

BRIEFING NOTE

Ref ► DGI/GE/KN/cgo/38-26

16 February 2026

Contribution to the report mandated by the United Nations General Assembly resolution 79/173 on “Missing persons”

Clarification of fate of missing persons – conducting effective investigations under standards of the European Convention of Human Rights

The European Court of Human Rights (ECtHR) has underlined that Article 2 (right to life) of the European Convention on Human Rights (ECHR) ranks as one of the most fundamental provisions in the Convention, and one from which no derogation is permitted, enshrining one of the basic values of the democratic societies making up the Council of Europe. The object and purpose of the Convention as an instrument for the protection of individual human beings also requires that Article 2 be interpreted and applied so as to make its safeguards practical and effective ([Tanis and Others v Turkey](#), 2005, §99).

In addition, the Court has noted that Article 5 (right to liberty and security) of the Convention imposes an obligation on the States to account for the whereabouts of any person taken into detention. Whether the failure on the part of the authorities to provide a plausible explanation as to a detainee's fate, in the absence of a body, might also raise issues under Article 2 of the Convention will depend on all the circumstances of the case, and in particular on the existence of sufficient circumstantial evidence, based on concrete elements, from which it may be concluded to the requisite standard of proof that the detainee must be presumed to have died in custody ([Tanis and Others v Turkey](#), 2005, §200).

The Court has stressed that authorities' failure to provide a plausible explanation as to a detainee's fate, in the absence of a body, might also raise issues under Article 2 of the Convention, this depending on all the circumstances of the case and in particular on the existence of sufficient circumstantial evidence, based on concrete elements, from which it may be concluded to the requisite standard of proof that the detainee must be presumed to have died in custody ([Timurtaş v. Turkey](#), 2000, §82, [Ukraine v Russia \(Re Crimea\)](#) GC 2024, §960).

Under Article 2 of the Convention, States also have a procedural obligation to carry out an effective investigation in case of a person's disappearance. The Court has noted in its case-law that a disappearance is characterised by an ongoing situation of uncertainty and unaccountability in which there is a lack of information or even a deliberate concealment and

obfuscation of what has occurred. This situation is very often drawn out over time, prolonging the torment of the victim's relatives. The subsequent failure to account for the whereabouts and fate of the missing person gives rise to a continuing situation. Thus, the procedural obligation will, potentially, persist as long as the fate of the person is unaccounted for; the ongoing failure to provide the requisite investigation will be regarded as a continuing violation ([Varnava and Others v Turkey](#) GC, 2009, §148, [Ukraine v Russia \(Re Crimea\)](#) GC 2024, §959). In order for an investigation to be effective the following standards need to be fulfilled: independence of investigating authority; adequacy of the investigating measures; promptness; public scrutiny and participation of the next-of-kin in the investigation (ECtHR [Guide on Article 2](#), p.38 ff).

Execution of judgments of the European Court of Human Rights concerning missing persons

Unlawful transfer of Ukrainian children to Russia

On 9 July 2025 the European Court delivered a landmark judgment in the case of [Ukraine and the Netherlands v. Russia](#), holding Russia accountable for widespread and flagrant abuses of human rights arising from the conflict in Ukraine since 2014, in breach of the European Convention of Human Rights, including the unlawful transfer of Ukrainian children in occupied areas to Russia, without parental or legal consent, and the facilitation of their adoption there. The Court found overwhelming evidence of a systematic practice of transferring Ukrainian children in occupied territories to Russia. This practice started in 2014 and intensified significantly following the 2022 invasion.

In December 2025, the Committee of Ministers started its supervision of the execution of this historic inter-State case, and adopted [its first decisions](#). The Committee deeply deplored the systematic practice of unlawful transfer to Russia and, in many cases, the adoption there of Ukrainian children with the aim of integrating them potentially indefinitely in Russian families or institutions. It exhorted Russia to share a list of the names and locations of children that have been illegally deported from Ukraine and urged them to revoke all domestic legislation and practices that facilitate the adoption of these children and the imposition of Russian nationality on children born in the occupied territories. The Committee of Ministers also instructed the Secretariat to prepare an analysis of the ongoing developments on the international stage and to explore all possible synergies with the international community with a view to ensuring support for the establishment of an international and independent mechanism with which the Russian authorities should co-operate.

The Committee of Ministers' decisions were brought to the attention of the relevant international bodies, in particular the UN, OSCE and EU, inviting them to take into account the Court's respective findings. The Secretary General also sent a [letter](#) to the Minister for Foreign Affairs of the Russian Federation, urging the authorities to comply with their international law obligations and to fully abide by the judgments of the European Court.

The Committee of Ministers will next examine the issue of the unlawful transfer of Ukrainian children at its June 2026 Human Rights meeting.

Enforced disappearances in the Chechen Republic and neighbouring regions

The European Court of Human Rights found numerous violations on account of the atrocities committed during and after the armed conflict in the Northern Caucasus, particularly in Chechnya. The Committee of Ministers supervises execution of these judgments in the [Khashiyev](#) group of cases, comprising currently 326 judgments. These judgments, in particular, concern almost 700 disappearances. The estimated total number of missing because of the conflict in the Chechen Republic is between 5,000 and 7,500, although the exact number is unknown.

The current investigative system in Russia is not adequate to carry out the search for the missing persons, and a new system will need to be established addressing the shortcomings identified in the European Court's judgments. At its consideration of the group [at its December 2024 Human Rights meeting](#), the Committee of Ministers reiterated its indication to the Russian authorities to create an *ad hoc* humanitarian high-level mechanism in charge of search for the disappearances in the region, taking into account the principles developed by international bodies and summarised in [H/EXEC\(2024\)18](#).

The principal goal of the mechanism should be the humanitarian aspect of locating and identifying the missing, decoupled from the criminal justice goals, i.e. prosecuting and if established - punishing those responsible. The mechanism must be autonomous from the accused perpetrators and have a wide mandate, allowing access to classified information where necessary. The leadership, composition of a body, its focus on assisting the families of individuals who have disappeared and its funding for efficient performance, use of contemporary technologies and IT tools are also critical prerequisites for successful operation.

At the same meeting, the Committee of Ministers underlined the key importance of the United Nations International Convention for the Protection of All Persons from Enforced Disappearance, which provides a comprehensive legal framework for addressing enforced disappearances, and therefore the need for its signature and ratification by the Russian Federation and for the recognition of the competence of the Committee on Enforced Disappearances ([CM/AS\(2013\)Rec1995-final](#)), as well as the importance of co-operation by the Russian authorities with the United Nations Working Group on Enforced or Involuntary Disappearances (UNWGEID), both in individual cases and in country visits.

Council of Europe Committee of Ministers Guidelines on eradicating impunity for serious human rights violations including the right to life

In 2011, the Council of Europe Committee of Ministers issued [Guidelines](#) on eradicating impunity for serious human rights violations (including those related to Article 2 ECHR – right to life) and in 2023, the Steering Committee for Human Rights (CDDH) acknowledged that enforced disappearances or forced renditions are amongst the most serious forms of transnational repression, which may amount to serious human rights violations and therefore fall within the scope of the 2011 Guidelines.

It should be noted that the 2011 Guidelines make specific recommendations on safeguarding victims' legitimate interests, including their involvement in investigations and proceedings and in particular to provide information on the fate of persons in cases of suspicious deaths or

enforced disappearances. One of the five forms of reparation, which are briefly mentioned in the 2011 Guidelines includes satisfaction in the form of search for the disappeared, assistance in the recovery, identification and reburial of the bodies.

In November 2025, the CDDH adopted a [Study](#) on the need for and feasibility of an additional non-binding instrument(s) to complement the 2011 Committee of Ministers' Guidelines on eradicating impunity for serious human rights violations, which also touches upon the issue of enforced disappearances. Revised Guidelines and/or (an) additional non-binding instrument(s) could also encourage Council of Europe member States to sign and ratify the International Convention for the Protection of All persons from Enforced Disappearances.

The Council of Europe's action in the field of smuggling of migrants related to missing persons

The phenomenon of missing migrants is closely linked to that of smuggling of migrants and the perilous journeys they often embark on by sea or land. Following a [feasibility study](#) by the Council of Europe Committee on Crime Problems ([CDPC](#)), the Committee of Ministers decided (February 2025) to develop a new "comprehensive Recommendation on deterring and fighting the smuggling of migrants, through legal means and other actions, and other actions. The Committee of Ministers also decided (November 2025) to set up a Committee of Experts on Smuggling of Migrants, under the authority of the CDPC, to lead this work (PC-TM) and complete it by end 2027. The above-mentioned feasibility study noted that a new Council of Europe instrument should include specific provisions concerning children, women, and vulnerable migrants, smuggled migrants who are refugees and asylum seekers, measures relating to endangered or missing persons, and protection from violence. The Recommendation will build on the UN Palermo Protocol and will provide practical guidance for national authorities, authorities with guidance to reinforce the criminal justice response to smuggling, while ensuring a human rights-based approach. The Council of Europe works with international partners, including the EU and the UN.