



## Resolution 2425 (2022)<sup>1</sup>

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

Parliamentary Assembly

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 disappearances examined by the Assembly in 2004 still remain unpunished. The Assembly also recalls its [Resolution 2067 \(2015\)](#) and [Recommendation 2076 \(2015\)](#) “Missing persons during the conflict in Ukraine”, [Resolution 2132 \(2016\)](#) “Political consequences of the Russian aggression in Ukraine”, [Resolution 2133 \(2016\)](#) “Legal remedies for human rights violations on the Ukrainian territories outside the control of the Ukrainian authorities”, [Resolution 2198 \(2018\)](#) “Humanitarian consequences of the war in Ukraine” and [Resolution 2391 \(2021\)](#) and [Recommendation 2209 \(2021\)](#) “Humanitarian consequences of the conflict between Armenia and Azerbaijan / 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 about the recent rise in cases of disappearances of migrants, especially minors. The Assembly also expresses deep concern about the unclear fate and whereabouts of the victims of enforced disappearance on the territory of the Russian Federation and territories under Russia's effective control, including the Autonomous Republic of Crimea, the city of Sevastopol and parts of the Donetsk and Luhansk regions (Ukraine).

2. The Assembly reiterates that enforced disappearances violate numerous non-derogable and fundamental human rights and are 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 emphasises 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 about the increasing number of cases of enforced disappearance in the context of armed conflicts when persons *hors de combat* captured by opposing 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 often remain inactive for a long time. It points out that the passage of time does not prevent the identification of bodies with modern DNA-based methods.

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1. *Assembly debate* on 27 January 2022 (7th sitting) (see [Doc. 15431](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr André Gattolin). *Text adopted by the Assembly* on 27 January 2022 (7th sitting). See also [Recommendation 2223 \(2022\)](#).



6. The Assembly points out that, in accordance with the case law of the European Court of Human Rights (the Court), 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 United Nations International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), which codifies the fundamental principles of action against enforced disappearances. The Committee on Enforced Disappearances created by the ICPPED 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 of the ICPPED.

8. The Assembly considers that the ICPPED, in conjunction with the UN's Working Group on Enforced or Involuntary Disappearances (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 case law of the European Court of Human Rights 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.

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 ICPPED and effectively implementing the preventive and enforcement 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 observer States that have not yet done so to:

11.1. sign and ratify the ICPPED and make declarations under Articles 31 and 32, enabling the Committee on Enforced Disappearances to examine individual and interstate communications, and promote universal ratification of this convention, *inter alia*, by joining the Group of Friends on the protection of all persons against enforced disappearances of the ICPPED, launched by France, Argentina and Morocco, or by setting up a Group of European Friends of the ICPPED;

11.2. implement the preventive and enforcement measures recommended in the ICPPED, including while ratification of this instrument is pending, *inter alia*, by:

11.2.1. making the crime of enforced disappearance a stand-alone offence, defined in accordance with the ICPPED, 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. ensuring that the statute of limitations, if applied in respect of enforced disappearance, is long and proportionate to the extreme seriousness of this offence, and takes into account its continuous nature;

11.2.4. undertaking measures to prevent cases of enforced disappearance based on racial or any other form of discrimination and duly investigating any such cases;

11.2.5. providing effective measures to identify the perpetrators of enforced disappearance;

11.2.6. creating centralised detention registers;

11.2.7. making prison release protocols mandatory;

11.2.8. prohibiting incommunicado detention and clandestine detention centres;

- 11.2.9. establishing protocols for documenting unidentified human remains;
- 11.2.10. avoiding sending people back to countries where they risk becoming victims of enforced disappearance;
- 11.2.11. providing suitable training for members of the security and armed forces;
- 11.2.12. 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 and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) 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 by, *inter alia*, the ICPPED, the Convention against Torture and the Rome Statute, to prosecute the perpetrators of crimes of enforced disappearance committed in other countries;

12.4. pay particular attention to the execution of the Court's judgments relating to cases of enforced disappearance and the relevant provisional measures indicated by the Court, taking all the individual and general measures necessary 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 provide mutual psychosocial support, combat impunity and carry out remembrance work;

12.6. impose sanctions against State bodies, State-controlled groups and individuals that are implicated in cases of enforced disappearance on the territories of the Council of Europe's member States or that are obstructing effective investigation into such cases;

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