechanisms, the Assembly firmly stresses the importance of ensuring that reporting and search processes are free from any considerations related to the administrative status or the criminal record of the person sought.

13. In the event of a disaster involving a large group of people, disaster victim identification teams should be deployed to ease a standardised cross-border mechanism to identify victims. The Assembly recommends that member States identify possible areas where resources can be mutualised and shared on the most critical aspects of such cross-border co-operation. The International Criminal Police Organization (INTERPOL) may be of support in this endeavour.

14. The Assembly warns against the risks possibly induced by the centralisation of personal data and recalls the importance of informed consent being obtained by data subjects in the management of their personal information and of identifying an adequate legal basis for such information management. Any such converging of information should only be performed with the guarantee of external oversight by independent data protection entities in the member States participating in such pooling of data.

15. As regards the identification and treatment of the bodies of the deceased, the Assembly underlines a critical need for additional resources to be allocated to forensic and coroners' services, including the need for sufficient space in the morgues pending autopsy, identification, burial or repatriation.

16. The Assembly recommends that prosecutors systematically authorise the investigation and autopsy of unidentified bodies to collect as much information as possible within the short period of time available, including secondary means of identification in line with international standards for the documentation and preservation of data. Data should be kept in dedicated storage accessible to law-enforcement authorities.

17. In the case of potentially unlawful deaths, the Assembly encourages member States to make use of the available international standards for their reliable investigation, in particular The Minnesota Protocol *on the Investigation of Potentially Unlawful Death (2016) – The revised United Nations manual on the effective prevention and investigation of extra-legal, arbitrary and summary executions.*

18. Member States should align their legislation with the legal standards allowing for the proper documentation of the deceased, as provided for in Recommendation No. R (99) 3 of the Committee of Ministers on the harmonisation of medico-legal autopsy rules, and enable the transfer of biometric data in the context of search and identification in full compliance with the Council of Europe's Convention for the

Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108), as amended by Protocol CETS No. 223 ("Convention 108+"). It calls on member States to facilitate the exchange of forensic knowledge and resources to allow for a form of identification within the short period of time available for such procedures to be carried out.

19. The Assembly acknowledges the role of INTERPOL as a potential facilitator towards such harmonisation. It stresses the critical importance of ensuring an external oversight by data protection bodies in each country where such harmonisation and processing of personal data is envisaged.

20. As regards the possibility to centralise post-mortem and ante-mortem data, the highest standards of data protection should be ensured when making the effort to co-ordinate the fragmented datasets available, in line with Convention 108+ and the Minnesota Protocol. A clear distinction should be made between data intended for humanitarian searches and those used for other purposes.

21. The Assembly encourages those countries who have not yet done so to ratify Convention 108+ and to use this instrument in the context of missing and deceased migrants, in line with paragraph 30 of its explanatory report. It draws attention to instruments such as the Council of Europe Model Contractual Clauses for the Transfer of Personal Data from Controller to Controller and the Model Contractual Clauses for the Transfer of Personal Data from Controller to Processor to transfer personal data to countries that are not party to Convention 108+ and whose data protection legislation is inexistent or does not provide an appropriate level of protection.

22. The Assembly calls for increased exchanges between the national and regional authorities with responsibilities in the field of data protection, human rights and migration issues, in order to best co-ordinate between themselves and with international and United Nations organisations that share recognised expertise on compilation, exchange and/or comparison of relevant information. Such organisations should include the International Commission on Missing Persons (ICMP), the International Committee of the Red Cross (ICRC), the International Federation of Red Cross and Red Crescent Societies (IFRC), INTERPOL, the International Organization for Migration (IOM), the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Special Rapporteur on the human rights of migrants, the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, experts from the United Nations Committee on Enforced Disappearances and the United Nations Working Group on Enforced or Involuntary Disappearances. Wherever possible, discussions on these matters must provide for the inclusion of the voices of migrants, the families of those lost or deceased and civil society.

23. The Assembly would welcome the Council of Europe being given a meaningful role to ensure data protection conditions allowing for standardised processes and platforms to enable the matching of data coming from vetted data collectors and holders, and to ensure interoperability. Such efforts may also lead to the establishment of a database.

24. The Assembly calls for regional co-operation between prosecutors across Europe on how best to identify and share data on missing migrants and unidentified bodies.

25. As part of the above actions, the Assembly recommends that member States:

25.1. adopt a common definition, guided by the ICRC's standard definition whereby missing persons mean "individuals of whom their families have no news and/or who, on the basis of reliable information, have been reported missing as a consequence of armed conflict (international or non-international) or other violence or of any other situation – including disasters or migration – that might require action by a neutral and independent body";

25.2. facilitate the issuance of relevant documents for families of the missing person (for example a certificate of absence), enabling them to gain access to various rights or to reunion or reunification procedures;

25.3. work together with the International Red Cross and Red Crescent Movement and contribute to the co-ordination of the disaster victim identification procedures and to the sharing of information on INTERPOL databases designed to search for and identify missing persons;

25.4. appoint national focal points for missing migrants to serve as the designated point of contact for inquiries by other national authorities or their representatives in transnational co-ordination efforts; member States which have already appointed national focal points for missing migrants may share their experience in the framework of the Network of Focal Points on Migration co-ordinated by the Special Representative of the Secretary General of the Council of Europe on Migration and Refugees;

25.5. expediate short-term visa requests lodged by families of missing migrants, refugees and asylum seekers, in order to facilitate identification processes and provide support to families with regard to the procedures involved, including repatriations;

25.6. review their legislation with a view to improving and harmonising national processes to record and manage cases of missing migrants and unidentified human remains, including as regards gaps in the medico-legal framework and the issue of European and international data sharing in line with international norms and standards on data protection;

25.7. ensure that graves are individualised, clearly identifiable and permanently marked either nominally or numerically, with unique codes, and recorded, and that every effort is made to respect the religious and spiritual beliefs of the persons deceased when such are known, in line with the right to freedom of religion and belief as protected in Article 9 of the European Convention on Human Rights;

25.8. ratify and implement the International Convention for the Protection of All Persons from Enforced Disappearance.