



Doc. 13294 – Compendium of written amendments

(Final version)

Missing persons from Europe's conflicts: the long road to finding humanitarian answers

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A. Draft Resolution

1. Solving the problem of missing persons following armed conflicts in Europe is vital for establishing reconciliation between warring factions and ensuring peace on the European continent.
2. There are still more than 20 000 missing persons following conflicts in Cyprus, the Balkans and the North and South Caucasus.
3. Two of the main reasons why the problem of missing persons has not yet been solved are lack of political will and individuals' fear of reprisals. To these problems can be added the limited national capacity in many countries and the lack of qualified forensic experts, as well as the budgetary constraints which in the present economic crisis affect the process of recovery and identification of missing persons.
4. The Parliamentary Assembly reminds the member States of the Council of Europe of their obligation to clarify the fate and whereabouts of missing persons under human rights and international humanitarian law. This obligation derives, inter alia, from the 1949 Geneva Conventions, the 2006 International Convention for the Protection of All Persons from Enforced Disappearance and Articles 2 and 3 of the European Convention on Human Rights (ETS No. 5).
5. The Assembly welcomes the range of judgments of the European Court of Human Rights concerning persons who went missing following conflicts between Cyprus and Turkey, in Spain, the former Yugoslavia, as well as in the Chechen Republic. These judgements highlight the responsibility of States to trace missing persons and hold them to account for failing to do this. These judgments also clarify that States involved in relevant conflicts remain under an obligation to solve the issue of missing persons until a proper investigation has been carried out. This means that these States can be held accountable for many years after a disappearance has occurred. The Assembly also notes that through further examination of relevant cases, the European Court of Human Rights will push member States to speed up the process of bringing truth to families on the fate of their missing.
6. Considerable progress has been made to solve the issue of missing persons following conflicts in Cyprus and in Bosnia and Herzegovina, Serbia and Croatia. In other conflicts, involving Armenia, Azerbaijan, Georgia and the Russian Federation, true recovery remains a pressing issue which hinders reconciliation.
7. Therefore, the Assembly considers that there are five priorities that have to be tackled by member States and relevant de facto authorities, to solve the problem of missing persons in Europe, both now and in the future:

Amendment 1

Tabled by the (Former) Committee on Migration, Refugees and Displaced Persons

In the draft resolution, paragraph 1, replace the words "warring factions" by the following words: "war torn societies and former warring parties".

Amendment 7

Tabled by Mr Ángel PINTADO, Mr José María BENEYTO, Mr José Ignacio PALACIOS, Mr Pedro AGRAMUNT, Mr Agustín CONDE, Ms Carmen QUINTANILLA, Mr Antonio GUTIÉRREZ LIMONES, Mr Arcadio DÍAZ TEJERA

In the draft resolution, paragraph 5, first sentence, delete the words "in Spain".

7.1. The first priority is to place families of missing persons at the centre of all actions concerning the issue of missing persons. The Assembly therefore calls on those involved in conflicts to:

- 7.1.1. promote multidisciplinary assessments of the needs of families of missing persons;
- 7.1.2. provide families of missing persons with the necessary legal, psychological and social assistance;
- 7.1.3. ensure that the needs of single heads of families are given special attention, taking into account the specific situation of women;
- 7.1.4. involve the families of missing persons in the investigations into the cases of missing family members;
- 7.1.5. provide assistance to the associations of families of missing persons, as they contribute significantly to the process of solving the issue of missing persons;

7.2. As a second priority, the development and promotion of national legislation remains essential in addressing the problem of missing persons, in particular in preventing disappearances, ascertaining the fate of missing persons, ensuring the proper management of information and supporting families of the missing. Therefore, the Assembly calls on member States, as well as relevant de facto authorities, to create the necessary legal framework to solve the problem of missing persons in Europe, and to:

7.2.1. recognise in legislation the right to know, and to ensure that the systematic denial of the right to know of the families of missing persons by authorities is punished as a criminal offence;

- 7.2.2. recognise within legislation every missing person as a legal personality;
- 7.2.3. codify in legislation enforced disappearance as a criminal offence;
- 7.2.4. ensure that perpetrators of enforced disappearance are prosecuted;
- 7.2.5. make sure that perpetrators of enforced disappearance do not benefit from any amnesty or similar measures that might exempt them from criminal responsibility.

7.3. Supporting the functioning of national and regional mechanisms created to prevent and solve the problem of missing persons is a third priority. The Assembly encourages member States and de facto authorities concerned, where relevant, to:

Amendment 2
Tabled by the (Former) Committee on
Migration, Refugees and Displaced Persons

In the draft resolution, paragraph 7.1, replace the words "those involved in conflicts" by the following words: "member States and relevant de facto authorities".

Amendment 3
Tabled by the (Former) Committee on
Migration, Refugees and Displaced Persons

In the draft resolution, paragraph 7.2.1, replace the words "right to know" by the following words: "right to an effective investigation and to know the truth".

- 7.3.1. take all necessary measures to recover the human remains of missing persons and return them to their families, whenever possible;
- 7.3.2. make sure that national or other mechanisms dealing with the issue of missing persons are independent and impartial in their working methods;
- 7.3.3. involve non-governmental organisations working on the issue of missing persons in the work of national or other mechanisms on missing persons and provide them with support;
- 7.3.4. support and provide all necessary assistance to regional mechanisms addressing the issue of missing persons;

Amendment 8

Tabled by Ms Stefana MILADINOVIĆ, Mr Vladimir ILIĆ, Ms Aleksandra DJUROVIĆ, Mr Miloš ALIGRUDIĆ, Mr Anvar MAKHMUTOV, Ms Nadezda GERASIMOVA, Ms Svetlana GORYACHEVA, Mr Robert SHLEGEL, Ms Melita MULIĆ

In the draft resolution, replace paragraph 7.3.4 with the following paragraph:

"offer clear and strong support and provide all necessary assistance to existing national, bilateral and regional mechanisms addressing the issue of missing persons;"

Amendment 9

Tabled by Ms Stefana MILADINOVIĆ, Mr Miloš ALIGRUDIĆ, Mr Anvar MAKHMUTOV, Mr Robert SHLEGEL, Ms Nadezda GERASIMOVA, Ms Svetlana GORYACHEVA, Ms Melita MULIĆ, Ms Aleksandra DJUROVIĆ

In the draft resolution, after paragraph 7.3.4, insert the following paragraph:

"support joint projects developed through bilateral and regional cooperation mechanisms which could be of assistance to other countries and regions in addressing the issue of missing persons."

- 7.4. Access to information on missing persons, which is essential in establishing their identity, location and fate and the circumstances of their disappearance and/or death is a fourth priority. The Assembly therefore calls on those involved to:

Amendment 4

Tabled by the (Former) Committee on Migration, Refugees and Displaced Persons

In the draft resolution, paragraph 7.4, replace the words "those involved" by the following words: "member States and relevant de facto authorities".

- 7.4.1. appoint a special authority to centralise all information available on missing persons and to be in charge of collecting and checking ante-mortem data and ensuring a reliable procedure for implementing identification measures;
- 7.4.2. collect, protect and manage data on missing persons according to international standards and to co-operate with each other on the exchange of information,

notwithstanding the often difficult political relationship between parties to the conflict;

- 7.4.3. make sure that the data on missing persons is only used for the purpose for which it was collected and not for any other purpose, unless the consent of the persons concerned is obtained;

- 7.5. As a fifth priority, it is important that all feasible measures are taken to identify the human remains of missing persons and to record their identity. The Assembly therefore calls on those involved in conflicts to:

- 7.5.1. respect the right of families to recover the remains of their missing family members and to ensure that the identification process of human remains includes DNA analysis and other forensic and scientific methods of expertise;

- 7.5.2. make sure that all professionals involved in forensic recovery respect the legal rules and professional ethics applicable to the management, recovery and identification of human remains;

- 7.5.3. ensure ownership of the forensic expertise, including forensic expertise provided by the International Committee of the Red Cross (ICRC) and the International Commission on Missing Persons (ICMP).

8. In addition to the five priorities put forward above, the Assembly calls on member States to:

- 8.1. provide financial support and human resources to the activities of international bodies dealing with the problem of missing persons, in particular, the ICRC the United Nations Working Group on Enforced or Involuntary Disappearances and the ICMP;

- 8.2. become a Party to the 2006 International Convention on the Protection of All Persons Against Enforced Disappearance as soon as possible, if they have not already done so.

9. The Assembly encourages the Council of Europe Commissioner for Human Rights to continue his activities in monitoring the problem of missing persons as a result of armed conflicts in the countries and regions concerned.

10. The Assembly recognises the important role played by the ICRC in resolving cases of disappearance during and after armed conflicts and on raising awareness of the problem of missing persons in Europe. It encourages the ICRC to continue its valuable assistance to the countries and regions concerned in solving the issue of missing persons.

Amendment 5

Tabled by the (Former) Committee on Migration, Refugees and Displaced Persons

In the draft resolution, paragraph 7.5, replace the words "those involved in conflicts" by the following words: "member States and relevant de facto authorities".

Amendment 6

Tabled by the (Former) Committee on Migration, Refugees and Displaced Persons

In the draft resolution, replace paragraph 10 with the following paragraph:

"The Assembly recognises the important role played by the ICRC and other organisations such as the ICMP, in resolving cases of disappearance during and after armed conflicts and on raising awareness of the problem of missing persons in Europe. It encourages the ICRC and other organisations to continue their

valuable assistance to the countries and regions concerned in solving the issue of missing persons."