



**Recommendation [CM/Rec\(2009\)12](#)  
of the Committee of Ministers to member states  
on principles concerning missing persons and the presumption of death**

*(Adopted by the Committee of Ministers on 9 December 2009  
at the 1073rd meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its member states, in particular by promoting the adoption of common rules in legal matters;

Noting that due to unprecedented mobility caused by the development of travel and prolongation of stays in foreign countries, as well as the increased risk and occurrence of terrorist attacks and man-made or natural disasters, due among other things to climate change, there is a need to supplement and, where legislation already exists, to further harmonise the legislation in member states on the presumption of death of missing persons;

Noting that there continue to be other circumstances in which people go missing in the Council of Europe member states, such as armed conflicts and situations of generalised violence;

Having regard to the Final Declaration and Action Plan adopted at the Third Summit of Heads of State and Government of the Council of Europe (Warsaw, 16-17 May 2005), in particular concerning the need to continue to develop family law as a focus point of the Council of Europe;

Having regard to the United Nations International Covenant on Civil and Political Rights (1966);

Having regard to the United Nations Convention on the Rights of the Child (1989);

Having regard to the United Nations International Convention on the Protection of All Persons from Enforced Disappearance (2006);

Having regard to the importance that should be attached to the international obligations of member states concerning missing persons, in particular under international criminal and international humanitarian law;

Appreciating the work of the International Committee of the Red Cross (ICRC) in this area;

Taking into account the relevant case law of the European Court of Human Rights;

Building on the Council of Europe's past experience in this field, namely Recommendation No. 646 (1971) of the Consultative Assembly of the Council of Europe on action to be taken in tracing missing persons and Recommendation No. R (79) 6 of the Committee of Ministers of the Council of Europe to member states concerning the search for missing persons;

Having regard to the Convention relating to the establishment of death in certain cases prepared by the International Commission on Civil Status (ICCS Convention No. 10) and signed in Athens on 14 September 1966, at present the only international legal instrument dealing with civil law aspects of the question of missing persons;

Noting that this convention deals only with cases where death can be regarded as certain, and consequently does not cover cases of missing persons whose death can be regarded as likely or as uncertain;

Acknowledging that legislation in this area has recently been adopted or proposed in some member states;

Considering nevertheless that a great number of member states remain devoid of legislation on this subject;

Recognising that there are considerable disparities between the legislation of member states, it being often unsuited to the situation of persons with a legitimate interest in the declaration of presumed death, by imposing numerous constraints upon them and consequently placing them in a vulnerable position before the declaration of presumed death has been made;

Considering the length of waiting periods before the certificate of presumed death can be issued;

Considering that the harmonisation of the rules and practices in force is therefore of great importance, from a legal point of view, to everyone concerned;

Taking into consideration that a fair balance must be struck between the interests of missing persons and of those with a legitimate interest, particularly as regards property and inheritance rights, pension and life insurance rights, the right to enter into a new union (remarriage, registered partnership or similar union existing in certain member states), legal affiliation and parental rights;

Considering that the introduction of the notion of disappearance and of presumption of death or, as the case may be, the improvement of the existing legislation on this topic would be of great benefit, in particular to family members who have a legitimate interest, as well as to the missing person, as it would clarify their respective legal position and status,

Recommends that governments of the member states take or reinforce all measures they consider necessary with a view to the implementation of the principles contained in the appendix to this recommendation.

*Appendix to Recommendation [CM/Rec\(2009\)12](#)*

## **Part I – Definition**

In this recommendation, a “missing person” is a natural person whose existence has become uncertain, because he or she has disappeared without trace and there are no signs that he or she is alive.

## **Part II – Governing principles**

### **Principle 1 – Cases where a declaration of presumed death in respect of a missing person may be issued**

A declaration of presumed death of the missing person may be issued if, in the light of all the circumstances of his or her disappearance:

- a. death can be taken as certain; or
- b. it is reasonable to conclude that the death of the missing person is likely; or
- c. although the missing person’s death is uncertain, his or her disappearance cannot be reasonably attributed to any cause other than death.

## **Principle 2 – Competent authority**

An authority competent to issue a declaration of presumed death with regard to a missing person (“competent authority”) may be designated:

- a. where the missing person was a national of the state to which the competent authority belongs, or was domiciled or had his or her habitual residence in its territory;
- b. where the person concerned was reported missing in the territory of that state;
- c. where the person concerned was reported missing during a voyage of a vessel or aircraft registered in that state.

## **Principle 3 – Requesting person, body or authority**

A request for a declaration of presumed death may be lodged by any person or body demonstrating a legitimate interest or by an authority designated by the state for this purpose.

## **Principle 4 – Waiting period for lodging the request**

1. Where, in the light of all the circumstances, the death of the missing person can be taken as certain, the lodging of the request mentioned under Principle 3 should preferably be possible without a waiting period.
2. Where the circumstances of disappearance of the missing person are such that it is reasonable to conclude that his or her death is likely, the time which must have elapsed from the disappearance, or from the receipt of the last news that the person was alive, for lodging the request should preferably be one year at the most.
3. Where the death of the missing person is uncertain, the time which must have elapsed from the disappearance, or from the receipt of the last news that the person was alive, for lodging the request should preferably be seven years at the most.

## **Principle 5 – Date and hour of presumed death**

The date and, if possible, the hour of presumed death of the missing person should be determined by referring to any evidence or indication relating to the circumstances of the case.

## **Principle 6 – Effects**

1. By operation of law, the declaration of presumed death should have all the legal effects of death.
2. Nevertheless, member states may make such exceptions to this provision as they consider strictly necessary. These exceptions should be limited but may cover matters such as marriage, registered partnerships, legal affiliation, property rights and inheritance rights and should aim at maintaining a fair balance between the interests of those concerned, including the person whose presumed death is declared.

## **Principle 7 – Return of the person whose presumed death has been declared**

1. Should the person, in respect of whom the declaration of presumed death has been issued, return, or where there is information establishing that he or she is still alive, member states should prescribe measures aiming at annulling the decision declaring this person’s death.
2. A request for annulment of a declaration of presumed death may be lodged by the person whose presumed death has been declared or by any person or body demonstrating a legitimate interest, as well as by an authority designated by the state for this purpose.
3. Member states may make provision for the protection of persons who may be adversely affected by the annulment of the decision.

### **Principle 8 – Transcription of decisions**

A decision declaring the presumed death of the missing person or a decision on annulment, referred to in Principles 2 and 7 respectively, should be transcribed in the relevant registers of the state where such a decision was pronounced.

### **Principle 9 – Procedural aspects**

1. Access to proceedings and their duration should balance the concerns and needs of all those having a legitimate interest in the declaration of presumed death, as well as of the missing person. This should also apply to proceedings concerning annulment.
2. When publicity concerning the search for a missing person is deemed necessary during the course of proceedings regarding a declaration of presumed death, this should be carried out by any appropriate means, including new technologies, and taking into account the financial situation of the requesting person.