

## **Combating enforced disappearances must become an important part of the implementation of the expanded 2020 OSCE commitment on torture prevention and eradication<sup>1</sup>**

### ***Why the OSCE should take more active steps to end enforced disappearances?***

Holding people in incommunicado detention, i.e. in complete isolation from the outside world, with no information to their families or no access to legal or medical assistance is a gross violation of States' international human rights obligations, including under the International Covenant on Civil and Political Rights. Moreover, enforced disappearance is a form of inhuman and degrading treatment both for the disappeared and their families, thus falling under the scope of the UN Convention against Torture. All OSCE participating States have ratified both the Covenant and the Convention, and some have also ratified the International Convention for the Protection of All Persons against Enforced Disappearances<sup>2</sup>. Enforced disappearances and incommunicado detention, as a form of torture and cruel, inhuman and degrading treatment, are also expressly prohibited in the situations of armed conflicts by 1949 Geneva Conventions. Being serious violations of international humanitarian law, according to the Conventions, they constitute war crimes and can constitute crimes against humanity.

According to the Convention, the term enforced disappearance expresses "(...) the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by the concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law."<sup>3</sup>

Enforced disappearances are most often committed in the following situations:

- as a tool of reprisal against political opponents and intimidation of other critics;
- in the course of armed conflicts, both internal and international, by state or non-state actors<sup>4</sup>;
- in the course of "counter-terrorism operations", both internally and in other countries, including during "sweeping operations" and in the process of extraordinary renditions in secret prisons;
- as a tool of persecution of minorities.

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<sup>1</sup> This chapter was produced by the Civic Solidarity Platform's Working Group on Turkmenistan.

<sup>2</sup> Out of 57 OSCE participating States, 25 have ratified the Convention for the Protection of All Persons against Enforced Disappearances or acceded to it, 15 have signed the Convention but have not ratified it, and 17 have not even signed. See the appendix to this chapter for a table with the status of participation in the Convention by OSCE participating States.

<sup>3</sup> International Convention for the Protection of All Persons from Enforced Disappearance. Adopted by the UN General Assembly Resolution 61/177 on 20 December 2006, entered into force on 23 December 2010. Art. 2. [https://treaties.un.org/doc/Publication/CTC/Ch\\_IV\\_16.pdf](https://treaties.un.org/doc/Publication/CTC/Ch_IV_16.pdf)

<sup>4</sup> While the International Convention for the Protection of All Persons from Enforced Disappearances defines enforced disappearances as acts committed "by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State," another term, "missing", denotes a broader category that, according to the International Committee of the Red Cross (ICRC), includes individuals "(...) who are unaccounted for as a result of armed conflict, whether international or internal. They might be military or civilian; anyone whose family has no information on their fate or whereabouts." Therefore, perpetrators in the cases of missing persons in armed conflicts may include both state and non-state actors. For discussion, see: Missing Persons: A Hidden Tragedy (Geneva: ICRC, 2007), <https://shop.icrc.org/personnes-portees-disparues-une-tragedie-oubliee-2619.html>. There are legal distinctions between these two terms arising from the international human rights law and the international humanitarian law, however, both categories of violations are pertinent in some states or regions and should be addressed by States and the international community. In some cases, these two terms have been used interchangeably by different stakeholders, including relatives of the disappeared and family organisations. Sometimes, distinction between these two categories is rendered meaningless in societies affected by these crimes, and "disappearance" has become a generic term that is often used quite loosely and tends to include both "missing" and "enforced disappearance". For a discussion, see the introduction to "Any Hopes for Truth? A Comparative Analysis of Enforced Disappearances and the Missing in Middle East, North Africa and Caucasus". Özgür Sevgi Göral. A publication of the Truth Justice Memory Center and the Regional Network for Historical Dialogue and Dealing with the Past, 2019. <https://hakikatadalethafiza.org/wp-content/uploads/2019/01/Zorla-Kaybetmeler-rapor.pdf>. Page 12.

Enforced disappearance may lead to a murder of a victim at hands of the perpetrators or his/her death from torture or inhuman and degrading conditions of custody. In other cases, a victim may languish in incommunicado detention for a long time and sometimes be released after pressure from the international community and local and international civil society.

Ending the ongoing enforced disappearances, their effective investigation, ending impunity of perpetrators and masterminds and holding them accountable, and ensuring justice to the victims and their relatives is an urgent task for the international community. Equally important is effective investigation of the past crimes of enforced disappearances, regardless of how much time has passed since they were committed. This is essential for truth, justice and reparation for the victims and their families, for preserving historical memory, and for prevention of new crimes of enforced disappearance.

In December 2020, OSCE participating States adopted a new, expanded OSCE commitment to prevent and eradicate torture by taking the Ministerial Council Decision 7/20<sup>5</sup>. In this decision, OSCE participating States for the first time unanimously included fighting enforced disappearances in the OSCE commitment to prevent torture and incorporated prolonged incommunicado detention in their definition of what can facilitate torture and other cruel, inhuman or degrading treatment or punishment or can by itself constitute a form of such treatment.

This landmark decision gives OSCE participating States, executive bodies, and institutions additional responsibility to vigorously address the problem of enforced disappearances in the OSCE region, including in the countries and regions where this crime has been perpetrated the most, such as Turkmenistan, Chechnya in the Russian Federation, parts of the Donetsk and Luhansk regions of Ukraine currently under control of the Russian Federation, the occupied Crimea, Belarus, and the region of the former Yugoslavia.

### ***An overview of the problem of enforced disappearances in the OSCE region***

In **Turkmenistan**, enforced disappearances in the prison system is a well-documented crime, the scale of which continues to grow. Incommunicado detention and disappearing people in prisons are the cruellest instruments of political repression among many tools applied by the Turkmen authorities to keep their grip on power and eliminate any real or perceived political challenge. The year 2022 marks the 20th anniversary of the beginning of mass repression in Turkmenistan. Since 2002, hundreds of enforced disappearances have occurred, after people were sentenced to long-term prison terms on political grounds and a variety of trumped-up charges. The Prove They Are Alive! international campaign has documented 162 cases of disappearances in Turkmenistan's prisons since 2002.<sup>6</sup> In the context of severe suppression of civil liberties and denial of access to the country for foreign human rights organisations and international observers, this list is inevitably incomplete. The total number of victims is estimated at several hundred. This is not a matter of history but an ongoing crime: 97 of the documented cases are continuing disappearances. As long as disappeared people remain unaccounted for, the crime continues. 65 cases of people who were subjected to enforced disappearances earlier have been taken off the list of the current cases based on verified and reliable data: 29 died in custody, 10 were released, and 26 continue to serve their sentences but have been granted visits and/or food parcels.

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<sup>5</sup> Decision No. 7/20, Prevention and Eradication of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, <https://www.osce.org/chairmanship/473199>

<sup>6</sup> List of the Disappeared in Turkmenistan's Prisons. A report by the Prove They Are Alive! campaign. November 2021. [https://provetheyarealive.org/wp-content/uploads/2021/12/Disappeared-in-Turkmenistans-prisons\\_report\\_Prove\\_November-2021\\_final.pdf](https://provetheyarealive.org/wp-content/uploads/2021/12/Disappeared-in-Turkmenistans-prisons_report_Prove_November-2021_final.pdf)

Turkmen criminal legislation does not permit full isolation of prisoners, regardless of the crime committed. Nevertheless, the authorities continue to impose this cruel and illegal punishment on people they consider to be a political threat to their absolute power due to their opinions, influence, or visibility. Widespread use of torture, poor sanitation, extremes of heat and cold, and close quarters in the prison cells provide a dangerous environment for prisoners' health. In an even more despicable violation of human rights, a number of those who are disappeared in Turkmenistan's prisons have not been released after their prison terms ended. Although their terms are over, they continue to be disappeared in a system that routinely tortures inmates and forces them to live in inhumane conditions. This includes at least 11 persons from the list of the disappeared whose terms have already expired. Terms of another dozen people will expire in 2022. There is absolutely no justification for their continued imprisonment, even in the deeply flawed logic of the regime.

The government of Turkmenistan, despite its OSCE commitments, continues to obfuscate or ignore inquiries about the fate of the disappeared, including those who should have been released at the end of their terms. This amounts to a new type of torture, piled on to the years of tortuous treatment of the imprisoned and their families. International civil society has repeatedly called on the OSCE to take vigorous actions to end enforced disappearances in Turkmenistan's prisons.<sup>7</sup>

In **Chechnya**, enforced disappearances have been perpetrated at an extremely high scale for more than 25 years and appear to be a result of a combination of several factors: a brutal war between the Russian government and armed separatists, counter-terrorism operations by Russian troops and Chechen law enforcement bodies, political repression of critics of the regime of Ramzan Kadyrov, and persecution of minorities on the grounds of sexual orientation and gender identity. As a result, Russia appears to be a leader in the number of disappearances in Europe in the 21<sup>st</sup> century.

Enforced disappearances are part of the tragic legacy of Russia's two military campaigns in Chechnya in the 1990s and early 2000s. Memorial Human Rights Centre estimated the number of disappearances between late 1999 and early 2005 at between 3,000 and 5,000<sup>8</sup>. Disappearance was used as a systematic strategy by the Russian government for repressing the armed struggle. The detention of thousands of individuals on the pretext of having information on suspected members of armed separatist groups became an ordinary, widespread, and systematic practice during the wars in Chechnya. People were detained and then disappeared through a number of common ways. Sweep operations were crucial for the implementation of enforced disappearances: towns and villages were blockaded while homes and workplaces were searched by the Russian military. Allegedly, the aim was to seize weapons and arrest Chechen rebels after finding them. Therefore, the majority of the disappeared were either detained after large-scale sweep operations or during targeted sweep and special operations. People were also detained at checkpoints or roads, taken from their homes during nighttime raids, and from detention centers and police stations<sup>9</sup>. Human Rights Watch argued that the scale of disappearances in Chechnya at that time

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<sup>7</sup> Strong International Actions Are Essential to Stop Enforced Disappearances in Turkmenistan. Twenty Years after the Start of Mass Repression, OSCE Participating States Should Launch the Moscow Mechanism with Respect to Turkmenistan to Address Continued Gross Human Rights Violations Civil society appeal to participants of the OSCE Ministerial Council Meeting in Stockholm. 01.12.2021.

[https://civicsolidarity.org/sites/default/files/appeal\\_on\\_the\\_launch\\_of\\_mm\\_on\\_turkmenistan\\_stockholm\\_2021\\_0.pdf](https://civicsolidarity.org/sites/default/files/appeal_on_the_launch_of_mm_on_turkmenistan_stockholm_2021_0.pdf)

<sup>8</sup> Чечня, 2004 год. Похищения и исчезновения людей. Доклад Правозащитного центра «Мемориал». 07.02.2005.

<https://memohrc.org/ru/reports/chechnya-2004-god-pohishcheniya-i-ischeznoveniya-lyudey>. Page 2.

<sup>9</sup> For detailed information, see, in particular, Last Seen. . . : Continued "Disappearances" in Chechnya. A Human Rights Watch report. April 2002. <https://www.hrw.org/reports/2002/russchech02/chech0402.pdf>, and Russia. Ethno-political anxieties and enduring cruelties: Where did all these people go in such a small place? in "Any Hopes for Truth? A Comparative Analysis of Enforced Disappearances and the Missing in Middle East, North Africa and Caucasus". Özgür Sevgi Göral. A publication of the Truth Justice Memory Center and the Regional Network for Historical Dialogue and Dealing with the Past, 2019.

<https://hakikatadalethafiza.org/wp-content/uploads/2019/01/Zorla-Kaybetmeler-rapor.pdf>.

was so widespread or systematic as to meet the definition of a "crime against humanity" enshrined in the UN Declaration on the Protection of Persons from Enforced Disappearances<sup>10</sup>.

After 2002, a phenomenon called the "Chechenization" of the conflict occurred when the government policy shifted the conflict from an anti-terrorist operation to the consolidation of local politics in Chechnya. As part of this process, former rebel armed fighters were incorporated into military units through an informal amnesty program. The new disappearances were committed by Chechen law enforcement bodies via door-to-door detentions. Bodies of most of the forcibly disappeared were not found and thousands of individuals were buried in unmarked mass graves around Chechnya, where there are 52 registered sites of mass graves. According to human rights activists, many cases of disappearances went unreported, making it hard to gauge the scale of the problem. People in Chechnya don't want to give statements to the authorities, which is part of what human rights groups describe as a climate of fear held in place by Ramzan Kadyrov and his government. Families of those who vanish – and who are usually assumed to have been detained by Chechen security forces – are frightened that coming forward will only make things worse for their loved ones<sup>11</sup>. Kadyrov, who was appointed by Russian President Vladimir Putin in 2007, has been widely accused of human rights abuses -- including murder, torture, and orchestrating disappearances -- for many years. Citing his oversight of "an administration involved in disappearances and extrajudicial killings," the US Treasury designated Kadyrov for individual sanctions on December 20, 2017, within the framework of the Russia Magnitsky Act of 2012, and on December 10, 2020, designated Kadyrov pursuant to the Global Magnitsky Executive Order "for being a foreign person who is a leader of an organization, the Kadyrovtsy, that has engaged in, or whose members have engaged in, serious human rights abuses."<sup>12</sup>. Since 2016-17, human rights organisations registered an alarming increase in the number of Chechens -- both men and women -- allegedly detained or abducted by security personnel, many of whom subsequently disappeared without a trace. Most cases of disappearances – and often subsequent extrajudicial executions – occur under the pretext of counter-terrorism operations<sup>13</sup>.

In some instances, critics of the regime, including bloggers, disappear in the hands of security officers after being kidnapped from home, other locations in Russia, or after being deported from European countries. Often, they emerge later on video, confessing to crimes under extreme duress. Memorial, which monitors such cases, has faced its own persecution from Chechen authorities. The head of its Grozny office, Natalya Estemirova, was abducted and murdered in 2009<sup>14</sup>. The ECtHR ruled that the Russian government failed to hold an effective investigation in the case of Estemirova's disappearance and subsequent murder<sup>15</sup> – as has happened in numerous other cases.

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<sup>10</sup> Worse Than a War. "Disappearances" in Chechnya—a Crime Against Humanity. A Human Rights Watch Briefing Paper. March 2005. <https://www.hrw.org/legacy/backgrounder/eca/chechnya0305/index.htm>

<sup>11</sup> See, in particular, Чечня: родственники похищенного отказались сотрудничать с правозащитниками из-за давления силовиков. Правозащитный центр «Мемориал». 27.05.2021. [https://memohrc.org/ru/news\\_old/chechnya-rodstvenniki-pohishchennogo-otkazalis-sotrudnicat-s-pravozashchitnikami-iz-za](https://memohrc.org/ru/news_old/chechnya-rodstvenniki-pohishchennogo-otkazalis-sotrudnicat-s-pravozashchitnikami-iz-za), and Relatives Fear Missing Chechen Man Has Joined Thousands of 'Disappeared'. Yekaterina Filippovich, Tony Wesolowsky. Radio Free Europe/ Radio Liberty, 25.10.2019. <https://www.rferl.org/a/chechen-shaikhayev-disappearance-kadyrov-human-rights/30236674.html>

<sup>12</sup> Treasury Sanctions Serious Human Rights Abusers on International Human Rights Day. Designations target human rights abusers in Haiti, Yemen, and Russia. 10.12.2020. <https://home.treasury.gov/news/press-releases/sm1208>

<sup>13</sup> Human Rights in Chechen Republic. Oleg Orlov's speech in the Parliamentary Assembly of the Council of Europe, 28.01.2020. <https://memohrc.org/en/publicationstypes/report/human-rights-chechen-republic-o-orlovs-speech-parliamentary-assembly>

<sup>14</sup> Она выбрала Чечню. 11 лет со дня гибели Натальи Эстемировой. Правозащитный центр «Мемориал». 15.07.2020. [https://memohrc.org/ru/news\\_old/ona-vybrala-chechnyu-11-let-so-dnya-gibeli-natali-estemirovoy](https://memohrc.org/ru/news_old/ona-vybrala-chechnyu-11-let-so-dnya-gibeli-natali-estemirovoy)

<sup>15</sup> ЕСПЧ по делу Эстемировой: российские власти не провели эффективное расследование убийства правозащитницы. Правозащитный центр «Мемориал». 31.08.2021. [https://memohrc.org/ru/news\\_old/espch-po-delu-estemirovoy-rossiyskie-vlasti-ne-proveli-effektivnoe-rassledovanie-ubiystva](https://memohrc.org/ru/news_old/espch-po-delu-estemirovoy-rossiyskie-vlasti-ne-proveli-effektivnoe-rassledovanie-ubiystva)

Since 2016, several waves of purges against LGBT people have occurred in Chechnya, when dozens of victims were abducted by security personnel, put in secret detention centres, held incommunicado, and tortured to confess and give away names of other LGBT people. A number of them were allegedly murdered while others were returned to relatives with a recommendation to kill them to “wash off shame from the family.” An official investigation, prompted by international outcry, led nowhere, and was closed. Dozens of cases of enforced disappearances in Chechnya since 2017, both of alleged terrorists and LGBT people, were documented in the OSCE report under the Moscow Mechanism in October 2018<sup>16</sup>.

In the most recent cases, in the end of December 2021, several dozen relatives of five Chechen activists who have dared to criticise the leadership of the Chechen Republic, including two opposition bloggers, a founder of a human rights association, director of a human rights NGO (all reside outside of Russia), and an employee of the human rights organization, Committee against Torture (resides in Russia but outside of Chechnya), were abducted on the territory of the Chechen Republic and in other regions of Russia, and the fate and whereabouts of many of them remains unknown. While the circumstances of these abductions are still emerging in many cases as human rights defenders continue to seek confirmation about the details of what exactly happened, the evidence available to date already indicates that these could be enforced disappearances carried out by agents of the state. It is clear that at least some relatives were taken from their homes, and there are unconfirmed reports that many were brought to local police stations. Some were later released after they had been forced by threats and humiliation to agree to ensure that their relatives will stop all activities that displease Ramzan Kadyrov. The fate and whereabouts of those who have not yet been released remains unknown.<sup>17</sup>

Domestic legal remedies for victims in Chechnya and their relatives are not available, and impunity is a major problem. None of the cases of disappearances has been investigated at the national level, the perpetrators have not been found, and the fate of the disappeared people is still unknown. Not a single official or a member of law enforcement has been held accountable. The situation before the European Court of Human Rights (ECtHR) is very different. The Court has reviewed almost 300 cases of disappearances in Chechnya and has held Russian government accountable for violating the European Convention, in particular for a lack of effective investigation of disappearances. After the ECtHR decision, the investigation of enforced disappearance would usually resume. However, none of the criminal cases of enforced disappearance in relation to which the ECtHR issued judgments have been solved; the perpetrators have not been found; the fate of those gone missing has not been established. ECtHR specified two groups of general measures in order to remedy the systemic failure of the Russian authorities in addressing the issue of enforced disappearances: The first group of measures concerns the situation of the victims’ families who suffer a sense of acute helplessness and confusion, and the second group concerns the effectiveness of investigations and the problem of impunity<sup>18</sup>.

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<sup>16</sup> OSCE Rapporteur’s Report under the Moscow Mechanism on alleged Human Rights Violations and Impunity in the Chechen Republic of the Russian Federation. By Professor Dr. Wolfgang Benedek. December 2018.  
[https://www.osce.org/files/Moscow%20Mechanism%20Document\\_ENG.pdf](https://www.osce.org/files/Moscow%20Mechanism%20Document_ENG.pdf)

<sup>17</sup> Joint open letter by international and Russia human rights NGOs to President Putin on mass abductions in Chechnya. 07.01.2022. <https://www.amnesty.org/en/wp-content/uploads/2022/01/EUR4651522022ENGLISH.pdf>

<sup>18</sup> Human Rights in Chechen Republic. Oleg Orlov’s speech in the Parliamentary Assembly of the Council of Europe, 28.01.2020.  
<https://memohrc.org/en/publicationtypes/report/human-rights-chechen-republic-o-orlovs-speech-parliamentary-assembly>

In **parts of Donetsk and Luhansk regions of Ukraine, currently under control of the Russian Federation**, hundreds of pro-Ukrainian activists and individuals opposing Russian occupation and actions of the Russia-backed separatist regime have been detained in secret prisons in inhumane conditions and subjected to torture. According to data from the government of Ukraine, 258 people have been reported missing in the occupied part of Donbas since 2014, including 67 servicemen and reservists<sup>19</sup>. The de facto authorities continue to unlawfully deprive civilians of their liberty while concealing their fate and whereabouts for weeks, sometimes months, and subject them to torture and other ill-treatment, without providing them recourse to justice or legal remedies. According to Human Rights Watch and Amnesty International statement in 2020, no steps have been taken to investigate reports of abduction, arbitrary, prolonged detention of civilians, and torture and other ill-treatment of detainees in the non-government-controlled areas of Donetsk and Luhansk regions, and there is no indication that these crimes under international law have stopped<sup>20</sup>. Details of such cases have continued to emerge, while documenting them has become considerably more difficult<sup>21</sup>.

In **the occupied Crimea**, a massive wave of repression against pro-Ukrainian, Maidan, and Crimean Tatar activists has been perpetrated since the occupation by the Russian Federation. Enforced disappearances, along with criminal persecution under trumped-up charges, torture, ill-treatment, and other forms of oppression, began to appear. According to human rights organisations and the government of Ukraine, 44 cases of enforced disappearance have been reported since 2014 in Crimea<sup>22</sup>. The majority of victims of enforced disappearances in occupied Crimea are Crimean Tatars. According to the UN Office of the High Commissioner for Human Rights' Monitoring Mission in Ukraine, 11 individuals remain missing today<sup>23</sup>. The government of Ukraine gives the figure of 15 people. "In the vast majority of cases, facts that indicate the involvement of Russian occupation administration in the disappearances have been revealed," the Foreign Ministry of Ukraine stated in August 2021<sup>24</sup>. In 2017, Ukraine filed a lawsuit against Russia in the UN International Court of Justice over enforced disappearances in the occupied Crimea<sup>25</sup>.

In **Belarus**, enforced disappearances have been used by the regime of Alexander Lukashenko as a tool of political repression. In the late 1990s, a secret group of former and acting special services officers was created under Lukashenko's orders to assassinate dangerous criminals and political opponents with total annihilation of their bodies or hiding them without trace. Reportedly, about 30 persons were kidnapped and murdered by that group. Victims of disappearances included influential criminals, well-known political opponents of the regime, businessmen supportive of the opposition, and at least one journalist.

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<sup>19</sup> 258 People Listed as Missing in Donbas, 44 Became Victims of Enforced Disappearances in Crimea - Foreign Ministry. Dasha Zubkova. Ukrainian News. 30.08.2021. <https://ukranews.com/en/news/798042-258-people-listed-as-missing-in-donbas-44-became-victims-of-enforced-disappearances-in-crimea>

<sup>20</sup> Ukraine: Justice Still Needed for Victims of Unlawful Detention in Eastern Ukraine. Joint statement by Human Rights Watch and Amnesty International. 06.08.2020. <https://www.hrw.org/news/2020/08/06/ukraine-justice-still-needed-victims-unlawful-detention-eastern-ukraine>

<sup>21</sup> Ukraine: Torture, Ill-Treatment by Armed Groups in East. Grave Medical Concerns for Detained Women. Human Rights Watch. 05.07.2021. <https://www.hrw.org/news/2021/07/05/ukraine-torture-ill-treatment-armed-groups-east>

<sup>22</sup> 258 People Listed as Missing in Donbas, 44 Became Victims of Enforced Disappearances in Crimea - Foreign Ministry. Dasha Zubkova. Ukrainian News. 30.08.2021. <https://ukranews.com/en/news/798042-258-people-listed-as-missing-in-donbas-44-became-victims-of-enforced-disappearances-in-crimea>

<sup>23</sup> Civic space and fundamental freedoms in Ukraine, 1 November 2019 – 31 October 2021. Report by the UN Human Rights Monitoring Mission in Ukraine. <https://www.ohchr.org/Documents/Countries/UA/UkraineCivicSpace2021-EN.pdf>

<sup>24</sup> Ukrainian MFA addresses Russia on International Day of Victims of Enforced Disappearances. 112.UA new agency. 30.08.2021 <https://112.international/ukraine-top-news/ukrainian-mfa-addresses-russia-on-international-day-of-victims-of-enforced-disappearances-64452.html>

<sup>25</sup> Victory for Ukraine means Russia must answer to UN court, including over MH17. Halya Coynash. Kharkiv Human Rights Protection Group. Information Portal "Human Rights in Ukraine". 11.11.2019. <https://khpg.org/en/1573335216>

The most resonant cases include four enforced disappearances and alleged political assassinations of well-known critics of the regime in 1999-2000: an influential opposition politician, former Minister of Internal Affairs Yury Zakhарanka; a popular opposition politician, former Deputy Prime Minister and former head of the Central Electoral Commission Viktor Hanchar; a businessman, writer, publisher, philanthropist, and supporter of the opposition Anatol Krasouski; and an investigative TV journalist Dzmitry Zavadski<sup>26</sup>. Several other political opponents of the Lukashenko regime were not abducted, but died in highly suspicious circumstances, including Deputy Speaker of Parliament Gennady Karpenko and the editor-in-chief of the main opposition media Charter-97 Aleh Bebenin. Official investigation of all the cases was soft-pedaled and suspended (except the case of Zavadski where four former officers of a special force unit of the Ministry of the Interior were sentenced to life for abducting him, but no masterminds of the crime were identified). In the early 2000s, the former head of a special execution squad of the Ministry of the Interior in charge of implementing death sentences Oleg Alkaev fled to Germany and stated that he had evidence that Zakhарanka, Hanchar and Krasouski had been murdered on the orders of the top Lukashenko's associates<sup>27</sup>. Former police officers, journalists, human rights defenders, and opposition activists carried out informal investigations and recreated the story of these crimes, including the names of the main participants, but it is impossible to conduct an effective official investigation in Belarus. Lukashenko has publicly admitted several times that he ordered the creation of a special group to assassinate "dangerous criminals" and took full responsibility for enforced disappearances in the country.

The OSCE PA resolution in 2002<sup>28</sup>, the PACE report and resolution in 2004<sup>29</sup>, the OSCE Moscow Mechanism report in 2011<sup>30</sup> and the UN Human Rights Committee concluding observations in 2018<sup>31</sup> called for a thorough, credible and impartial investigation of the cases of enforced disappearances in 1990-2000, ensure that the victims and their relatives are informed of the progress and results of the investigation, identify those responsible and ensure that they are prosecuted and punished with appropriate penalties that are commensurate with the gravity of their crimes, ensure that victims of enforced disappearance and their families are provided with full reparation, including rehabilitation, satisfaction and guarantees of non-repetition. The UN Human Rights Committee reviewed individual complaints by relatives of the disappeared and concluded that Belarus must carry out proper investigation, bring perpetrators to justice, pay compensation to the relatives, and publish materials of investigations<sup>32</sup>. However, the Belarusian government has repeatedly announced that it does not have a legal obligation to implement views of the Human Rights Committee on individual complaints. No action has been taken by the authorities<sup>33</sup>.

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<sup>26</sup> Without Trace: Uncovering the Fate of Belarus' "Disappeared". An Amnesty International report. September 2002. <https://www.amnesty.org/en/wp-content/uploads/2021/06/eur490132002en.pdf>

<sup>27</sup> Олег Алкаев: В Беларуси я искал следы пропавших оппозиционеров. DW, 14.12.2012 [shorturl.at/ivGZ9](http://shorturl.at/ivGZ9)

<sup>28</sup> OSCE Parliamentary Assembly Resolution on Belarus, adopted on 10 July 2002, par. 7 and 12, pp.15-16. <https://www.oscepa.org/en/documents/annual-sessions/2002-berlin/declaration-13/220-2002-berlin-declaration-eng/file>,

<sup>29</sup> Disappeared persons in Belarus. Report by Christos Pourgourides, PACE Committee on Legal Affairs and Human Rights, 12.03.2004, and PACE Resolution 1371, 28.04.2004. <https://pace.coe.int/en/files/10456>

<sup>30</sup> OSCE Rapporteur's Report under the Moscow Mechanism on the fulfilment of the provisions of the OSCE human dimension in Belarus. By Professor Emmanuel Decaux. May 2011. <https://www.osce.org/files/f/documents/6/b/78705.pdf>

<sup>31</sup> Human Rights Committee. Concluding observations on the fifth periodic report of Belarus. CCPR/C/BLR/CO/5. 22.11.2018 [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Countries.aspx?CountryCode=BLR&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx?CountryCode=BLR&Lang=EN)

<sup>32</sup> Krasovskaya and Krasovskaya v. Belarus (CCPR/C/104/D/1820/2008) and Zakharenko and Zakharenko v. Belarus (CCPR/C/119/D/2586/2015)

<sup>33</sup> Правозащитница: Дела исчезнувших политиков расследоваться в ближайшее время не будут. Belarusian Documentation Centre. 06.03.2019. <https://bydc.info/news/859-konstitutsionnyj-sud-ne-vidit-problemy-v-otsustvii-v-ugolovnom-kodekse-nasilstvennogo-ischeznoveniia>

In the region of the **former Yugoslavia**, estimated 40,000 persons went missing during the armed conflicts on the territory of the region in 1991-2001<sup>34</sup>. The victims of enforced disappearances came from all ethnic groups and from all walks of life – civilians and soldiers, men, women, and children. Some 10 thousand persons are still unaccounted for, and their relatives are still awaiting justice<sup>35</sup>. Enforced disappearances are a daily source of pain for the relatives still waiting to learn the fate and whereabouts of their loved ones, still searching for truth, justice, and reparation. Reconciliation in the region of the Western Balkans greatly depends upon resolving that problem. The authorities in the region (Croatia, Bosnia and Herzegovina, Northern Macedonia, Montenegro, Serbia, and Kosovo) need to take more active and consistent steps to investigate enforced disappearances and to ensure the victims and their families receive access to justice and adequate and effective reparation for the harm they have suffered. All six governments have failed to abide by their international legal obligations to effectively investigate and prosecute these crimes. Some perpetrators have been brought to justice by the International Criminal Tribunal for the Former Yugoslavia<sup>36</sup>, but the Tribunal completed its mandate. Domestic courts are slow to abide by their responsibility to seek out, identify and prosecute the remaining perpetrators. The major obstacle to tackling impunity and bringing the perpetrators to justice is a persistent lack of political will in all countries of the region.

### ***MC Decision 7/20 provisions as a basis for action plans to eradicate enforced disappearances in the OSCE region***

It is time for OSCE actors to focus their attention on the problem of enforced disappearances and develop concrete action plans to address it across the OSCE region in cooperation with civil society. For States, this concerns not only eradicating enforced disappearances committed by their governments or their agents in their own countries and elsewhere and effectively investigating their past crimes of disappearances, but also effectively addressing enforced disappearances in all OSCE participating States, based on the Helsinki principle that the human dimension commitments “are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned”<sup>37</sup>.

We believe that the MC Decision 7/20 provides a strong basis for developing such action plans. Based on the language of the following paragraph in the MC Decision 7/20, “Reminding all participating States that *prolonged incommunicado detention* or detention in secret places *can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment*,”<sup>38</sup> we consider that all provisions of the Decision apply to incommunicado detention (enforced disappearances in places of detention) in the same way as they apply to torture and other cruel, inhuman or degrading treatment or punishment in this document. This means that OSCE participating States have committed to the same responsibilities to prevent and eradicate enforced disappearances as they have done in respect of preventing and eradicating torture and other cruel, inhuman or degrading treatment or punishment, as spelled out in the MC Decision. These include:

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<sup>34</sup> Jeremy Sarkin, Dr. Lara Nettelield, Max Matthews, Renee Kosalka. Bosnia and Herzegovina Missing Persons from the Armed Conflicts of the 1990s: A Stocktaking. International Commission on Missing Persons (ICMP), Sarajevo. October 2014. [https://www.icmp.int/wp-content/uploads/2014/12/StocktakingReport\\_ENG\\_web.pdf](https://www.icmp.int/wp-content/uploads/2014/12/StocktakingReport_ENG_web.pdf)

<sup>35</sup> Ibid.

<sup>36</sup> Achievements. Website of the United Nations the International Criminal Tribunal for the former Yugoslavia. <https://www.icty.org/en/about/tribunal/achievements>.

<sup>37</sup> Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE. Page 2. <https://www.osce.org/files/f/documents/2/3/14310.pdf>

<sup>38</sup> Decision No. 7/20, Prevention and Eradication of Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment. Page 2. <https://www.osce.org/chairmanship/473199>



- the absolute prohibition of *[enforced disappearances]*;
- full implementation of their obligations under the 1949 Geneva Conventions *[regarding enforced disappearances]*;
- implementation of effective legal and procedural safeguards throughout all stages of detention;
- respect for the safeguards concerning the liberty, security and dignity of the person;
- make all acts of *[enforced disappearances]*, attempts to commit *[enforced disappearances]*, and acts of complicity or participation in *[enforced disappearances]* offences under domestic criminal law, and providing for appropriate penalties reflecting their grave nature;
- incorporate education and information regarding the prohibition of *[enforced disappearances]* in the training of law enforcement personnel, civil, military and medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest;
- ensure full and ongoing government co-operation, in line with their respective obligations under international law, with applicable international preventive bodies or mechanisms and with relevant national bodies, such as national human rights institutions, including by allowing unrestricted access to places of detention if such access is an obligation for a participating State under the international law;
- fully co-operate with the International Committee of the Red Cross (ICRC) in conformity with the participating States' obligations under international humanitarian law;
- ensure that all allegations of *[enforced disappearances]*, as well as wherever there are reasonable grounds to believe that such an act has been committed, are investigated promptly, effectively, thoroughly, and impartially by competent and independent national authorities and ensuring that complainants and witnesses are protected against ill-treatment and intimidation as a consequence of their complaint or evidence given;
- ensure that those who encourage, instigate, order, tolerate, acquiesce in, consent to or perpetrate acts of *[enforced disappearances]* are held responsible, brought to justice and punished in a manner commensurate with the severity of the offence, including the officials in charge of any place of detention or other place in which persons are deprived of their liberty where the prohibited act is found to have been committed;
- provide redress for the victims of *[enforced disappearances]*, encompassing effective remedy and adequate, effective and prompt reparation, which should include restitution, fair and adequate compensation, rehabilitation, satisfaction and guarantees of non-repetition, taking into full account the specific needs of the victim;
- ensure that appropriate rehabilitation services are promptly available without discrimination to all victims and take effective measures for ensuring a safe and enabling environment for accessing and providing rehabilitation services to victims of *[enforced disappearances]*;
- consider developing measures to support all persons affected by *[enforced disappearances]*, including victims' children and other immediate family members;
- promote dissemination of information for victims about the availability of rehabilitation services and ensure that the procedures for obtaining rehabilitation are transparent;
- support the efforts of civil society organizations working to prevent and combat *[enforced disappearances]*, enable their active contribution, as appropriate, and make use of information provided by them in alleged cases of *[enforced disappearances]*;
- continue to make use of, or consider drawing on, ODIHR's advice, expertise and technical assistance in the field of preventing and combating of *[enforced disappearances]*.

It is both very important and feasible for concerned OSCE participating States, executive bodies, and institutions to get down to work and develop in 2022 concrete action plans to eradicate enforced disappearances in the OSCE region.

**Appendix: Status of participation in the International Convention for the Protection of All Persons from Enforced Disappearance by OSCE participating States<sup>39</sup>**

	State	Signature	Ratification, Accession(a)
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Ratified or acceded			
1	Albania	6 Feb 2007	8 Nov 2007
2	Armenia	10 Apr 2007	24 Jan 2011
3	Austria	6 Feb 2007	7 Jun 2012
4	Belgium	6 Feb 2007	2 Jun 2011
5	Bosnia and Herzegovina	6 Feb 2007	30 Mar 2012
6	Czech Republic	19 Jul 2016	8 Feb 2017
7	Denmark	25 Sep 2007	13 Jan 2022
8	France	6 Feb 2007	23 Sep 2008
9	Germany	26 Sep 2007	24 Sep 2009
10	Greece	1 Oct 2008	9 Jul 2015
11	Italy	3 Jul 2007	8 Oct 2015
12	Kazakhstan		27 Feb 2009 a
13	Lithuania	6 Feb 2007	14 Aug 2013
14	Malta	6 Feb 2007	27 Mar 2015
15	Mongolia	6 Feb 2007	12 Feb 2015
16	Montenegro	6 Feb 2007	20 Sep 2011
17	Netherlands	29 Apr 2008	23 Mar 2011
18	Norway	21 Dec 2007	22 Aug 2019
19	Portugal	6 Feb 2007	27 Jan 2014
20	Serbia	6 Feb 2007	18 May 2011
21	Slovakia	26 Sep 2007	15 Dec 2014
22	Slovenia	26 Sep 2007	15 Dec 2021
23	Spain	27 Sep 2007	24 Sep 2009
24	Switzerland	19 Jan 2011	2 Dec 2016
25	Ukraine		14 Aug 2015 a

<sup>39</sup> Status as of 16.01.2022. Based on the table on the CPED page in the UN Treaty Collection website: [https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-16&chapter=4&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-16&chapter=4&clang=en)

<b>Signed but have not ratified or have not acceded</b>			
1	Azerbaijan	6 Feb 2007	-
2	Bulgaria	24 Sep 2008	-
3	Croatia	6 Feb 2007	-
4	Cyprus	6 Feb 2007	-
5	Finland	6 Feb 2007	-
6	Iceland	1 Oct 2008	-
7	Ireland	29 Mar 2007	-
8	Liechtenstein	1 Oct 2007	-
9	Luxembourg	6 Feb 2007	-
10	Monaco	6 Feb 2007	-
11	North Macedonia	6 Feb 2007	-
12	Poland	25 Jun 2013	-
13	Republic of Moldova	6 Feb 2007	-
14	Romania	3 Dec 2008	-
15	Sweden	6 Feb 2007	-

<b>Have not signed</b>			
1	Andorra	-	-
2	Belarus	-	-
3	Canada	-	-
4	Estonia	-	-
5	Georgia	-	-
6	Holy See	-	-
7	Hungary	-	-
8	Kyrgyzstan	-	-
9	Latvia	-	-
10	Russian Federation	-	-
11	San Marino	-	-
12	Tajikistan	-	-
13	Turkey	-	-
14	Turkmenistan	-	-
15	United Kingdom	-	-
16	United States	-	-
17	Uzbekistan	-	-