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Research

# How to Improve the Search System for Missing Persons?



Research

# "How to Improve the Search System for Missing Persons?"

Abridged English version

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1. Yavorskyy, V.M., Serdiuk, V.M., Yashchuk, N.M. “How to Improve the Search System for Missing Persons?” Center for Civil Liberties, 2025. pp. 34-49. URL: <https://ccl.org.ua/yak-pokrashchyty-systemu-poshuku-bezvisty-znyklykh.pdf>

# 1. Introduction

During an armed conflict, many people go missing, including both civilians and military personnel. The state has the following obligations in this respect:

1. to account every case of disappearance;
2. to maintain a registry of missing persons;
3. to take effective actions aimed at searching for the missing and recovery;
4. to investigate potential crimes or human rights violations, to bring those responsible to justice and establish the truth — specifically, what actually happened to the missing person — to ensure that relatives have the right to the truth;
5. to ensure communication between government authorities and the families of the missing.

The state must legislate and maintain a legal framework capable of effectively performing these tasks.

The search for missing persons will continue for many years, even after the hostilities have ceased. Therefore, this mechanism must be sustainable and in line with the principle of effectiveness.

Under the current legal framework, searching for missing persons is complicated by the ongoing armed aggression of the Russian Federation against Ukraine. Active military conflict and the hostilities have led to a sharp increase in the number of missing persons — both civilians and military — highlighting how the existing state framework is ill-equipped to search for them. In particular, it has been repeatedly confirmed that this framework (the so-called “police search model”) was designed to operate in peacetime, being unable to deal with the number of missing persons arising from a full-scale war of aggression. As of August 29, 2025, approximately 70,000 people have been entered into the Unified Register of Persons Missing under Special Circumstances<sup>2</sup>. As of August 2024, 2,410 unidentified bodies (remains) were registered in the Register<sup>3</sup>.

The framework currently provided for in the legislation poses numerous practical challenges, which overburden it and cause confusion among the relatives of missing persons and the general public. Furthermore, the existing framework does not fully serve its objective of searching for persons missing as a result of war, and under the current legal model, the search for such individuals is ineffective. Therefore, the existing framework requires a redistribution of the workload and a transition from the current legal model to another that would be better adapted to searching for both civilians and military personnel missing due to war, ensuring greater effectiveness in the long term.

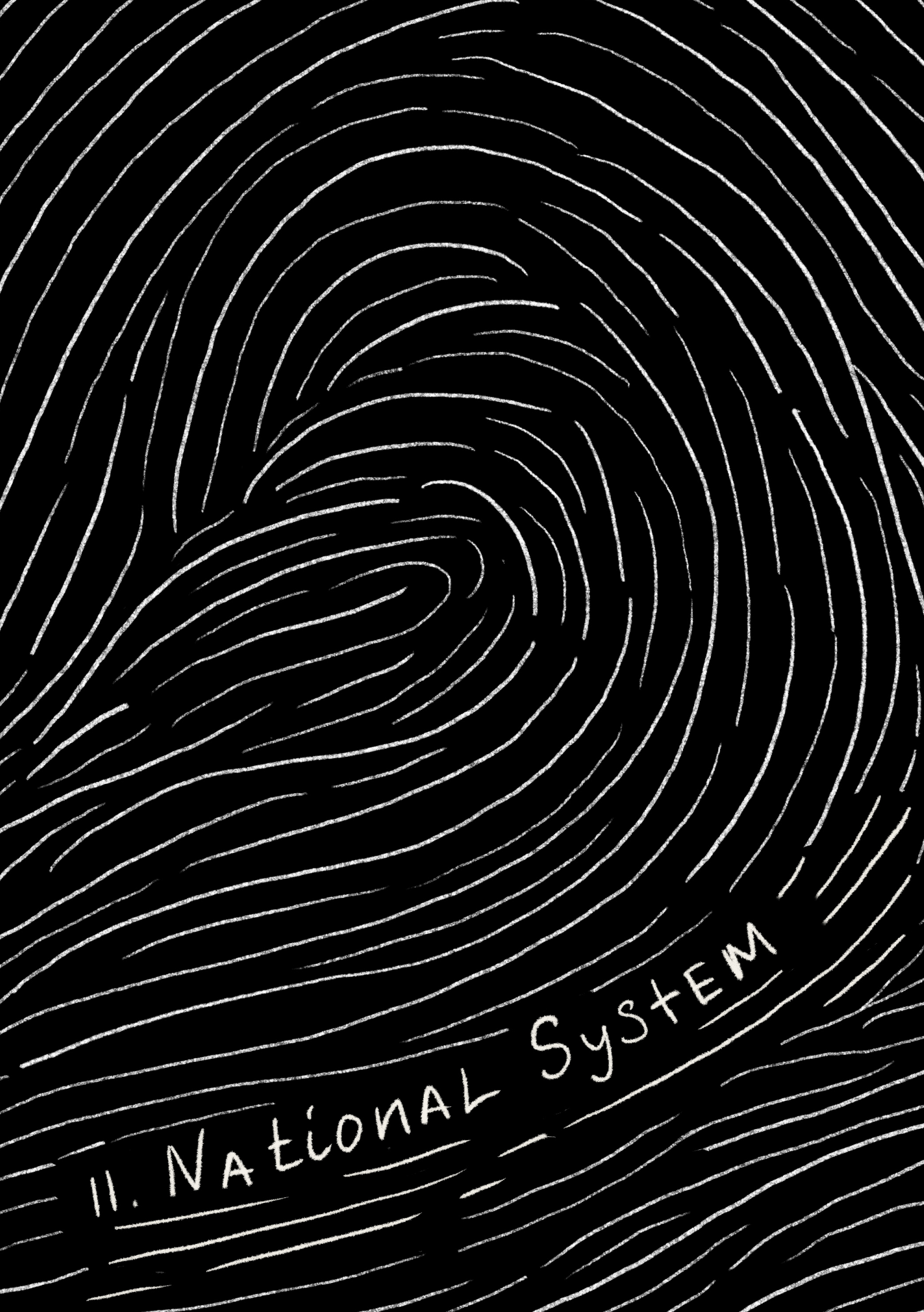
The purpose of this analysis is to highlight the problems within the system of state regulation and management of matters relating to missing persons, compare national legislation with international recommendations and best practices, and illustrate the complexity of the procedures actually confronted by people attempting to locate their missing relatives. This analysis aims to highlight existing structural challenges in terms of appropriateness and effectiveness of the current legal framework for searching for missing persons, both for the victims and their relatives, and it is intended to protect their rights and legitimate interests.

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2. Red Cross: The number of missing persons worldwide has increased by nearly 70% over the last five years. *NV*. (29.08.2025). URL: <https://nv.ua/ukr/world/geopolitics/znikli-bezvisti-u-sviti-kilkist-zrosla-na-70-za-ostanni-5-rokiv-i-stanovit-284-400-lyudey-50541039.html> (Accessed: October 7, 2025).

3. MIHR Analytical Report: “How to Accelerate the Identification of Those Killed or Missing in the War.” *Media Initiative for Human Rights*. URL: <https://mipl.org.ua/yak-pryshvydshyty-identyfikacziyu-zagyblyh-znyklyh-bezvisty-na-vijni/>





II. NATIONAL SYSTEM

## 2.1. National Legislation

As a general rule in peacetime, a person is declared missing through civil proceedings under Article 43 of the Civil Code of Ukraine (hereinafter referred to as the CC of Ukraine) to facilitate the subsequent exercise of the absent person's property rights (for example, establishing guardianship over their property). In such cases, the substantive legal interest or the necessity of the person applying to the court prevails. This procedure existed before the war and still applies today under martial law.

A special law on missing persons, the Law of Ukraine “On the Legal Status of Persons Missing under Special Circumstances”<sup>4</sup>(hereinafter referred to as the Law on Missing Persons), was adopted in 2018 and later updated in 2022 to regulate the legal status of persons missing under special circumstances. This law provides a person missing under special circumstances with the right to have their property placed under guardianship from the date when their details are entered into the Unified Register of Persons Missing under Special Circumstances, i.e., after they have acquired the legal status of a person missing under special circumstances.

According to the Law on Missing Persons, a missing person means an individual whose whereabouts are unknown at the time the applicant applies for their search.

A person who has gone missing in an area of armed conflict while performing military service, or under any other circumstances confirming their presence in such an area, is deemed to be a person missing due to an armed conflict.

A person who has gone missing due to an armed conflict, hostilities, internal civil unrest, natural or man-made disasters, or other events that may lead to mass casualties is considered a person missing under special circumstances.

Pursuant to Part 1 of Article 18 of the Law on Missing Persons, a relative (*or a member of a military formation, a state authority, a local government, a public association, any other person aware of the disappearance, or the Commissioner for Persons Missing under Special Circumstances*) may file a missing person report and request a search for them at the relevant territorial body of the National Police of Ukraine (hereinafter – the NPU), which is the authority authorized to search for missing persons.

There are certain differences in terms of declaring a person as missing or granting a person the status of missing under special circumstances.

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4. Law of Ukraine “On the Legal Status of Persons Missing under Special Circumstances.” URL: <https://zakon.rada.gov.ua/laws/show/2505-19#Text>

| Provisions of the Civil Code of Ukraine                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Law of Ukraine "On the Legal Status of Persons Missing under Special Circumstances"                                                                                                                                                                                                                                                                                                                                                                                                    |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><i>Part 1 of Article 43 of the Civil Code of Ukraine:</i></p> <p>– An individual may be declared missing by a court if, for a period of one year, there has been no evidence of their whereabouts at the place of their permanent residence.</p> <p><i>Paragraph 3 of Part 2 of Article 293 of the Civil Procedure Code of Ukraine:</i></p> <p>– The court considers matters of declaring an individual missing or declaring them deceased under the voluntary jurisdiction procedure.</p> <p>The procedure, under which courts consider cases involving the declaration of an individual as missing, is set out in Chapter 4 of Section IV of the Civil Procedure Code of Ukraine.</p> | <p><i>Part 1 of Article 4:</i></p> <p>– A person acquires the <i>status of a person missing under special circumstances</i> from the date when their details are entered from the disappearance report into the Unified Register of Persons Missing under Special Circumstances, in accordance with the procedure provided by this Law. The person is considered missing under special circumstances from the time the applicant submits the report on the person's disappearance.</p> |

In general, the Civil Procedure Code of Ukraine stipulates four procedures resulting in a court decision, based on which the State Civil Register may issue a death certificate, namely:

- Establishing the person's death at a specific time where the state civil register is unable to register the death (Paragraph 8, Part 1, Article 315 of the CPC of Ukraine).
- Establishing the death of a person who went missing under circumstances that threatened them with death or provide grounds to believe they perished in a specific accident due to man-made or natural disasters (Paragraph 9, Part 1, Article 315 of the CPC of Ukraine);
- Establishing the person's death in the temporarily occupied territory of Ukraine or in a territory where martial law or a state of emergency has been introduced (Article 317 of the CPC of Ukraine).
- Declaring an individual deceased (Articles 305-309 of the CPC of Ukraine).

These procedures are distinct from one another and have specific features that, for example, affect the provision or termination of certain social payments to relatives.

During the full-scale invasion, a judicial practice has emerged in which relatives of missing persons apply to the court to establish the death under civil procedure law (under the procedure for establishing a legally binding fact). This results in the person being recognized as deceased regardless of to the timeframes specified in Article 46 of the Civil Code.

Although the Supreme Court has somewhat restricted these cases, they only reach it when there is a dispute and an appeal. In particular, the Supreme Court stated the following in its ruling:

“Therefore, declaring an individual deceased is a judicial affirmation of the presumption that this person has died — that is, a statement of a high degree of probability of death.

The basis for declaring a person deceased is not facts (evidence) that testify to their death with certainty, but circumstances that provide grounds to presume the death of such a person...

In view of the above, based on the provisions of Articles 43 and 46 of the CC of Ukraine and Articles 305 and 306 of the CPC of Ukraine, the Supreme Court found that in the presence of presumptions regarding the death of an individual, including due to military operations, without reliable evidence attesting to this fact, the correct procedure would be to apply to the court with a petition to declare the person deceased (Part 2 of Article 46 of the CC of Ukraine), rather than with a petition to establish the fact of death of the said individual (Paragraph 8, Part 1, Article 315 of the CPC of Ukraine).<sup>5</sup>

It should be noted that the general and special procedures under the law are not mutually exclusive. Thus, according to Part 3 of Article 4 of the Law of Ukraine “On the Legal Status of Persons Missing under Special Circumstances,” granting a person the status of missing under special circumstances in accordance with this Law does not prevent their relatives or other persons from applying to a court with a petition to declare such a person missing or deceased in the manner prescribed by law.

Consequently, both the general (provided by the Civil Code) and the special (provided by a special law) legal systems operate during a special period. These systems are not fully harmonized with one another, creating confusion for an average person. Under the general procedure, a person can be declared missing through civil court proceedings. However, this can simultaneously be done by filing a report with the police regarding a missing person. Furthermore, filing a report about a missing person and a request for their search does not prevent a person from applying to a court to have their relative declared missing or deceased.

On the other hand, a court decision declaring a person missing or deceased carries no weight within the special system. For example, a court decision declaring a missing person deceased does not constitute grounds for terminating the search based on the previously filed report and search request. Moreover, pursuant to Part 2 of Article 20 of the Law on Missing Persons, if a person missing under special circumstances is declared deceased (by court decision) but their remains have not been found, search operations shall **not** cease until their whereabouts, burial site, or the location of their remains is established. Consequently, such an individual remains deemed missing. In effect, a person can simultaneously hold the status of both missing and deceased.

According to the Civil Code of Ukraine, the grounds for declaring an individual missing constitute a combination of legal facts, or a legal pattern, that includes the following<sup>6</sup>:

There is no information about the individual’s presence at their place of permanent residence.

There is no information regarding the person’s actual location, and such information can not be obtained.

One year has expired from the date the last information regarding the individual’s whereabouts was received, or from the date determined in accordance with Part 2 of Article 43 of the Civil Code of Ukraine.

The applicant has a legal interest in resolving the issue of declaring the person missing.

This aligns with the legal opinion set forth by the Supreme Court in the following resolutions: dated 7 May 2018, in case No. 225/1297/17 (proceedings No. 61-3902cb18); dated 22 November 2018, in case No. 225/882/17 (proceedings No. 61-34068cb18); dated 5 February 2020, in case No. 756/17293/17 (proceedings No. 61-16093cb19); and dated 6 May 2020, in case No. 760/3112/16-п (proceedings No. 61-48362cb18).

In cases No. 754/7858/23 and No. 229/4416/21, the Supreme Court elaborates on Article 43 of the CC of Ukraine in greater detail, emphasizing that this legal provision primarily requires clarifying the person’s place of permanent residence at the time of their disappearance, measures taken by the applicant to establish the location of the person in question, and whether all possibilities for finding them have been exhausted.

In case No. 754/7858/23, the Court dismissed the applicant’s claims, arguing that the mere fact that

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5. Resolution of the Supreme Court in case No. 506/358/22 dated 28 February 2024. URL: <https://reyestr.court.gov.ua/Review/117624259>

6. Decision of the Chamber of the Civil Cassation Court within the Supreme Court in case No. 754/7858/23 dated 9 October 2024. URL: <https://reyestr.court.gov.ua/Review/122253121>



a search for the person had been announced, their non-residence at the registered address for a long period, and the actual lack of information regarding their whereabouts did not constitute an absolute ground for declaring them missing. This finding is further supported by the Court's rulings in cases No. 202/14972/23 and No. 229/4416/21, which state that:

The mere fact that the applicant has lost contact with an individual and the applicant's actual lack of information regarding that individual's whereabouts do not constitute an absolute ground for declaring the person missing.

The mere fact that the applicant has lost contact with an individual and/or the individual's unwillingness to communicate with them is not a ground for declaring the person missing.

The caselaw on this issue is quite stable and consistent. A person applying to the court must prove the fact of disappearance or death with specific evidence. Therefore, this procedure differs significantly from the special procedure introduced in wartime.

As of 1 October 2025, there are 4,671 Supreme Court decisions concerning the declaration of a person as missing or deceased in the Unified State Register of Court Decisions. Of these, approximately 70% pertain to declaring an individual deceased, while 30% pertain to declaring a person missing.

In turn, according to the special procedure, a person acquires the status of a missing person from the date the applicant submits a report of their disappearance and a search request to the police, which then registers criminal proceedings in the Unified Register of Pre-Trial Investigations (URPTI)<sup>7</sup>. The next step involves entering the person's data from the disappearance report into the relevant Register (*the Unified Register of Persons Missing under Special Circumstances*). The individual is considered missing until the search is terminated, specifically until their whereabouts, burial site, or the location of their remains is established.

Pursuant to Article 12 of the Law on Missing Persons, the Unified Register of Persons Missing under Special Circumstances (hereinafter the Register) is established to accumulate and centralize information and data regarding such missing persons, as well as to record information necessary for their effective search. The Ministry of Internal Affairs of Ukraine (hereinafter MIAU) is responsible for maintaining this Register.

The special framework appears more straightforward in general. However, it is structured in such a way that the primary burden of implementing its functions falls upon the police investigator handling the relevant criminal case regarding the missing person. Furthermore, under the current framework, the fact of a person's disappearance gives rise to instituting criminal proceedings, as it is presumed that a crime has been committed under Articles 115 (Murder), 146 (Unlawful Imprisonment or Kidnapping), 146-1 (Enforced Disappearance), or 438 (Violation of the Laws and Customs of War) of the Criminal Code of Ukraine (hereinafter the CC of Ukraine).

In accordance with Article 25 of the Criminal Procedure Code of Ukraine (hereinafter the CPC of Ukraine), the prosecutor and the investigator are required, within their competence, to initiate a pre-trial investigation in every case where elements of a criminal offense are directly detected (except where criminal proceedings may only be initiated based on a victim's report) or upon receipt of a report (notification) concerning the commission of a criminal offense. They are also required to take all measures provided by law to establish the circumstances of the criminal offense and the identity of the person who committed it<sup>8</sup>.

Article 2 of the CPC of Ukraine establishes that the objectives of criminal proceedings are to protect the individual, society, and the state from criminal offenses, to safeguard the rights, freedoms, and legitimate interests of participants in criminal proceedings, and to ensure a prompt, full, and impartial investigation and trial so that everyone who has committed a criminal offense is held accountable to the extent of their guilt, no innocent person is accused or convicted, no person is subjected to groundless procedural coercion, and proper legal procedure is applied to every participant in the criminal proceedings<sup>9</sup>.

Thus, according to the CPC of Ukraine, the investigator is obliged to:

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7. Unified Register of Pre-trial Investigations. URL: <https://erdr.gp.gov.ua/erdr/erdr.web.system.LoginPage.cls>.

8. Article 25 of the CPC of Ukraine. URL: <https://zakon.rada.gov.ua/laws/show/4651-17/conv#n621>

9. Article 2 of the CPC of Ukraine. URL: <https://zakon.rada.gov.ua/laws/show/4651-17/conv#n621>



- institute criminal proceedings;
- enter all information into the URPTI and the Unified Register of Persons Missing under Special Circumstances;
- issue a ruling on opening an investigative case, in accordance with the Law of Ukraine “On Operational Search Activity,”<sup>10</sup> following the institution of criminal proceedings over the disappearance;
- investigate the case until the whereabouts, burial site, or location of the remains of the missing persons are established;
- conduct investigative actions;
- order the collection of biological material samples and appoint forensic examinations (Domestic medicolegal system) to extract DNA profiles;
- communicate with other state authorities and the Commissioner for Persons Missing under Special Circumstances;
- regularly update the Register with new information, in accordance with MIAU Order No. 535 dated 29 August 2022, “On Approval of the Regulations on the Unified Register of Persons Missing under Special Circumstances”<sup>11</sup>;
- inform the Commissioner for Persons Missing under Special Circumstances on the progress of the pre-trial investigation and the measures taken to search for persons missing under special circumstances, to ensure data is entered into the Unified Register of Persons Missing under Special Circumstances, pursuant to the Law of Ukraine “On the National Police”<sup>12</sup>.

At the same time, it should be stressed that in times of an aggressive war, a single investigator may handle hundreds or even thousands of criminal proceedings.

According to Article 19 of the Law on Missing Persons, the Commissioner for Persons Missing under Special Circumstances (hereinafter the Commissioner) facilitates the search for missing persons by sending inquiries for additional information regarding such individuals, as well as by monitoring the search process.

In 2024, the Law on Missing Persons was significantly updated. The amendments stipulated that the Commissioner’s functions now include the ability to communicate with individuals who may possess information that could facilitate the search for persons missing under special circumstances, and to obtain written or oral explanations from them with their consent. In other words, the Commissioner may reach out to an undefined circle of actors who may have any information regarding the missing person. To a certain extent, this offers a chance to increase the effectiveness of search activities and gather information about the individual to enter it into the Register.

In addition, the Cabinet of Ministers of Ukraine (hereinafter the CMU) has determined<sup>13</sup> that:

The powers set out in Para. 8, Part 1, Article 11 of the Law on Missing Persons, namely, the establishment and operation of search parties or humanitarian missions to locate the remains of missing persons, exhume bodies (remains) of deceased individuals, and transport their remains, are exercised jointly by the Commissioner, the National Police (NPU), the SSU, the SES, and the General Staff of the Armed Forces of Ukraine.

The powers set out in Para. 9, Part 1, Article 11 of the Law on Missing Persons — specifically regarding negotiations with humanitarian missions, public associations, and individuals working or staying in the temporarily occupied territories of Ukraine — are exercised by the Coordination Headquarters for the Treatment of Prisoners of War.

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10. Paragraph 3 of Article 9 of the Law of Ukraine “On Operational Search Activity.” URL: <https://zakon.rada.gov.ua/laws/show/2135-12#Text>

11. MIA Order No. 535 dated 29 August 2022, “On Approval of the Regulations on the Unified Register of Persons Missing under Special Circumstances.” URL: <https://zakon.rada.gov.ua/laws/show/z0998-22/conv#n76>

12. Para. 28, Part 1, Article 23 of the Law of Ukraine “On the National Police.” URL: <https://zakon.rada.gov.ua/laws/show/580-19#n163>

13. Resolution of the Cabinet of Ministers of Ukraine No. 975 dated 12 September 2023. URL: <https://zakon.rada.gov.ua/laws/show/975-2023-%D0%BF#Text>

These authorities will exercise the functions specified in subparagraphs 8 and 9 of Part 1 of Article 11 of the Law in the period of martial law in Ukraine and for one year from the date of its termination or cancellation.

In effect, the CMU first vested certain state bodies with these powers and subsequently proposed that corresponding amendments be introduced to the Law on Missing Persons itself. In our view, these amendments, particularly regarding the transfer of certain functions to the Central Directorate of Civil-Military Cooperation of the General Staff of the Armed Forces, represent an attempt to redistribute the functional workload to achieve better quality in the process of searching for persons missing under special circumstances and their remains, the search for and documentation of burial sites, the exhumation of the bodies (remains) of deceased individuals and the transportation of their remains, as well as search operations conduct in areas where actions to defend Ukraine, protect public safety, and the interests of the state due to the armed aggression of the Russian Federation against Ukraine are being carried out, as well as in the temporarily occupied territories of Ukraine. However, this remains not fully harmonized with the Law on Missing Persons.

It appears evident that the legislation concerning missing persons is contradictory and inconsistent, and for the public, it seems exceedingly confusing and complex. We have not conducted a review of social benefits and other legal inconsistencies generated by such convoluted legislation, yet there are dozens of litigations regarding social payments and the procedure for managing property belonging to a missing person.

## 2.2. The System of Authorities Dealing with the Issue of Missing Persons

The system of government authorities dealing with the issue of missing persons is also quite complex to understand.

Since 2014, Ukraine has lacked a unified system of authorities responsible for prisoners of war or missing persons: the police were responsible for searching for civilians within criminal proceedings, while the SSU (Security Service of Ukraine) and the Ministry of Defense handled the search for individuals deprived of liberty and the exchange of both civilians and military personnel.

Additionally, the courts had and still have the authority to declare a person missing or deceased upon the petition of an interested party, in accordance with the provisions of the Civil Code of Ukraine.

It was not until 2016 that the SSU established the Joint Center for Coordination of Search, Release of Persons Illegally Deprived of Liberty and Hostages, and Establishing the Location of Missing Persons in the Area of the Anti-Terrorist Operation<sup>14</sup>. Later, in 2019, this was reorganized into the Joint Center for Coordination of Search and Release of Persons Illegally Deprived of Liberty in the Area Where Actions Are Taken to Provide the National Security and Defense, Repel and Deter the Armed Aggression of the Russian Federation in the Donetsk and Luhansk Oblasts<sup>15</sup>. Formally, the center continues to operate to this day.

In March 2022, following the start of the full-scale invasion, the Coordination Headquarters for the Treatment of Prisoners of War (hereinafter the Coordination Headquarters) was established, initially headed by the Deputy Prime Minister of Ukraine – Minister for Reintegration of the Temporarily Occupied Territories<sup>16</sup>. However, by June 2022, it was placed under the leadership of the Chief of Defence Intelligence of Ukraine (hereinafter DIU), and effectively, this institution was developed by the DIU<sup>17</sup>. The Cabinet of Ministers' Resolution defines the core tasks, functions, and powers of the Coordination Headquarters. It remains operational to this day.

In 2018, the Law “On the Legal Status of Missing Persons” was adopted, which established the Commission on Persons Missing under Special Circumstances<sup>18</sup>. In April 2022, the title of the law was changed to “On the Legal Status of Persons Missing under Special Circumstances,” and the Commissioner for Persons Missing under Special Circumstances was established to replace the Commission. The Commissioner was envisioned as a body within the MIAU. In practice, the Commissioner and their Secretariat only became fully operational in 2023. The Commissioner has a Secretariat and regional branches that coordinate local efforts and maintain communication with the relatives of the missing.

In parallel, the Ukrainian Parliament Commissioner for Human Rights became involved in this matter, although such activity is, in principle, beyond the scope of his constitutional powers, as this institution was established to exercise parliamentary control over the observance of constitutional rights and freedoms. However, under wartime conditions, he sought to negotiate exchanges, obtain information about detainees in Russia, and improve their conditions of detention with Russia's Commissioner for Human Rights, which evidently led to his involvement in these activities.

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14. Order of the Security Service of Ukraine, the Ministry of Defense of Ukraine, and the Ministry of Internal Affairs of Ukraine dated 19 May 2016, No. 237/267/388 (expired). URL: <https://zakon.rada.gov.ua/laws/show/z0856-16#Text>

15. Order of the Security Service of Ukraine, the Ministry of Defense of Ukraine, and the Ministry of Internal Affairs of Ukraine dated 8 April 2019, No. 573/152/252. URL: <https://zakon.rada.gov.ua/laws/show/z0413-19#Text>

16. Cabinet of Ministers of Ukraine Resolution No. 257 dated 11 March 2022. URL: <https://zakon.rada.gov.ua/laws/show/257-2022-%D0%BF/ed20220311#Text>

17. See the current version of the Resolution of the Cabinet of Ministers No. 257 “On the Establishment of the Coordination Headquarters for the Treatment of Prisoners of War.” URL: <https://zakon.rada.gov.ua/laws/show/257-2022-%D0%BF#Text>

18. See the original first version of the Law. URL: <https://zakon.rada.gov.ua/laws/show/2505-19/ed20180712#Text>

Furthermore, to fulfill Ukraine's obligations under international humanitarian law, the National Information Bureau<sup>19</sup> (hereinafter NIB) was established to collect and exchange information regarding prisoners of war. Once again, this institution introduced another parallel framework, as the NIB began independently gathering information on missing persons.

As we can see, the system of government authorities appears quite complex and inconsistent. To date, five state bodies maintain their own registries of missing persons. At the same time, the Coordination Headquarters and the Commissioner for Missing Persons have agreed to synchronize their registries, which serves as an example of an attempt to establish more efficient and rational functioning that is not legislatively governed. As each authority involved in the search system maintains its own register, they are empowered to require individuals to contact these authorities and provide the same information repeatedly, which also leads to the unnecessary retraumatization of the relatives of the missing. This is a clear case of redundant duplication of functions; under normal circumstances, the state should maintain a single registry that other authorities could access and retrieve information from.

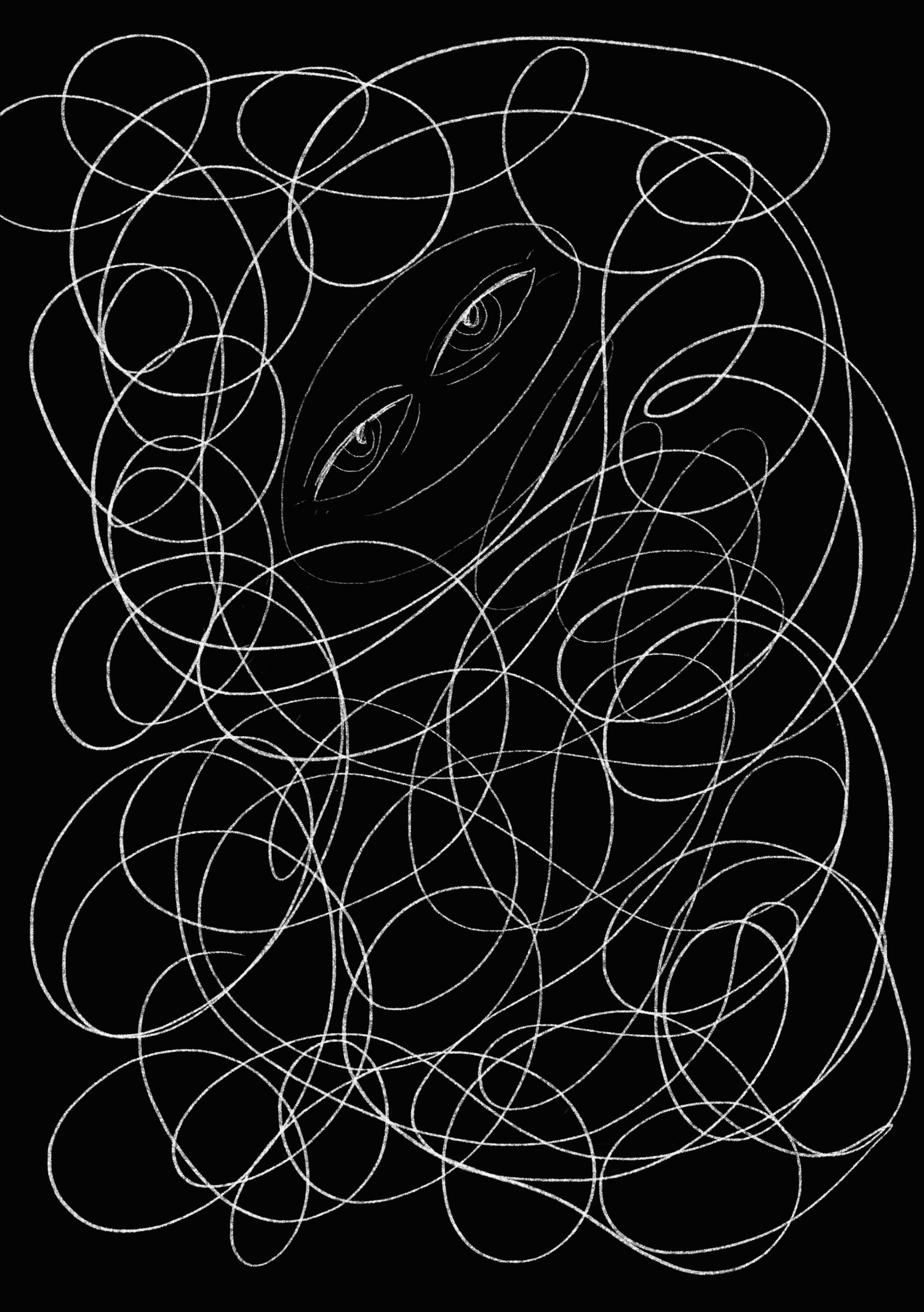
In the table below, we have attempted to outline the authorities that influence the policy and system regarding missing persons and their key powers. A few other authorities are not mentioned here, though they increasingly attempt to play a coordinating role. For example, the Office of the President is among them, although we have doubts that this policy should be organized and coordinated specifically by the Office of the President.

Obviously, such an authority model and the overall system can hardly be called efficient or rational. There is clearly significant duplication of functions and attempts to shift this activity under the jurisdiction of specific agencies. This significantly hinders inter-agency cooperation, as a result of which the state policy lacks a single vector and priorities, and, accordingly, is sometimes implemented in a rather chaotic manner.

In our opinion, the military and the Commissioner for Missing Persons should play the most important role in this process, while the roles of the SSU and the Ukrainian Parliament Commissioner for Human Rights should be significantly reduced. However, we will address this at the end of this document in our conclusions and recommendations section.

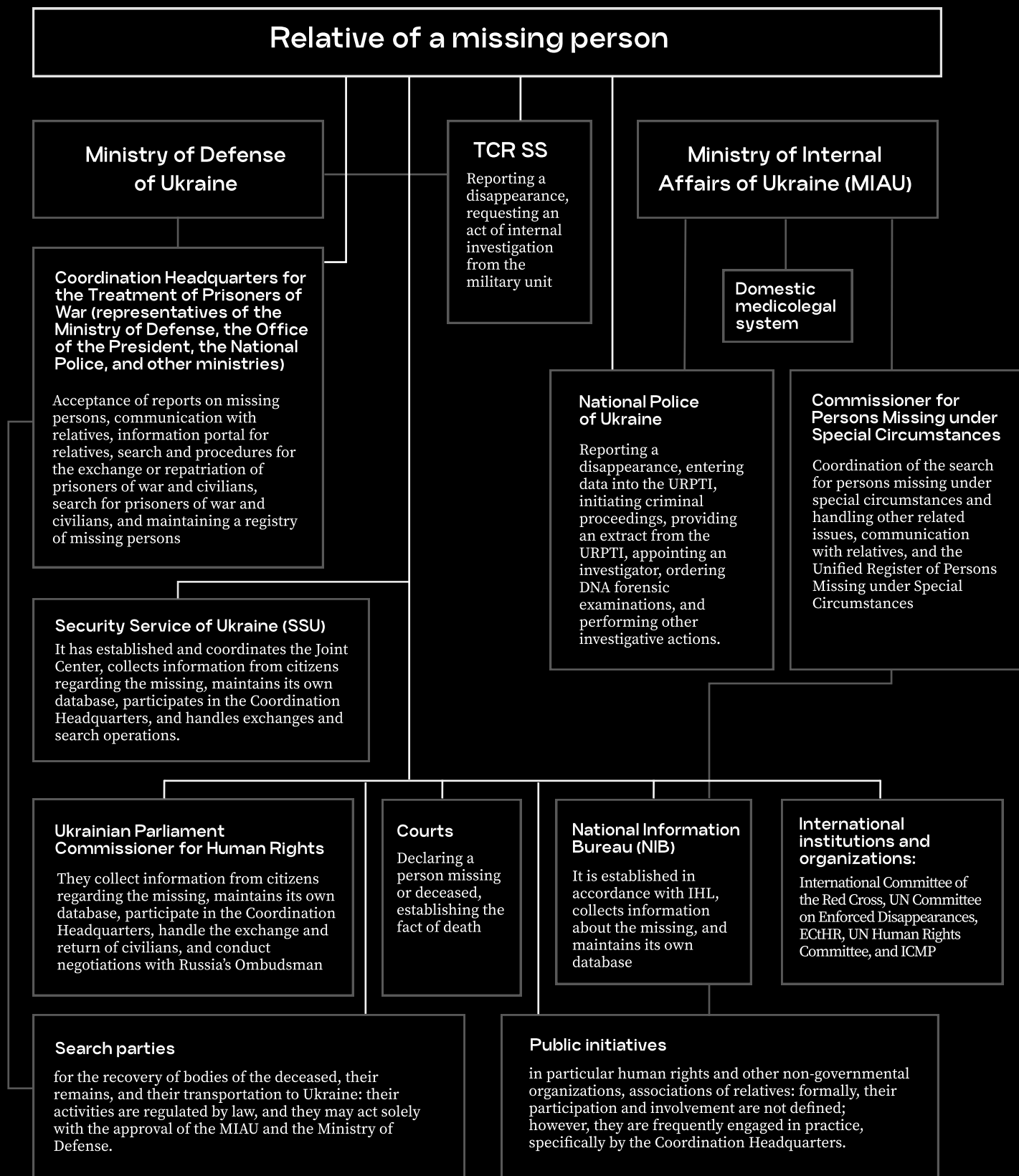
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19. On the Designation of the State Enterprise Performing the Functions of the National Information Bureau. Order No. 228-r dated 17 March 2022 URL: <https://www.kmu.gov.ua/npas/pro-viznachennya-derzhavnogo-pidpriyemstva-yake-vikonuye-funkciyi-nacionalnogo-informacijnogo-byuro-228->





# System of Authorities Dealing with Missing Persons



## 2.3. How the mechanism works in practice: a perspective from the relatives of the missing

In practice, a relative of a missing person, or another interested individual, or anyone who has become aware of the disappearance must take several critical steps. Notably, some of these steps involve providing the same information to different entities<sup>20</sup>.

Specifically, they must contact:

1. The Police, to institute a criminal investigation;
2. The Territorial Center for Recruitment and Social Support (TCR SS) and the military unit to obtain the internal investigation report regarding the circumstances of the disappearance;
3. The National Information Bureau (NIB), established in accordance with the Geneva Conventions<sup>21</sup>, in order to submit a notification of disappearance;
4. The Coordination Headquarters for the Treatment of Prisoners of War<sup>22</sup> to open and update a personal user profile;
5. The Security Service of Ukraine<sup>23</sup>, to submit an application for the search of a missing relative;
6. The International Committee of the Red Cross <sup>24</sup>to submit an application to search for the missing person or to establish their status as a prisoner of war;
7. The Commissioner for Persons Missing under Special Circumstances (MIAU)<sup>25</sup> to obtain an extract from the Register and for further communication.

Thus, it is necessary to provide virtually identical information to five state authorities and one international organization. Furthermore, the recommendations include contacting the UN Working Group on Enforced or Involuntary Disappearances to submit a disappearance report and a search request.

In accordance with the Law on Missing Persons and criminal procedural legislation, the police should be contacted first.

- It is necessary to contact the relevant territorial body of the National Police of Ukraine (NPU) and submit a report on the missing person and apply for their search.
- Afterwards, it is necessary to obtain an extract from the Unified Register of Pre-Trial Investigations (URPTI), which will specify the criminal proceeding number and the designated police investigator handling the criminal case (this process can be significantly delayed due to periodic changes of investigators and the transfer of cases).
- In accordance with the investigator's ruling, biological specimen must be collected and a forensic examination performed to isolate a DNA profile (for relatives).
- Constant communication with the investigator must be maintained, and they should be immediately informed of any new facts that come to light in the case.
- The applicant should personally closely monitor the progress in the case involving their missing relative, especially after biological material is collected to create the DNA profile.

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20. See the algorithm of actions for relatives of missing persons prepared by the Center for Civil Liberties. URL: [https://ccl.org.ua/wp-content/uploads/2024/09/instrukciya\\_bevisty\\_znykli.pdf](https://ccl.org.ua/wp-content/uploads/2024/09/instrukciya_bevisty_znykli.pdf)

21. How to Act And Where to Turn If a Person Has Gone Missing. 25 October 2022. URL: <https://nib.gov.ua/news/yak-diyati-i-kudi-zvertatis-yaksho-lyudina-znikla/>

22. Submit information about a prisoner of war or a missing person. URL: <https://koordinatsiya.gov.ua/submit-information>

23. Notification form URL: <https://docs.google.com/forms/d/e/1FAIpQLScCpF9IMFayFWVH3gABn4fR6iIlPnX81rw93tFtV6PqrzeOtQ/viewform>

24. How to submit a request to the ICRC to find a relative: providing answers to families. 1 February 2024. URL: <https://blogs.icrc.org/ua/2024/02/korysna-informatsiia/poshuk-znykli-bezvisty-chervoniy-hrest-2022/>

25. Single window for citizens. URL: <https://services.mvs.gov.ua/services?q=&category=%D0%90%D0%BD%D0%BA%D0%B5%D1%82%D0%B0>

Furthermore, in the event of a servicemember going missing, the applicant must apply in writing to the Territorial Center for Recruiting at the applicant's place of residence to be issued a notification of the person's disappearance. In many cases, the TCR SS would inform the relatives of the disappearance and issue the corresponding notification immediately. However, subsequently, they must apply in writing to the military unit to which the servicemember was assigned to be served with a copy of the internal investigation report.

In the event that the TCR SS refuses to accept such an application, the applicant should notify the Regional Coordinator of the Commissioner (hereinafter the Regional Coordinator) at their place of residence thereof. If the internal investigation report is not received within 30 calendar days from the date when the application was submitted to the TCR SS, a written application for the issuance of the internal investigation report must be filed with the General Staff of the Armed Forces of Ukraine.

Should the TCR SS refuse to forward inquiries to the relevant military units, including those of the SBGS, the NGU, or the TDF, or decline to issue notifications regarding missing servicemembers, the applicant should submit a written request demanding that the necessary actions be taken. The application should be executed in duplicate: one copy should be submitted to the TCR SS, and the applicant must request that a stamp acknowledging receipt of the application be affixed to the second copy. Should the TCR SS refuse to accept such an application, they should demand to be served with a written refusal to accept the application, specifying the reasons for the refusal. Upon receiving a written refusal, they should contact a higher-level TCR SS or the General Staff of the Armed Forces of Ukraine. The written refusal should also be provided to the Regional Coordinator<sup>26</sup>.

In practice, such a system is extremely inconvenient for an individual who is forced to report the same information to various government authorities. This system is also difficult to navigate; it appears confused, making it hard for a person to understand where to receive updates regarding their case. Most people possess neither the knowledge nor the skills to navigate all these stages of communication with different authorities, all while being in a state of high stress after receiving news that a loved one is missing.

The report prepared by the ZMINA Human Rights Center and the Media Initiative for Human Rights (MIHR)<sup>27</sup> also gave examples of how ineffective the system is by providing numerous interviews with relatives of missing persons who spoke about the challenges they faced while searching for their loved ones. The study highlights the following challenges:

insufficient communication with the public on the part of the vast number of government authorities handling this matter;

another redistribution of functions and the existence of functions not covered by responsible bodies following the establishment of the Commissioner within the MIAU; and

the excessive workload of investigators.

This mechanism also appears problematic for the authorities themselves, who essentially duplicate each other's activities. It is challenging to discern who formulates government policy and who is responsible for implementing it, and with regard to which issues. Consequently, it is difficult to figure out who is in charge of these activities and where to complain if no action is taken on one's case. Despite the existence of the legislative provision mandating a URMP, virtually every agency maintains its own register or database, while feedback to relatives remains extremely poor.

The search for missing persons is one of the areas of activity of the Center for Civil Liberties. Through our cooperation with the families of the missing, we are able to highlight in this material the problems that relatives encounter when attempting to search for and ascertain what happened to their loved ones within the current legal framework.

For instance, in one specific case, three different investigators were assigned over the course of a year at the location of the disappearance. In fact, none of them have communicated with the relative of the missing servicemember in any way, failing to explain the rights and procedural

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26. For more information, please visit <https://gutszn.kr-admin.gov.ua/2010-05-20-15-12-08/3579-2023-04-27-09-08-40>

27. How Ukraine Searches for Persons Missing Due to Russia's Aggression and Supports Their Family Members. Analytical Report. Syniuk, O.; Lunova, O., Bieliachkova, O. (eds.). Kyiv, 2024. For more information, please visit [https://zmina.ua/wp-content/uploads/sites/2/2024/07/znykli\\_bezvisty\\_a4\\_ua-preview.pdf](https://zmina.ua/wp-content/uploads/sites/2/2024/07/znykli_bezvisty_a4_ua-preview.pdf)

options available to the applicant. In particular, relatives have complained: *“Until you find out the duties of the investigators yourself: interrogating witnesses, inquiring about DNA, the resolution on victim status, etc., the investigator will not budge.”*

Each time, relatives must independently find out who is handling the case, and as soon as they manage to establish some form of communication with a specific investigator, the latter is replaced once again.

It should be specifically mentioned that families who have, unfortunately, faced the problem of a relative going missing due to the war, ask a rather logical question:

*“How does the National Police of Ukraine participate in the search for the missing if the investigators have 500–800 cases each, and they do not personally travel to the frontline?”*

The following facts became known about a specific brigade.

*“The DNA was lost. The investigator is not responding to requests to submit DNA. I won’t even mention the activities of the military unit. Until we started shouting in the literal sense of the word, .... XXX<sup>28</sup> did not believe us that the military unit was not interacting with the families. Personal items and documents were not returned to the families. Only after we started shouting and writing a heap of appeals to the General Staff and the Ministry of Defense did the military unit begin returning personal items. It was a shock for the families when items were returned after a year.”*

In another specific case, it was stated that contact with the investigator was only established when motions were sent not only to the investigator in charge of the case but also to their procedural supervisor. Without such actions, contacting the case investigator was problematic.

This list can be supplemented with other issues that families of missing persons face within the current state search mechanism:

Investigators communicated with relatives in a rude manner, failing to provide any information regarding the case.

No internal investigation report was provided upon the request of the relatives.

Failures to conduct internal investigations into the disappearance of a servicemember.

Relatives were served with Internal Investigation Findings instead of an Internal Investigation Report. No document entitled “Internal Investigation Findings” is provided for under current legislation.

Motions and petitions have been ignored.

All communication with the investigator was reduced to a single phone call, with complaints from him (the investigator).

Repeated DNA testing was required, but was not assigned immediately upon the need arising, but on a first-come, first-served basis, which again significantly complicated and prolonged the process.

Investigators were replaced weekly.

The investigator failed to contact the military unit. As a result, relatives obtained everything themselves and personally delivered it to the investigator.

Investigators fail to investigate cases, citing wartime. The only response is “wait”.

Repeated instances where, after 12 (or more) months, the investigator has never contacted the relatives of the missing servicemember.

A servicemember listed as missing has already been declared by the aggressor state and the International Committee of the Red Cross (ICRC) as a prisoner of war, yet remained listed as missing in his military unit.

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28. Depersonalized.

When asked: “How are you investigating?”, the response was: “We aren’t, because those territories are currently occupied by Russia”.

A quote from an investigator’s response: “I’m not going to go look for your husband myself. Contact other organizations.”

It should also be emphasized that there is positive feedback from the families of missing persons about the work of investigators, including the level of their communication with families.

However, even with a positive assessment of the investigators’ actions, relatives understand that none of the investigators are in a position to actually search for their loved one.

It must be stressed that the list of challenges in the operation of the existing legal mechanism for searching for missing persons is not exhaustive.

## 2.4. Search for Missing Persons

In accordance with the Law on Missing Persons, a search party means a humanitarian mission established by authorities mandated to register and/or search for persons missing under special circumstances, as well as to perform other functions related to the implementation of this Law, organizations, and/or individuals, aimed at searching for persons missing under special circumstances and their remains, locating and documenting burial sites of persons missing under special circumstances, exhuming bodies (remains) of deceased (fallen) persons, and transporting their remains.

This means that both government authorities and private organizations or groups may establish search parties; however, these activities must always be agreed with the MIAU and the Ministry of Defense.

Only those official search parties may collect information (records, data), human remains, and other materials in coordination with the National Police of Ukraine (NPU). To this end, where necessary and with the permission of the central executive body responsible for implementing state policy in the field of compliance with international humanitarian law throughout the territory of Ukraine (which, according to CMU Resolution<sup>29</sup> No. 975 of 12 September 2023, is the MIAU), search parties have the right to establish contact with legal entities and individuals in the temporarily occupied territories of Ukraine.

In accordance with the Procedure<sup>30</sup> for the Formation and Activity of Search Parties for Persons Missing under Special Circumstances, approved by CMU Resolution No. 511 of 29 April 2022, search parties are authorized to:

1. subject to approval by the National Police, collect information, bodies (remains), items, and documents;
2. by decision of the Head of the Coordination Headquarters, establish contacts with legal entities and individuals in the temporarily occupied territories of Ukraine;
3. involve citizens, representatives of public associations, and private law legal entities — with their consent — who possess information that may facilitate the search for a person missing under special circumstances, or knowledge and experience required for conducting work (providing services) related to the search, exhumation of bodies (remains) of deceased (fallen) persons, and their removal (transportation).

During search operations, these groups must cooperate with pre-trial investigation bodies (investigators) and operational units involved in search activities.

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29. Resolution of the Cabinet of Ministers of Ukraine No. 975 dated 12 September 2023. URL: <https://zakon.rada.gov.ua/laws/show/975-2023-%D0%BF#Text>

30. Procedure for the Formation and Activity of Search Parties for Persons Missing under Special Circumstances. URL: <https://zakon.rada.gov.ua/laws/show/511-2022-%D0%BF#n50>



Additionally, according to Part 5 of Article 6 of the Law on Missing Persons:

- Citizens, public associations, and private law legal entities may, with their consent, be involved by the National Police of Ukraine in the search for persons missing under special circumstances.
- Citizens, public associations, and private law legal entities, on their own initiative and in coordination with the National Police of Ukraine, may participate in the search for persons missing under special circumstances and provide assistance and support to the bodies of the National Police of Ukraine in the search for such persons in any manner not prohibited by law.
- Citizens, public associations, and private law legal entities participating in the search for persons missing under special circumstances have the right to receive from state authorities information on the person missing under special circumstances, the recommended route and search area, and any other information that may facilitate an effective search for the person missing under special circumstances, excluding data obtained from investigative actions or law enforcement operations.

## 2.5. DNA Analysis

collection of biological material samples and commissions an examination to isolate a DNA profile. Therefore, only the investigator in a specific case may commission the examination. The examination is free of charge. Biological specimens may be collected directly at the departments of a forensic medical laboratory upon the instruction of a person authorized to act within the framework of legal proceedings, i.e., the investigator, or by a court order<sup>31</sup>. However, as the analytical report prepared by the MIHR reveals, in most cases, biological material is collected at the police station where the relatives submit their report on the disappearance of their relative<sup>32</sup>.

Currently, in Ukraine, DNA samples can only be collected from biological relatives: the parents or children of the missing person. Forensic medical experts collect samples of the deceased and transfer them for processing to the State Scientific Research Forensic Center of the MIAU of Ukraine. It is there that the DNA profile is isolated. After that, the relative's DNA profile is also entered in the database of human genetic characteristics, where the victim's and relatives' DNA profiles are compared automatically (in the Electronic Register of Human Genomic Information<sup>33</sup>). If a match is found, the authority that ordered the examination and is conducting the pre-trial investigation must be informed thereof. Next, the relatives of the deceased person are also notified thereof<sup>34</sup>.

The results of the forensic medical examination are executed in the form of an expert opinion and forwarded to the investigator who commissioned it<sup>35</sup>.

Additionally, it should be noted that a repeated DNA examination is possible.

If a DNA match is found, genetic material can be repeatedly collected under the following circumstances:

While identifying the body, clear discrepancies were observed between the appearance and physical characteristics of the missing person and the details recorded in the unidentified person's file.

The percentage of the match is very low.

The previously collected sample of genetic material has been lost.

There's no way to get a re-examination done on one's own initiative. To do so, one must contact the investigator, who will order a re-collection of biological samples and assign an examination to extract the DNA profile<sup>36</sup>.

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31. For more information, please visit <https://moz.gov.ua/uk/jak-prohodit-dnk-ekspertiza-dlja-poshuku-zagiblih-ta-zniklih>

32. MIHR Analytical Report: "How to Accelerate the Identification of Those Killed or Missing in the War." *Media Initiative for Human Rights*. URL: <https://mipl.org.ua/yak-pryshvydshyty-identyfikacziyu-zagyblyh-znyklyh-bezvisty-na-vijni/>

33. Ibid.

34. For more information, please visit <https://moz.gov.ua/uk/jak-prohodit-dnk-ekspertiza-dlja-poshuku-zagiblih-ta-zniklih>

35. How to find deceased and missing relatives using DNA forensic examination? URL: <https://www.pereselenci.kh.ua/?p=3795>

36. For more information, please visit <https://minre.gov.ua/2023/03/19/za-yakyh-umov-mozhlyva-povtorna-dnk-ekspertyza-znyklyh-bezvisty/>

In the MIHR analytical report<sup>37</sup>, the following problems faced by relatives of missing persons during the DNA forensic examination were identified:

**A large number of deceased or missing persons and a shortage of forensic agencies.** In Ukraine, there is a state monopoly on the services of forensic institutions. To date, 25<sup>38</sup> institutions of the MIAU Expert Service conduct DNA research. After regional laboratories have created DNA profiles from post-mortem samples, these results are forwarded to the central laboratory in Kyiv. The problem is that this scheme was designed for peacetime and is capable of processing only a small volume of data. In wartime, when hundreds of victims must be identified every week, the system is overloaded.

**A shortage of fully equipped laboratories.** To date, there are only 13<sup>39</sup> fully equipped DNA research laboratories in the entire country capable of handling any biological material, including samples from living persons, bones, and the remains of fallen soldiers. These laboratories are accredited under the ISO 17025 standard. At the same time, there is a shortage of DNA testing reagents, as well as of personnel trained to perform these tasks.

**A shortage of experts.** To date, only 240 experts are employed within the framework of the State Scientific Research Forensic Center (hereinafter SSRFC) in Ukraine<sup>40</sup>. Each expert performs 35–40 examinations per month. A single examination lasts from several days to several weeks, depending on the integrity of the body. One center can receive up to 300 examination requests per day. Currently, according to an SSRFC representative, these experts have 12,000 examinations pending. Training new experts is a complex and lengthy process; experts must have appropriate qualifications and undergo specialized training.

**Many remains require long-term, complex examinations.** Some remains require lengthy examination either because they are in poor condition, or they may be the remains of different people who were together at the time of death or were transported together.

As suggested in the analytical report, experts experienced in searching for missing persons in other countries, particularly in the post-war period, could assist in dealing with the timely and high-quality processing of large volumes of DNA material<sup>41</sup>. However, the government currently envisions no progress in this direction.

Among the problems faced by relatives in the process of searching for missing persons, the following should be highlighted:

- Loss of DNA materials before they even reach the laboratory.
- Violations of biomaterial collection rules, committed most often by the investigators themselves at police stations. Sometimes the responsibility for collecting biomaterial is placed on the relatives, who do not fully understand how to do it correctly. As a result, the quality of the analysis decreases.
- Challenges with labeling, storage, transportation, and protection of the collected DNA samples and documenting, as well as documenting the actions taken with regard to them (the accompanying procedural note).
- Investigators fail to send biological material to experts in a timely manner, causing samples to spoil and forcing relatives to resubmit DNA material, which unjustifiably prolongs the entire process.
- Loss of DNA information during its transfer between investigators at the regional or district levels, or between different regions.

Excessive workload of investigators, which sometimes prevents them from tracking the progress of a case, and things come to a standstill. Under such circumstances, relatives are forced to resubmit

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37. MIHR Analytical Report: “How to Accelerate the Identification of Those Killed or Missing in the War.” *Media Initiative for Human Rights*. URL: <https://mipl.org.ua/yak-pryshvydshyty-identyfikacziyu-zagyblyh-znyklyh-bezvisty-na-vijni/>

38. As of March 2025.

39. As of March 2025.

40. As of March 2025.

41. MIHR Analytical Report: “How to Accelerate the Identification of Those Killed or Missing in the War.” *Media Initiative for Human Rights*. URL: <https://mipl.org.ua/yak-pryshvydshyty-identyfikacziyu-zagyblyh-znyklyh-bezvisty-na-vijni/>

DNA samples. To prevent this, relatives should monitor how the case is progressing and stay in permanent contact with the investigator.

There are instances where unidentified servicemembers are buried as unknown. When the DNA of their living relatives is eventually entered into the database, subsequent forensic examination requires the exhumation of the servicemember's body. This causes severe psychological suffering for the relatives.

Verifying and processing DNA data and entering it into the Register is a lengthy process. At the same time, relatives of the missing observe that these actions are often untimely and inadequate. For instance, MIHR is aware of cases where DNA examinations lasted 10–12 months, even though the relatives identified the deceased immediately after the bodies were returned from Russian captivity.

As MIHR experts note, to relieve the pressure on a system facing an unprecedented surge in requests for testing, it is worth accepting assistance from institutions, international organizations, and other states for DNA testing<sup>42</sup>, i.e., permitting testing to be carried out at other facilities for this purpose.

Kathryne Bomberger, Director-General of the International Commission on Missing Persons (hereinafter ICMP), in her interview<sup>43</sup> of 31 May 2024, mentioned the following problems:

1. A shortage of DNA experts and laboratories, given the scale of the conflict.
2. Interaction between institutions requiring the coordinated work of all authorities involved in the process.
3. Evidence must be collected in accordance with international law so that it can be used in courts in the future.
4. The Unified Register needs improvement to look similar to, for example, the ICMP identification data management system.
5. Everyone needs to coordinate their work so that each institution collects data in accordance with standards. This is precisely where Ukraine needs international partners.
6. There must be a structure in which the families of the missing serve as an official advisory body. They also need to be able to regularly communicate with the government and know at what stage their cases are.
7. Russia lacks the proper political will to preserve the bodies of the deceased and their remains in accordance with international standards and to ensure their timely transfer<sup>44</sup>.

To date, government authorities, taking advantage of this situation, have been requesting technical assistance from international organizations and other countries to re-equip existing laboratories, which is a positive step. However, this does not solve the problem as demand for DNA examinations is substantially higher. An obvious step forward should be establishing procedures enabling the conduct of these examinations in the certified laboratories of other countries or international organizations. It is also worth reconsidering the state monopoly on forensic services and opening this sector to private companies. Furthermore, in our conviction, Ukraine's legal recognition of ICMP's official activities in our country would be an appropriate step.

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42. Ibid.

43. For more information, please visit <https://suspilne.media/761249-gendirektorka-miznarodnoi-komisii-z-pitan-zniklih-bezvisti-pro-edinij-reestr-analiz-dnk-ta-rozsliduvanna-sprav/>

44. For more information, please visit <https://suspilne.media/761249-gendirektorka-miznarodnoi-komisii-z-pitan-zniklih-bezvisti-pro-edinij-reestr-analiz-dnk-ta-rozsliduvanna-sprav/>

## 2.6. Challenges in Investigating Criminal Proceedings Involving Missing Persons

A large challenge in itself is the fact that it is the National Police of Ukraine that is authorized to search for persons missing under special circumstances, and all the required actions are the burden that falls on investigators. The overwhelming workload is essentially placed on the investigator, who simultaneously investigates hundreds or thousands of other criminal cases and lacks the time to fully dedicate themselves to specific cases. This practice often paralyzes the search system, as investigators may change, and they lack the time to perform potential investigative actions. These investigations are typically quite difficult to conduct as objectively, there's no access to the bodies of the deceased or their remains, as these are located in areas of active hostilities or temporarily occupied territories, making it impossible to perform any search or investigative actions.

It is important to stress that **people often disappear for reasons other than crimes**. For example, it is so in a situation where a servicemember is killed in hostilities, and all the required data (time, place, circumstances) are definitely known, but no investigative actions or body recovery can be performed. In such a situation, a criminal investigation may be necessary in certain specific cases — for instance, if the death occurred as a result of a violation of the laws and customs of war. The current procedure mandates that criminal proceedings be instituted whenever a servicemember goes missing in hostilities, which excessively overloads the national system and is not necessary. Furthermore, such criminal proceedings cannot be closed even if it is established that the person did not die as a result of a crime — it would only be possible once the body or remains of the missing person are found. In effect, the criminal proceedings in this situation are serving a purpose beyond their intended scope: the search for a missing person, rather than the search for and identification of a guilty party.

The Parliamentary Commissioner for Human Rights of Ukraine clarified that, “*in every instance of disappearance, abduction, or capture, the pre-trial investigation body initiates criminal proceedings*”<sup>45</sup>.

On the one hand, the state has positive procedural obligations regarding the right to life: it must conduct a prompt, independent, and proper investigation into deprivation of life. As previously noted, those investigations face many difficulties and, in practice, are most often simply not conducted. In essence, what investigators mostly do as a standard is order a DNA examination and the collection of samples for it, as well as occasionally obtain data from telecommunications operators on how the missing person used their phone. However, this objective is not always identical to the goal of searching for a missing person. It is evident that if a criminal investigation finds no elements of a crime in the circumstances surrounding a person's disappearance, then the criminal investigation should be closed.

On the other hand, searching for the missing requires much more proactive actions, while the criminal procedure does not provide for them. In fact, the search is burdened by the formalistic nature of the criminal procedure.

Both national and international law stipulate that the conditions for the status of a combatant of a belligerent party are set out in Article 4 of the Geneva Convention (III)<sup>46</sup> and Article 43 of Additional Protocol I to the Geneva Conventions<sup>47</sup>. According to these, combatants enjoy special immunity in respect of lawful military actions — the participation of combatants in an armed conflict per se, as well as the killing of combatants of the opposing party in compliance with the provisions of international humanitarian law, do not constitute criminal acts and cannot be prosecuted. The separate opinion of the judges on the resolution of the Grand Chamber of the Supreme Court dated 28 February 2024, case No. 415/2182/20, argues that,

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45. The Ombudsman Provides Information on DNA Forensic Examinations to Search for the Missing and Identify the Deceased. 17 February 2023. URL: [https://ombudsman.gov.ua/news\\_details/ombudsman-nadaye-informaciyu-shchodo-provedennya-dnk-ekspertizi-dlya-poshuku-zniklih-bezvisti-ta-identifikaciyi-zagiblih?fbclid=IwY2xjawGz1aoBHWvYRZrwYWop-UzpUOmUbGar2uNllhaQ2P45Gb-CGNHz-LIvlyt6r1FP3g](https://ombudsman.gov.ua/news_details/ombudsman-nadaye-informaciyu-shchodo-provedennya-dnk-ekspertizi-dlya-poshuku-zniklih-bezvisti-ta-identifikaciyi-zagiblih?fbclid=IwY2xjawGz1aoBHWvYRZrwYWop-UzpUOmUbGar2uNllhaQ2P45Gb-CGNHz-LIvlyt6r1FP3g)

46. Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949. URL: [https://zakon.rada.gov.ua/laws/show/995\\_153#Text](https://zakon.rada.gov.ua/laws/show/995_153#Text)

47. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977. URL: [https://zakon.rada.gov.ua/laws/show/995\\_199#Text](https://zakon.rada.gov.ua/laws/show/995_199#Text)



*“Article 43 of the Additional Protocol to the Geneva Conventions... provides that combatants have the “right to participate directly in hostilities,” meaning they have the right to use lethal force against valid military targets. As a logical extension of this right, combatants must be granted immunity from national prosecution for acts, including violent ones, committed in compliance with international humanitarian law, even if they constitute crimes under national law”<sup>48</sup>.*

*A similar position has been expressed by representatives of the Supreme Court: “...the right of a combatant to participate directly in hostilities entails immunity from prosecution for lawful military actions. At the same time, combatants do not have such immunity in respect of violations of international humanitarian law: violations of the laws and customs of war, or crimes against protected persons”<sup>49</sup>.*

Therefore, it can be argued that opening criminal proceedings and conducting further investigation is required only where there is evidence of probable war crimes or crimes against humanity committed by combatants, but certainly not in every known instance of a person's disappearance during a special period. In effect, investigators have just been saddled with additional paperwork, although, for objective reasons, they are unable to perform search or investigative actions.

The greatest difficulty here lies in understanding the fact that when a servicemember goes missing in action while performing a combat mission, several outcomes may arise.

1. In the first scenario, other servicemembers may monitor the course of direct hostilities via surveillance drones, providing video recording of the entire sequence of events. In such a situation, it can be asserted with a high degree of probability that evidence shows that the servicemember went missing in action, and that while it is impossible to recover the body or remains, there is an understanding that no crime was committed against that servicemember.
2. Or, such a servicemember was taken captive without other violations, yet what happened to them later remains unknown, potentially until the moment they are declared a prisoner of war by the ICRC. Nevertheless, the state has an obligation to conduct an investigation and find evidence as to whether other crimes were committed against that servicemember in captivity and to hold the perpetrators accountable. This function more clearly demonstrates the direction and ultimate goal of criminal investigations.
3. In the next scenario, given the absence of specific evidence and information — for example, video from a surveillance drone — it cannot be asserted that no other crime, such as a violation of the laws and customs of war or other offenses, has been committed against that servicemember, in the course of transition into enemy captivity.

Therefore, for the second and third scenarios, it can be argued that the state has an obligation to conduct a proper investigation to establish all facts and, if necessary, hold the perpetrators accountable. However, it should also be noted that in wartime, the scale of such investigations is excessive for the national investigative mechanism, not to mention the fact that it is simply impossible to carry out such investigations beyond the mere institution of criminal proceedings.

It should also be added that the majority of criminal proceedings involving missing persons, which currently number approximately 156,000 (for the period from 24 February 2022 to the present), are opened under Article 115 (Premeditated Murder) of the Criminal Code of Ukraine<sup>50</sup> with the “missing” note. Subsequently, upon receiving reliable information from various government bodies involved in the search processes, the criminal case is reclassified under Article 438 (War Crimes) of the Criminal Code of Ukraine, as Russia systematically violates the standards of treatment of prisoners of war and civilians in captivity. This situation creates an even greater burden on the existing investigative mechanism and complicates it further. Specifically, reclassification from Article 115 to Article 438 of the Criminal Code of Ukraine changes, under Article 216 of the Criminal

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48 Separate opinion of the judges on the resolution of the Grand Chamber of the Supreme Court dated 28 February 2024, in case No. 415/2182/20. URL: <https://reyestr.court.gov.ua/Review/117721706>

49 Nadiia Stefaniv, Supreme Court Judge, Has Analyzed the Status of Combatants And Civilians Protected by International Law. 1 March 2023. Electronic resource: Judiciary of Ukraine. URL: <https://supreme.court.gov.ua/supreme/pres-centr/news/1389139/>

50 Criminal Code of Ukraine. URL: <https://zakon.rada.gov.ua/laws/show/2341-14/conv#n927>



Procedure Code<sup>51</sup> of Ukraine, the investigative jurisdiction, so that the case is transferred from an NPU investigator to an SSU investigator.

For a better understanding of the issue, the latest statistical data on missing persons can be mathematically compared. In total, since the beginning of the full-scale invasion, approximately 191,763 war crimes have been registered in Ukraine<sup>52</sup>. According to public data, as of 29 August 2025, details of about 70,000 people have been entered into the Unified Register of Persons Missing Under Special Circumstances. Currently<sup>53</sup>, about 69,430 criminal proceedings involving missing persons are open in Ukraine, assigned to about 1,321 investigators from the National Police of Ukraine, as well as to the specialized regional centers for the search for persons missing under special circumstances, through which additional investigative resources have been allocated to the ongoing search process.

As of 26 March 2025, 9,739 cases were reported where it was established that a person considered missing under special circumstances was alive<sup>54</sup>. In fact, in the three years following Russia's full-scale aggression against Ukraine, the national legal investigative mechanism has been able, under increased workload, to more or less effectively process about 1/6 of all persons whose data are entered into the Unified Register of Persons Missing Under Special Circumstances. However, it should also be remembered that the real figures and the number of people missing due to Russia's aggression against Ukraine are significantly larger.

## 2.7. Internal Investigations Involving Missing Persons

Relatives often face problems while attempting to obtain the report of the military unit's internal investigation into the disappearance of a servicemember. This document is extremely important, as it may contain a first-hand description of the circumstances of the disappearance, of critical importance in the future for the search for the missing person and for their relatives.

This issue is governed by the Law of Ukraine "On the Disciplinary Statute of the Armed Forces of Ukraine"<sup>55</sup> and the Order of the Ministry of Defense of Ukraine dated 21 November 2017, No. 608 "On the Approval of the Procedure for Conducting Internal Investigations in the Armed Forces of Ukraine"<sup>56</sup>. However, national law establishes requirements for internal investigations only in the Armed Forces of Ukraine, while other military structures, such as the National Guard of Ukraine, the State Border Guard Service, and the SSU, remain outside the scope of this obligation. Such legal inconsistency creates problems for the relatives of the missing, as some military units do not conduct internal investigations at all, or conduct them in violation of deadlines or with other irregularities, or have no obligation to inform relatives of the investigation's results.

Specifically, in the former Order of the Minister of Defense of Ukraine dated 15 March 2004, No. 82, "On the Approval of the Instruction on the Procedure for Conducting Internal Investigations in the Armed Forces of Ukraine"<sup>57</sup>, the last paragraph of clause 1.3 provided for a number of administrative actions in the event that the immediately responsible person failed to conduct an internal investigation, unlike the current order, which lacks such specification. For instance, the decision of the Kharkiv District Administrative Court in case No. 520/8922/24<sup>58</sup> dated 4 February 2025, provided more practical details about this issue. It is about the wife of a missing servicemember who challenged the unlawful failure to decide on the allowance payment and illegal refusal to be

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51. Criminal Procedure Code of Ukraine. URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text>

52. According to the Office of the Prosecutor General of Ukraine, as of 8 October 2025: <https://gp.gov.ua/>

53. As of March 2025.

54. Materials of the Human Rights Club Session "Search for Missing Persons: Challenges, Solutions, International Experience," organized and held by the Center for Civil Liberties on 26 March 2025.

55. Law of Ukraine "On the Disciplinary Statute of the Armed Forces of Ukraine." URL: <https://zakon.rada.gov.ua/laws/show/551-14#Text>

56. Order of the Ministry of Defense of Ukraine No. 608 of 21 November 2017 "On Approval of the Procedure for Conducting Internal Investigations in the Armed Forces of Ukraine." URL: <https://zakon.rada.gov.ua/laws/show/z1503-17#Text>

57. Order of the Minister of Defense of Ukraine No. 82 of 15 March 2004 "On Approval of the Instruction on the Procedure for Conducting Internal Investigations in the Armed Forces of Ukraine." URL: <https://zakon.rada.gov.ua/laws/show/z0385-04#Text>

58. Decision of the Kharkiv District Administrative Court in case No. 520/8922/24 dated 4 February 2025. URL: <https://reyestr.court.gov.ua/Review/124945606>

served with a portion of the internal investigation report containing no restricted information.

It is necessary to pay attention to recent legislative changes that abolish the mandatory requirement for an internal investigation into the fact of a servicemember's death, capture, or disappearance<sup>59</sup>. These new amendments make the key document the commander's notification of the event; using a new form<sup>60</sup>, they must indicate information based on an exhaustive list regarding the servicemember's death, capture, or disappearance. The new notification form provides for the following information:

**Background Information:**

- general details of the servicemember;
- contact information of the military unit;

**regarding the deceased, the following should also be specified:**

- place and date of death;
- cause of death and its connection to the performance of military service duties and the defense of the homeland;
- a characterization of the servicemember's fidelity to the Military Oath of Allegiance to the Ukrainian People;

**regarding those taken captive or held hostage, interned in neutral states, or missing in action, the following should also be specified:**

- the place, date, and circumstances of being taken captive or held hostage, interned in neutral states, or going missing in action;
- whether biological material was collected from the servicemember.

In addition, the commander of the military unit is required to issue a core activity order<sup>61</sup> based on the incident, including, in particular, the following:

**Background Information:**

- Whether the servicemember has left personal belongings, specifying the individuals to whom they will be returned, and the military unit official responsible for their return.
- Whether or not a service member has drawn up a personal will for the event of their death, and if so, who they have designated to receive a lump-sum payment; the name of the TCR SS to which the military unit has sent the original copy of the personal will.
- Whether there are any circumstances indicating that the death of the service member is not linked to the commission of a criminal or administrative offence by them, or is not the result of actions taken by them while under the influence of alcohol, drugs, or toxic substances, or of them intentionally causing bodily harm to themselves or committing suicide.

**for servicemembers taken captive or held hostage, interned in neutral states, or missing in action, the following should additionally be specified:**

- The personal number from the identification tag or the servicemember's personal record documents.
- Photos and/or videos of the location of disappearance (if available); the type, date, and time of the last contact with the servicemember.
- Actions taken to evacuate them or the impossibility of taking such actions.

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59. Instruction on the Organization of Personnel Records in the System of the Ministry of Defense of Ukraine, approved by the Order of the Ministry of Defense of Ukraine No. 280 dated 15 September 2022. URL: <https://zakon.rada.gov.ua/laws/show/z1407-22#Text>; Order of the Ministry of Defense of Ukraine No. 455 of 7 July 2025 "On Approval of Amendments to the Instruction on the Organization of Personnel Records in the System of the Ministry of Defense of Ukraine." URL: [https://ips.ligazakon.net/document/re44532?an=2&ed=2025\\_07\\_07](https://ips.ligazakon.net/document/re44532?an=2&ed=2025_07_07).

60. Annex 20. URL: [https://ips.ligazakon.net/document/re44532?an=28&ed=2025\\_07\\_07](https://ips.ligazakon.net/document/re44532?an=28&ed=2025_07_07)

61. Annex 21. URL: [https://ips.ligazakon.net/document/re44532?an=28&ed=2025\\_07\\_07](https://ips.ligazakon.net/document/re44532?an=28&ed=2025_07_07)

- Whether there are witnesses (eyewitnesses) to the circumstances of their capture, hostage-taking, or disappearance.
- Data of the subdivision and the military unit officials to be used while requesting law enforcement agencies to declare the person missing.

Furthermore, it should even be specified whether the death, capture, or disappearance was related to the unlawful behavior or actions of the servicemember themselves.

No reference is made anywhere to the internal investigation report among the mandatory components of the commander's notification; as a result, this document, which should be central to establishing the truth (for example, whether the commander issued a criminal order) and to the subsequent search for the missing person, is rendered ineffective. However, the Order of the Ministry of Defense of Ukraine dated 21 November 2017, No. 608 "On the Approval of the Procedure for Conducting Internal Investigations in the Armed Forces of Ukraine"<sup>62</sup> still remains the key document ordering that an internal investigation be carried out. It prescribes that "*non-performance or improper performance of service duties by a servicemember, or exceeding their authority, which led to human casualties or threatened the life and health of personnel or the civilian population, or caused material or moral damage*" shall be the grounds for an internal investigation in the Armed Forces of Ukraine<sup>63</sup>. In particular, a commander empowered to issue written orders and impose disciplinary sanctions on subordinates, or other officials, through the respective petition, shall decide on instituting an internal investigation<sup>64</sup>.

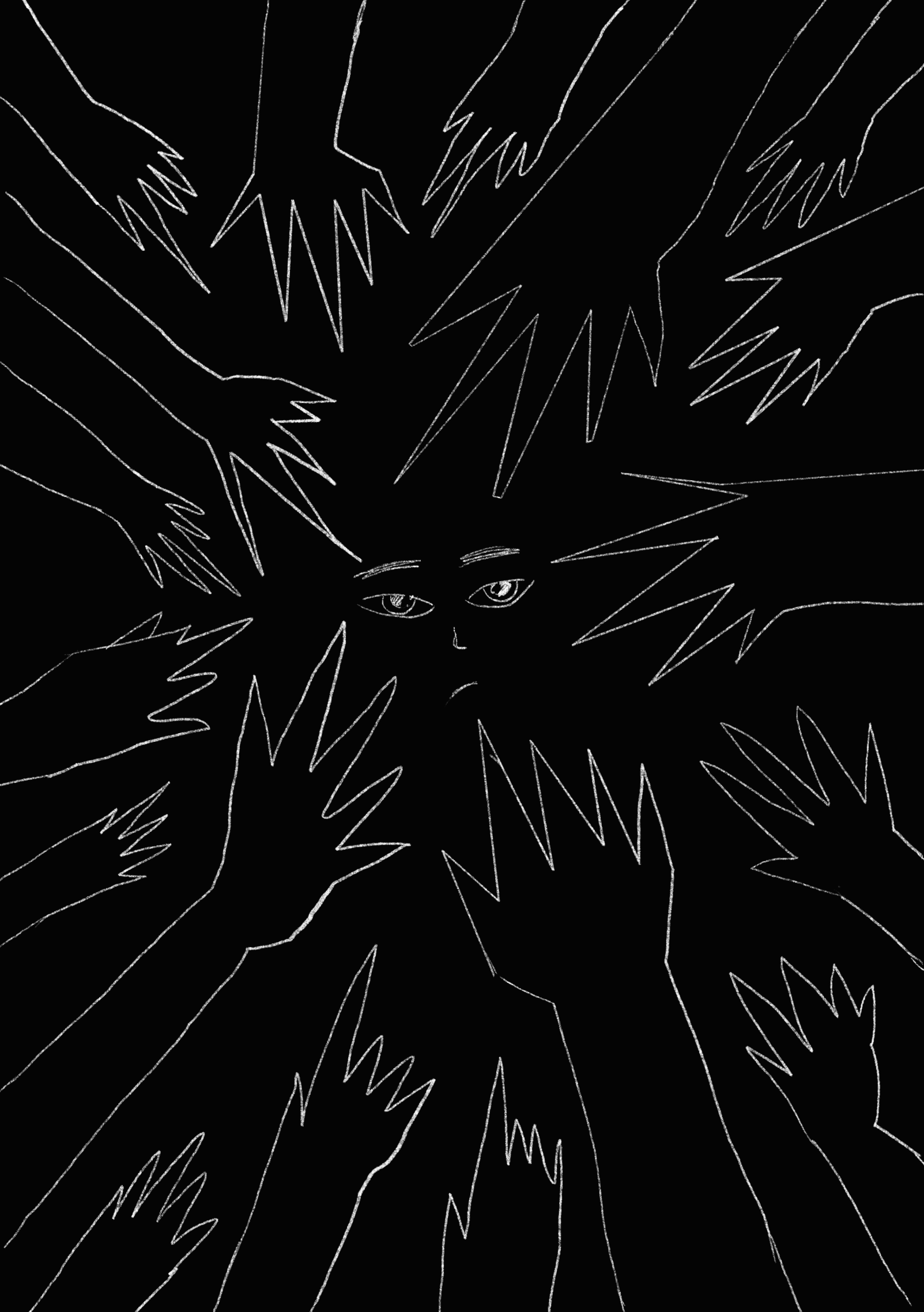
At the same time, this simplification may have a positive impact on the families of servicemembers who apply for social guarantees and payments, as well as provide more detailed information in the notification regarding the circumstances of the event, in contrast to the previous state of affairs. From now on, relatives will be able to receive more specific information about the event, time, place, and circumstances, as well as statements from direct witnesses (provided there were any), review photo and video materials related to the event, and get to know what has been done to evacuate the person or why such an evacuation was impossible. No less important is the identification of a specific responsible official who must apply to the NPU bodies to initiate criminal proceedings to investigate the disappearance, as well as the official responsible for returning the servicemember's personal belongings to their relatives.

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62. Order of the Ministry of Defense of Ukraine No. 608 of 21 November 2017 "On Approval of the Procedure for Conducting Internal Investigations in the Armed Forces of Ukraine." URL: <https://zakon.rada.gov.ua/laws/show/z1503-17#Text>

63. Para. 2, Clause 1, Section II of the Order of the Ministry of Defense of Ukraine No. 608 of 21 November 2017 "On Approval of the Procedure for Conducting Internal Investigations in the Armed Forces of Ukraine." URL: <https://zakon.rada.gov.ua/laws/show/z1503-17#Text>

64. Clause 1, Section III of the Order of the Ministry of Defense of Ukraine No. 608 of 21 November 2017 "On Approval of the Procedure for Conducting Internal Investigations in the Armed Forces of Ukraine." URL: <https://zakon.rada.gov.ua/laws/show/z1503-17#Text>





# III. INTERNATIONAL LAW



In international law, there is no legal definition of the term “missing person”<sup>65</sup>; therefore, the issue of missing persons must be considered through the lens of international customary law, international humanitarian law, international criminal law, and international human rights law. This comprehensive approach makes it possible to define more fully the scope of state obligations related to the right to life.

## 3.1. International Humanitarian Law

The 2005 study on customary International Humanitarian Law (hereinafter IHL) identified 161 rules<sup>66</sup>. Rule 117 is titled “Accounting for Missing Persons”:

*“Each party to the conflict must take all feasible measures to account for persons reported missing as a result of armed conflict and must provide their family members with any information it has on their fate”<sup>67</sup>.*

The obligation to account for missing persons corresponds to the prohibition of enforced disappearances (Rule 98<sup>68</sup>, as well as the International Convention for the Protection of All Persons from Enforced Disappearance<sup>69</sup>), the requirement to respect family life (Rule 105<sup>70</sup>), and the requirement to record all available information prior to the burial of the deceased (Rule 116<sup>71</sup>)<sup>72</sup>.

The Geneva Conventions provide for the establishment of Information Bureaus (a working title)<sup>73</sup>, the role of which is to centrally collect information on prisoners of war and civilians belonging to the adverse party, transmit such information to that party, and initiate investigations to account for missing persons. To fulfill this obligation, each party to the conflict must record information regarding the deceased and persons deprived of their liberty in any form.

Article 26 of the Geneva Convention (IV)<sup>74</sup> requires parties to a conflict to facilitate inquiries made by persons searching for relatives from whom they have been separated as a result of the conflict.

According to Article 33 of Additional Protocol I<sup>75</sup>, each party to the conflict must search for persons reported missing by the adverse party<sup>76</sup>. Similar obligations are established regarding the remains of the deceased (Article 34 of Additional Protocol I)<sup>77</sup>.

These rules originate from the right of families to know the fate of their missing relatives. This is interpreted from the provisions of Article 26 of the Fourth Geneva Convention<sup>78</sup>, according to which states must facilitate the conduct of searches at the request of family members separated as a result of an armed conflict.

The right of families to know the fate of their relatives is also confirmed by a series of resolutions adopted by international organizations and conferences. In paragraph 2 of the resolution adopted in 2002, the UN Commission on Human Rights reaffirmed “the right of families to know the fate of their relatives reported missing in connection with armed conflicts”<sup>79</sup>. The right of families to know the fate of their relatives is also affirmed by European Parliament resolutions (European Parliament

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65. Guidance notes national mechanisms for missing persons. Toolbox. ICRC, December 2024. P. 12

66. For more information, please visit <https://ihl-databases.icrc.org/en/customary-ihl>

67. For more information, please visit <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule117>

68. Rule 98 Enforced Disappearances. URL: <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule98>

69. International Convention for the Protection of All Persons from Enforced Disappearance. URL: [https://zakon.rada.gov.ua/laws/show/995\\_154#Text](https://zakon.rada.gov.ua/laws/show/995_154#Text)

70. Rule 105. The requirement to respect family life. URL: <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule105>

71. Rule 116. The requirement to record all available information prior to the disposal of the dead. URL: <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule116>

72. For more information, please visit <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule117>

73. In Ukraine, the National Information Bureau (NIB) was established to fulfill this requirement. URL: <https://nib.gov.ua/>

74. Article 26 of the Geneva Convention (IV) URL: [https://zakon.rada.gov.ua/laws/show/995\\_154#Text](https://zakon.rada.gov.ua/laws/show/995_154#Text)

75. Article 33 of Additional Protocol I. URL: [https://zakon.rada.gov.ua/laws/show/995\\_199#Text](https://zakon.rada.gov.ua/laws/show/995_199#Text)

76. Rule 116. The requirement to record all available information prior to the disposal of the dead. URL: <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule116>

77. Article 34 of Additional Protocol I. URL: [https://zakon.rada.gov.ua/laws/show/995\\_199#Text](https://zakon.rada.gov.ua/laws/show/995_199#Text)

78. Article 26 of the Geneva Convention (IV) URL: [https://zakon.rada.gov.ua/laws/show/995\\_154#Text](https://zakon.rada.gov.ua/laws/show/995_154#Text)

79. UN Commission on Human Rights Resolution 2002/60 Missing Persons. URL: <https://missingpersons.icrc.org/library/missing-persons-commission-human-rights-resolution-200260>

resolution of 15 March 2007 on the missing persons in Cyprus<sup>80</sup>, European Parliament resolution of 12 February 2015 on the mass graves of the missing persons of Ashia in Ornithi village in the occupied part of Cyprus (2015/2551(RSP))<sup>81</sup>, and by Recommendation No. 1056 of the Parliamentary Assembly of the Council of Europe<sup>8283</sup>.

The UN Committee has noted that disappearances seriously violate the rights of the families of the missing. These families suffer greatly due to the uncertainty surrounding the fate of their loved ones, often for a prolonged period.

When considering several cases, the European Court of Human Rights found that the failure to inform the families of individuals detained by security forces, or remaining silent regarding persons who went missing during an armed conflict, reaches a level of cruelty that may amount to inhuman treatment (cases *Kurt v. Turkey*<sup>84</sup>, *Timurtas v. Turkey*<sup>85</sup>).

The Inter-American Court of Human Rights expressed the same view, ruling that the state must use all means at its disposal to inform relatives of the fate of missing persons (case *Velásquez Rodríguez*<sup>86</sup>). It also stated that in the event of the victim's death, the state is required to inform the relatives of the location of the deceased person's remains (case *Bámaca Velásquez*<sup>87</sup>).

Similarly, the African Commission on Human and Peoples' Rights ruled that "to hold a person without allowing them to maintain contact with their family, and to refuse to inform the family whether that person is detained and where they are located, constitutes inhuman treatment both for the detainee themselves and for their family" (case *Amnesty International and Others v. Sudan*<sup>88</sup>)<sup>89</sup>.

This caselaw demonstrates that these customary IHL rules, reinforced by international human rights law, have already become a well-established practice, forming a certain scope of state obligations regarding missing persons and their families.

The mechanism must be adjusted to the nature and scale of the workload, the needs and expectations of families, and the general socio-economic, cultural, institutional, legal, and political environment in the country<sup>90</sup>. The mechanism's mandate must include, at least, the powers and functions necessary to account for the fate and whereabouts of missing persons, as well as to provide services and assistance to their families<sup>91</sup>.

The search for and identification of missing persons, as well as addressing the needs of their families, are complex and potentially sensitive processes that may require the involvement of and cooperation with the judicial, investigative, and forensic systems, as well as other entities and stakeholders. These may include non-governmental actors, both national and international, which may possess specific resources and expertise that can be utilized in the operation of the mechanism<sup>92</sup>.

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80. European Parliament resolution of 15 March 2007 on missing persons in Cyprus. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52007IP0081>

81. European Parliament Resolution of 12 February 2015 on the mass graves of the missing persons in the village of Ashia in Ornithi village in the occupied part of Cyprus. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015IP0038>

82. Parliamentary Assembly of the Council of the Europe Recommendation No. 1056. URL: <https://pace.coe.int/en/files/15090#trace-2>

83. Rule 116. The requirement to record all available information prior to the disposal of the dead. URL: <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule116>

84. The case of *Kurt v. Turkey*. URL: <https://hudoc.echr.coe.int/fre?i=001-58198>

85. The case of *Timurtas v. Turkey*. URL: <https://hudoc.echr.coe.int/eng?i=001-58901>

86. The case of *Velásquez Rodríguez*. URL: [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_04\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_04_ing.pdf)

87. The case of *Bámaca Velásquez*. URL: [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_70\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_70_ing.pdf)

88. The case of *Amnesty International and Others v. Sudan*. URL: <https://globalfreedomofexpression.columbia.edu/cases/amnesty-international-and-others-v-sudan/>

89. For more information, please visit <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule117>

90. Guidance notes national mechanisms for missing persons. Toolbox. ICRC, December 2024. P. 13

91. Ibid. P. 15

92. Ibid. P. 17

## 3.2. International Human Rights Law

In the context of missing persons, state obligations also stem from duties to secure the right to life, the prohibition of torture and other forms of ill-treatment or punishment, and the right to respect for private and family life.

In terms of the right to life, the state has an obligation to properly investigate all facts of deprivation of life or the disappearance of a person. The procedural aspect of the right to life requires states to criminalize the unlawful deprivation of life and to investigate all such reported cases. This obligation arises in various instances: when a person has sustained potentially fatal bodily injuries, or when a person has died or disappeared under violent or suspicious circumstances, regardless of whether state agents or private individuals are likely responsible, whether they are known or not, or whether the person inflicted injuries upon themselves<sup>93</sup>. The state's obligation to conduct an effective investigation is considered in the ECtHR's practice to be an inherent obligation under Article 2, which requires, in particular, that the right to life be "protected by law." The primary purpose of the investigation stemming from Article 2 is to ensure that domestic legal provisions protecting the right to life are effectively implemented and, if the death might have been caused by the conduct of state agents or bodies, to ensure they are held accountable for deaths occurring under their responsibility.

The type of investigation capable of achieving the objective pursued by Article 2 depends on the circumstances. Whichever method of investigation is chosen, state authorities must act on their own initiative as soon as they receive a report. They must not place the initiative for filing a formal complaint or the responsibility for carrying out any investigative actions upon the relatives of the deceased.

The nature and degree of scrutiny that satisfy the minimum standard of effectiveness depend on the specific circumstances of the case and must be assessed in light of the totality of relevant facts and with regard to the practical realities of investigative work. The diverse situations that may arise cannot be reduced to a simple list of investigative actions or other simplified criteria.

Disappearance, in turn, is a distinct phenomenon characterized by a situation where relatives face uncertainty and a lack of explanations or information regarding what happened for a prolonged period, as relevant evidence may sometimes even be intentionally concealed or destroyed. Such a situation often lasts a very long time, thereby exacerbating the anxiety of the victim's relatives. The subsequent lack of explanation regarding what happened to the missing person and their whereabouts is an additional distinguishing factor that creates a continuing state of affairs. Therefore, in such cases, the procedural obligation potentially continues to exist until the fate of the person in question is established; the ongoing absence of a necessary investigation must be considered a continuing violation. This holds true even when the death of the victim may eventually be presumed (*Varnava and Others v. Turkey*)<sup>94</sup>.

The European Court of Human Rights (hereinafter ECtHR) has ruled that the procedural obligation under Article 2 continues to apply in difficult security conditions, particularly in the context of an armed conflict. In this regard, it is evident that if a death subject to investigation under Article 2 occurs in conditions of widespread violence, armed conflict, or unrest, obstacles may arise in the path of investigators, and specific constraints may necessitate the use of less effective investigative measures or cause delays in the investigation. At the same time, the obligation under Article 2 mandates that even in difficult security conditions, all reasonable measures must be taken to ensure an effective, independent investigation into alleged violations of the right to life (*Hanan v. Germany* [GC], 2021, § 204; *Georgia v. Russia (II)* [GC] (merits), 2021, § 326).

However, the ECHR clarified that in respect to the investigation of deaths occurring during an armed conflict, the procedural obligation provided under Article 2 must be applied realistically (*Georgia v. Russia (II)* [GC] (merits), 2021, § 327). Consequently, when challenges/constraints for investigative bodies (due to the fact that death occurred during active hostilities in an extraterritorial armed conflict) affect the investigation as a whole and continue to impact the feasibility of investigative actions that could be taken throughout the entire investigation (including investigative actions

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93. Guide on Article 2 of the Convention – Right to Life. European Court of Human Rights 41/68 Updated: 31 August 2024. URL: [https://ks.echr.coe.int/documents/d/echr-ks/guide\\_art\\_2\\_ukr](https://ks.echr.coe.int/documents/d/echr-ks/guide_art_2_ukr)

94. Ibid.

conducted by civilian authorities on the territory of the Member State), the Court ruled that the standards applied to the investigation conducted by civilian investigative authorities in that Member State are determined by the standards established for investigations of deaths in an extraterritorial armed conflict (Hanan v. Germany [GC], 2021, § 200)<sup>95</sup>.

Furthermore, the state has an obligation to respect the privacy and family life of a missing person, which in a practical sense means that relatives must be able to obtain information about the investigation; measures must be taken to search for the missing person; and in the event of their death, identification and proper burial of the individual must be carried out.

In certain situations, where state authorities, through intentional actions, inflict certain psychological pain associated with the missing person, this may constitute forms of inhuman treatment of such relatives.

### 3.3. Recommendations for Establishing Search Commissions

Practice indicates that the possible avenues for ascertaining what has happened to missing persons could include the establishment of special commissions or other search frameworks. An example of this could be the Commission to Search for Persons Missing in War Activities in the Republic of Croatia. Commissions may include representatives of the ICRC and other organizations. The UN Secretary-General's Bulletin "Observance by United Nations forces of international humanitarian law" stipulates that UN forces must facilitate the work of the ICRC Central Tracing Agency<sup>96</sup>.

Furthermore, as stated in paragraph 2 of Principle 13, "*The search and the criminal investigation should be interrelated,*" of the Guiding Principles for the Search for Disappeared Persons (an annex to the International Convention for the Protection of All Persons from Enforced Disappearance<sup>97</sup>), adopted by the UN Committee on Enforced Disappearances:

*"When the search is conducted by non-judicial authorities independent of those that make up the justice system, mechanisms and procedures should be established to ensure cooperation, coordination and an exchange of information between them and the ones responsible for carrying out the criminal investigation, in order to guarantee that the progress and results achieved on both sides feed into one another regularly and without delay. ... The existence of mechanisms and procedures for searches by administrative, non-judicial, and other bodies cannot be invoked as an obstacle to the pursuit of criminal investigations or as an alternative to them."*<sup>98</sup>

Therefore, the search processes and criminal proceedings (if a crime has been committed) must be complementary yet not interfere with one another. For instance, such a functional division is sometimes introduced to ensure these functions are performed more effectively. In particular, the above leads to a highly important conclusion: a single legal mechanism can quite seamlessly separate the functions of search and criminal investigation. Hence, an administrative body can pursue the objective of searching for missing persons without excessive bureaucratic burdens, while the authorities empowered to investigate alleged crimes can conduct their investigation in parallel, neither hindering the search processes nor being weighed down by unnecessary bureaucracy themselves.

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95. Ibid.

96. Guidance notes national mechanisms for missing persons. Toolbox. ICRC, December 2024

97. Guiding principles for the search for disappeared persons. URL: <https://documents.un.org/doc/undoc/gen/g19/134/11/pdf/g1913411.pdf>

98. Ibid.

Another example proving that an entity other than the authority that has to perform criminal investigations can search for missing persons is found in one of the recommendations of the online report “Counting the dead update 2020-2021”<sup>99</sup>, Part 3, point (i):

*“The promotion of consistent collaboration between and among actors concerned with determining the fate and whereabouts of missing migrants (authorities at national and regional levels, non-governmental organizations operating at sea in SAR operations, other organizations such as the Red Cross and Red Crescent Movement, and communities of migrants in countries of transit, destination and origin). ... By doing so, they can leverage their capabilities to enhance data collection efforts and improve the identification process.”<sup>100</sup>*

### 3.4. State Obligations to Provide for the Identification of Deceased and Missing Persons

The obligation to identify the deceased prior to burial was first codified in the 1929 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field. This obligation, along with the details that must be recorded and the duty to transmit information to the adverse party and the ICRC Central Tracing Agency, is currently outlined in the 1949 Geneva Conventions. Furthermore, numerous military statutes stipulate the duty to conduct identification of the deceased before burial. Additionally, some military statutes include a requirement to maintain records of burial sites.

According to the information gathered about existing practices, the measures in question include preserving one-half of a double identification disc, conducting an autopsy, recording autopsy results, issuing a death certificate, recording burial information, burial in individual graves, the prohibition of burial in mass graves without prior identification, and the proper marking of graves. Practice also indicates that exhumation and the application of forensic methods, including DNA analysis, may be necessary for the identification of the deceased after burial<sup>101</sup>.

In general, these rules contain universally recognized standards and recommendations for the effective performance of states in fulfilling their obligation to search for missing persons. It should be emphasized that the successful fulfillment of these obligations requires a significant level of cooperation between the parties.

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99. Counting the dead update 2020-2021. URL: [https://missingpersons.icrc.org/sites/default/files/2024-03/CountingTheDead%20Update%202020-2021\\_0.pdf](https://missingpersons.icrc.org/sites/default/files/2024-03/CountingTheDead%20Update%202020-2021_0.pdf)

100. Ibid.

101. For more information, please visit <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule116>





IV. INTERNATIONAL  
PRACTICES in SEARCHING  
for Missing persons

*(This section is contained in the full version of the study “How to Improve the Search System for Missing Persons?” in Ukrainian<sup>102</sup>)*



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102. Yavorsky, V.M., Serdiuk, V.M., Yashchuk, N.M. “How to Improve the Search System for Missing Persons?” Center for Civil Liberties, 2025. pp. 34-49. URL: <https://ccl.org.ua/yak-pokrashchyty-systemu-poshuku-bezvisty-znyklykh.pdf>



V. General conclusions

In times of peace and armed conflict, the state has the following obligations regarding missing persons:

- to account each case of disappearance, maintain their records, and update information;
- to take effective actions aimed at searching for missing persons and recovery;
- to investigate alleged crimes or facts of human rights violations and, where possible, hold those responsible accountable;
- to locate for burial sites and organize procedures for the return and identification of bodies and remains;
- to ensure continuous communication with the relatives of the missing, providing them with full information on the results of searches and investigations, as well as including them in various procedures related to the search for the missing.

It is possible to broadly outline three models of state systems for dealing with missing persons, as implemented in various countries:

**Police or Prosecutorial and Police Search Model**, where the entire procedure of registering a missing person, searching for them, and gathering information is concentrated within the investigative body and takes place primarily within the framework of criminal proceedings. This model functions more effectively in peacetime, when the number of missing persons is not large, and the vast majority of disappearances are related to crimes.

**Specialized Models of Search for Missing Persons** are implemented by the military, specialized new bodies, or several bodies simultaneously. This system is characteristic of conflict situations where there is a large number of missing persons and the primary goal is to search for the missing, specifically regarding burial sites or places of detention. It does not exclude criminal investigations, but the latter cover only those cases where there is a prospect for criminal prosecution.

**Mixed Model** where elements of investigation are combined with administrative search measures.

Based on the studied international practices, it can be concluded that all prosecutorial and police models of searching for missing persons in various countries were operational at the onset of a conflict and, in some cases, even after its conclusion. However, due to their systemic focus on another kind of social relations and peacetime realities, these models were sooner or later replaced by special search models better prepared for the challenges of armed conflict. These models were pre-designed to ensure a more effective capacity to process a significant volume of missing person cases, specifically:

- by relieving specialized bodies of the bureaucratic criminal process;
- through their sufficient legislative empowerment with special authority to conduct searches;
- through separate, adequate funding, etc.

It is crucial to distinguish between the processes of search and criminal investigation. They have different objectives and may employ different methods. A criminal investigation has the ultimate goal of establishing the circumstances of a crime and identifying the guilty party in order to hold them accountable. This is also important in the context of the relatives' right to know the truth about the circumstances of the disappearance. Specialized search mechanisms aim to find the person, their body, or their remains. This goal can be achieved through a much wider range of methods and may not be burdened by criminal procedures. Human rights protect an individual within the criminal process to ensure a fair trial. However, for the purposes of searching for a missing person, human rights guarantees may be significantly narrower, and procedures may be much simpler. For example, the following may be done in a more simplified manner, by decision of an authority and with no order from an investigator or an investigating judge:

- information about a person may be collected from various registries;
- telecommunications operators may notify of the last location of a telephone;
- DNA examinations may be ordered;
- potential witnesses may be interviewed;

- many other actions to collect information about missing persons can be performed.

While on the one hand, the state has an obligation to conduct a criminal investigation into disappearances, which stems from the procedural duty regarding the right to life, this does not mean that all procedures must take place within the framework of criminal proceedings, all the more so because in the vast majority of cases, no crime has been committed. Nonetheless, investigations are also important for establishing the truth – that is, clarifying the circumstances of a person's disappearance.

These two lines of action by state authorities – search and investigation – do not contradict one another. However, if the search is conducted exclusively through an investigation, given a large number of missing person cases, the entire system becomes blocked or hindered, and either fails to function or works extremely slowly and ineffectively. As a result, there is practically no investigation, and the search becomes much more complicated.

That is why, in most cases where there was an increase in the number of missing persons, a specialized body for searching for the missing was typically created to handle both of these directions, while investigative bodies continued to conduct official investigations to establish the truth, which also yielded positive results. However, these frameworks did not interfere with each other but rather complemented one another.

Furthermore, information from criminal investigations is protected by the secrecy of the investigation and, as a rule, is not shared with those engaged in the search. This complicates search activities and the provision of information to relatives regarding the circumstances of a person's disappearance.

In Mexico, thanks to the confession of a single participant in criminal proceedings, it became possible to discover an entire burial site, and such an example is not unique. Global experience provides us with information and the practices of other countries that can be meaningfully utilized and applied in our conditions to improve the national legal mechanism.

The Ukrainian framework for searching for persons missing under special circumstances was not fully established after 2014; its formation effectively began only in 2022–2025. Prior to 2022, this issue lacked specific regulation and remained almost entirely within the domains of the police (criminal investigations) and the SSU (Joint Center for Coordination of Search and Release of Prisoners of War and Persons Illegally Deprived of Liberty), except for the creation of search parties. To a certain extent, this can be explained by the relatively small number of missing persons prior to 2022.

Today, Ukraine is in fact implementing a police-led search model with certain elements of involvement of various government bodies. To a large extent, it resembles models that operate during peacetime. Currently, it would perhaps be more appropriate to describe our model as a system for the criminal investigation of facts of disappearance rather than a search system, as the primary focus remains centered on the criminal justice framework. In our opinion, this is one of the reasons for the questionable effectiveness of the current legal mechanism.

Furthermore, legislation fails to clearly regulate many procedures, which leads to the duplication of functions among government bodies and makes many procedures unclear for the relatives of the missing.

A large burden of bureaucratic processes is placed on the police, which, for objective reasons, cannot conduct the search and is detached from military agencies. This only complicates the transfer of information relevant to the search for missing military personnel, while the effectiveness of the search for missing civilians remains low.

The introduction of the Commissioner for Missing Persons can be positively assessed, as it was established based on international practices and in accordance with the standards of international humanitarian law. The Commissioner's Office populates the database on persons missing under special circumstances and also serves as the primary body responsible for all necessary communication with the families of the missing. However, according to the existing national legal framework (the police-led search model), the Commissioner is not empowered to conduct administrative searches for civilians missing due to the war. Thus, the Commissioner cannot alleviate the procedural burden of NPU investigators, who, under the criminal procedural law, are required, for instance, to obtain authorization from an investigating judge for certain procedural actions.



In summary, it can be concluded that today in Ukraine, the search process follows this logic: if a person has gone missing, a criminal proceeding must be opened, and a subsequent search must be conducted through investigative actions. We believe that this logic is flawed and leads to an excessive overburdening of the existing system, resulting in its paralysis and ineffectiveness. In wartime, according to the provisions of international law, combatants participate in hostilities and, unfortunately, many military personnel perish or go missing. Furthermore, the death of civilians may also not always constitute a crime. At the same time, it is clear that during a war, the percentage of persons missing specifically due to hostilities is the highest, and the ability to conduct their search is objectively complicated. According to IHL rules<sup>103</sup>, combatants who participate in hostilities and kill combatants of the opposing side without violating the provisions of international law do not bear criminal responsibility for such participation; that is, their actions do not constitute a crime, except where they commit war crimes or crimes against humanity.

The practice of opening criminal proceedings in absolutely all cases where military personnel and civilians are missing in war, and concentrating excessive powers within the investigators of the NPU, paralyzing, in fact, their activities, is flawed. It does not serve the objective of searching for those missing due to the war, but rather aims at investigating crimes and holding perpetrators accountable.

At present, relatives of missing persons are only minimally involved. The potentially enormous role of associations and unions of families of the missing should be leveraged, as they influence not only the processes of search and investigation but also life processes and the reformation of search frameworks. We believe that giving representatives of relatives of the missing an opportunity to become an integral part of search mechanisms — as implemented in the model of Bosnia and Herzegovina — should be assessed positively. The participation of family association representatives in the internal management bodies of specialized search entities is seen as a positive factor that increases the efficiency of such a body and trust in its work.

Searching for those missing as a result of war is quite a long process; it can last for 15 or 20 years after the end of an armed conflict, and in the case of the U.S.A., even 80 years. As we noted in the study, much of the effectiveness of the search for the missing will, without any doubt, largely depend on the diplomatic efforts of Ukraine in concluding agreements with other countries. Therefore, Ukraine should define its long-term strategy in the matter of searching for the missing on the international stage. Currently, no document identifies this issue as important or strategic for Ukraine's international policy. Consequently, long-term political support for Ukraine on this issue is required at the international level.

Ukraine's low level of cooperation with international organizations is worth noting. In our opinion, the capacities and assistance of international actors, such as the ICMP and the Global Alliance for the Missing, should not be neglected, as they can effectively influence search processes, alleviate the burden of the Domestic medicolegal system, and help establish the truth, including for the purpose of holding criminals accountable. Currently, Ukraine does not cooperate with these organizations to the full extent, which is also contrary to the principle of effectiveness for reasons that remain unclear.

In general, we have reached the following conclusions:

Although Ukraine has built an extensive system of government bodies to address the problem of missing persons, it remains ineffective, with a large duplication of powers. This system is based on a police-led search model, where key procedures are concentrated within the criminal proceedings through the investigation of criminal cases concerning disappearances. This system is hardly effective in times of full-scale war and when tens of thousands are missing.

The framework currently provided for in the legislation poses numerous practical challenges, which overburden it and cause confusion among the relatives of missing persons and the general public. Furthermore, the existing framework does not fully serve its objective of searching for persons missing as a result of war, and under the current legal model, the search for such individuals is effectively not being carried out. Therefore, the existing framework requires a redistribution of the

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103. Article 43(2) of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I). 1977. URL: [https://zakon.rada.gov.ua/laws/show/995\\_199#Text](https://zakon.rada.gov.ua/laws/show/995_199#Text); Section 1 of Chapter 3. Geneva Convention relative to the Treatment of Prisoners of War. 1949. URL: [https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.32\\_GC-III-EN.pdf](https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.32_GC-III-EN.pdf); Article 23 (c) of the IV Convention respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. 1907. URL: [https://zakon.rada.gov.ua/laws/show/995\\_222#Text](https://zakon.rada.gov.ua/laws/show/995_222#Text)

workload and a transition from the current legal model to another that would be better adapted to searching for both civilians and military personnel missing due to war, ensuring greater effectiveness in the long term. The goal of the current legal model of searching for the missing is not to find the missing person, but to find the perpetrator and the victim of a crime, to bring the perpetrator to criminal responsibility.

The system of authorities appears quite complex and inconsistent. To date, five state bodies maintain their own registries of missing persons. At the same time, the Coordination Headquarters and the Commissioner for Missing Persons have agreed to synchronize their registries, which serves as an example of an attempt to establish more efficient and rational functioning that is not legislatively governed. As each authority involved in the search system maintains its own register, they are empowered to require individuals to contact these authorities and provide the same information repeatedly, which also leads to the unnecessary re-traumatization of the relatives of the missing. This is a clear case of redundant duplication of functions; under normal circumstances, the state should maintain a single registry that other authorities could access and retrieve information from.

The Unified Register of Missing Persons provided for by law is, in reality, not unified. A total of five authorities maintain such registries and request that relatives of the missing fill out questionnaires and submit the same data repeatedly. Furthermore, many relatives of the missing have encountered technical difficulties with submitting information and creating or maintaining user accounts. As a rule, these resources are not designed for individuals with low computer literacy. Another significant issue is the interaction between the Unified Register and international databases, as well as the registries of other authorities.

Reporting a missing person is difficult if the individual is in the temporarily occupied territories or abroad. When relatives are in occupied territories, they require neutral communication channels rather than transmitting information via the SSU website. Furthermore, such individuals cannot in practice apply to the police, which is the initial mandatory stage for commencing all other procedures. It is evident that the administrative search system could be more sensitive to reports of missing persons from occupied territories.

In fact, the general and the special legal systems coexist during a special period, which are not entirely harmonized and create confusion for the average person. Under the general procedure, an individual can be declared missing or dead through civil legal procedure<sup>104</sup>. However, in parallel, during a special period, this can be done by filing a missing person report with the police. At the same time, filing a report of a missing person and a request for their search does not prevent an individual from applying to the court to seek a declaration that their relative is missing or dead. This increases confusion for relatives of the missing and compels many of them to file lawsuits in court to have the missing person declared dead for the purpose of receiving state aid or distributing their property. It is challenging under such circumstances to discern who formulates government policy and who is responsible for implementing it, and with regard to which issues. Consequently, it is difficult to figure out who is in charge of these activities and where to complain if no action is taken on one's case. Furthermore, people do not understand the legal consequences of these different actions, as a person can simultaneously be missing and judicially declared dead.

In accordance with the Law on Missing Persons, an individual is required in the first place to contact the national police, which must open criminal proceedings concerning the person's disappearance. All subsequent important actions must be performed exclusively based on orders from the investigator in the case: an order recognizing the person as a victim, an order for DNA examination, an order that data be collected from a telecommunications operator, etc. Investigators are extremely overburdened and entirely unprepared for communication with the relatives of the missing.

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104. Articles 43-45 of the Civil Code of Ukraine and Articles 305-309 of the Civil Procedure Code of Ukraine. The practice of judicial recognition of a person's death through the procedure for establishing legally binding facts (Articles 315-319 of the Civil Procedure Code of Ukraine) has also become widespread.

The institution of criminal proceedings is mandatory in all cases, even where it is known for certain that the individual perished in battle and no criminal offense under international law was committed against them<sup>105</sup>.

A limited number of police investigators (one investigator may have hundreds of criminal disappearance cases and hundreds or thousands of cases overall) are, in fact, engaged in bureaucracy instead of searching. Most of them, understanding the lack of prospects for the investigation, are unwilling to take active investigative steps. The excessive concentration of procedural powers within police investigators leads to the paralysis of their work, as it merely creates an additional formal burden.

The above implies an obligation to act within the framework of criminal procedure law, imposing a burden on the investigation process in the form of requests to the investigating judge to authorize the performance of certain procedural actions, although it is entirely possible to simplify the collection of this information.

The excessive workload on investigators leads to inadequate communication with the relatives of the missing, which might result in untimely procedural actions, omissions, and groundless delays in the search process.

The legislative repeal of the mandatory internal investigation by the military unit into a disappearance. It should be noted that in the US, an internal investigation report regarding a missing person is the key document on which further investigations and the search for the missing person are based.

Search parties cannot operate in areas of active hostilities and in temporarily occupied territories in a manner that allows for the full range of investigative actions to be carried out.

Relatives note the following problems in communication with the government bodies dealing with the issue of missing persons:

Investigators communicated with relatives in a rude manner, failing to provide any information regarding the case.

An internal investigation report that should have been prepared by the military unit and should contain a description of the circumstances of the disappearance has not been provided, based on the relatives' request.

Numerous failures to conduct internal investigations into the disappearance of a servicemember.

Petitions from relatives are ignored and can be implemented only after a copy of the petition is sent to the supervising prosecutor.

Communication between investigators and the relatives of the missing is inadequate, as the former are unwilling to speak to them or explain the rights and opportunities of the victims. There were many cases where people had a single contact with the investigator over 12 months.

Investigative actions are not carried out, explained by ongoing hostilities, or the facts that the disappearance site is remote or controlled by Russia, with requests to wait until the end of the war.

Frequent changes of investigators in a case cause many processes to either start from scratch or come to a halt.

Investigators fail to contact the military unit: as a result, relatives have to obtain everything independently and personally deliver it to the investigator.

It becomes necessary to repeat DNA examination due to issues with the proper and accurate collection, storage, and transport of samples; months are also lost in waiting, as repeat testing is performed on a first-come, first-served basis, which again greatly complicates and lengthens the process, taking over a year in certain cases.

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105. See Article 43(2) of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I). 1977. URL: [https://zakon.rada.gov.ua/laws/show/995\\_199#Text](https://zakon.rada.gov.ua/laws/show/995_199#Text); Section 1 of Chapter 3. Geneva Convention relative to the Treatment of Prisoners of War. 1949. URL: [https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.32\\_GC-III-EN.pdf](https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.32_GC-III-EN.pdf); Article 23 (c) of the IV Convention respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. 1907. URL: [https://zakon.rada.gov.ua/laws/show/995\\_222#Text](https://zakon.rada.gov.ua/laws/show/995_222#Text)

Instances that have not been addressed by legislation, where the ICRC has confirmed that a person is a prisoner of war, yet the government system continues to classify them as missing in action.

One of the biggest challenges is the excessively long time required for DNA examination. The state maintains a monopoly and refuses to cooperate with foreign or international laboratories. The current level of cooperation between the government and the ICMP is extremely insufficient, in view of the ICMP's laboratory capacities and willingness to assist in the identification process. Unfortunately, under the national legislation, a memorandum of cooperation is not a binding document. Moreover, such cooperation does not comply with criminal procedural law. That is why it is virtually impossible to provide samples for DNA analysis if relatives are abroad; consequently, they are required to travel to Ukraine specifically for this purpose, and given all the complications, they may need to do so repeatedly. Accordingly, for those in the occupied territories, there is not even a theoretical possibility of performing an examination. At the same time, Ukraine faces the following structural problems with such examinations:

- A large number of deceased or missing persons and a shortage of forensic agencies.
- A shortage of fully equipped laboratories.
- A shortage of experts.
- Many remains require long-term, complex examinations.

Failure to implement a system for collecting DNA samples from military personnel at the start of their service. While this is a costly procedure, it is highly effective for future searches for missing persons and criminal investigations.

Relatives report frequent instances of DNA materials being lost even before they reach the laboratory.

Violations of biomaterial collection rules, committed most often by the investigators themselves at police stations. Challenges with labeling, storage, transportation, and protection of the collected DNA samples and documenting, as well as documenting the actions taken with regard to them (the accompanying procedural note). Investigators fail to send biological material to experts in a timely manner, causing samples to spoil and forcing relatives to resubmit DNA material, which unjustifiably prolongs the entire process. As a result, the quality of the analysis is low, or it must be repeated.

Loss of DNA information during its transfer between investigators at the regional or district levels, or between different regions.

There are instances where unidentified servicemembers are buried as unknown. When the DNA of their living relatives is eventually entered into the database, subsequent forensic examination requires the exhumation of the servicemember's body. This causes severe psychological suffering for the relatives.

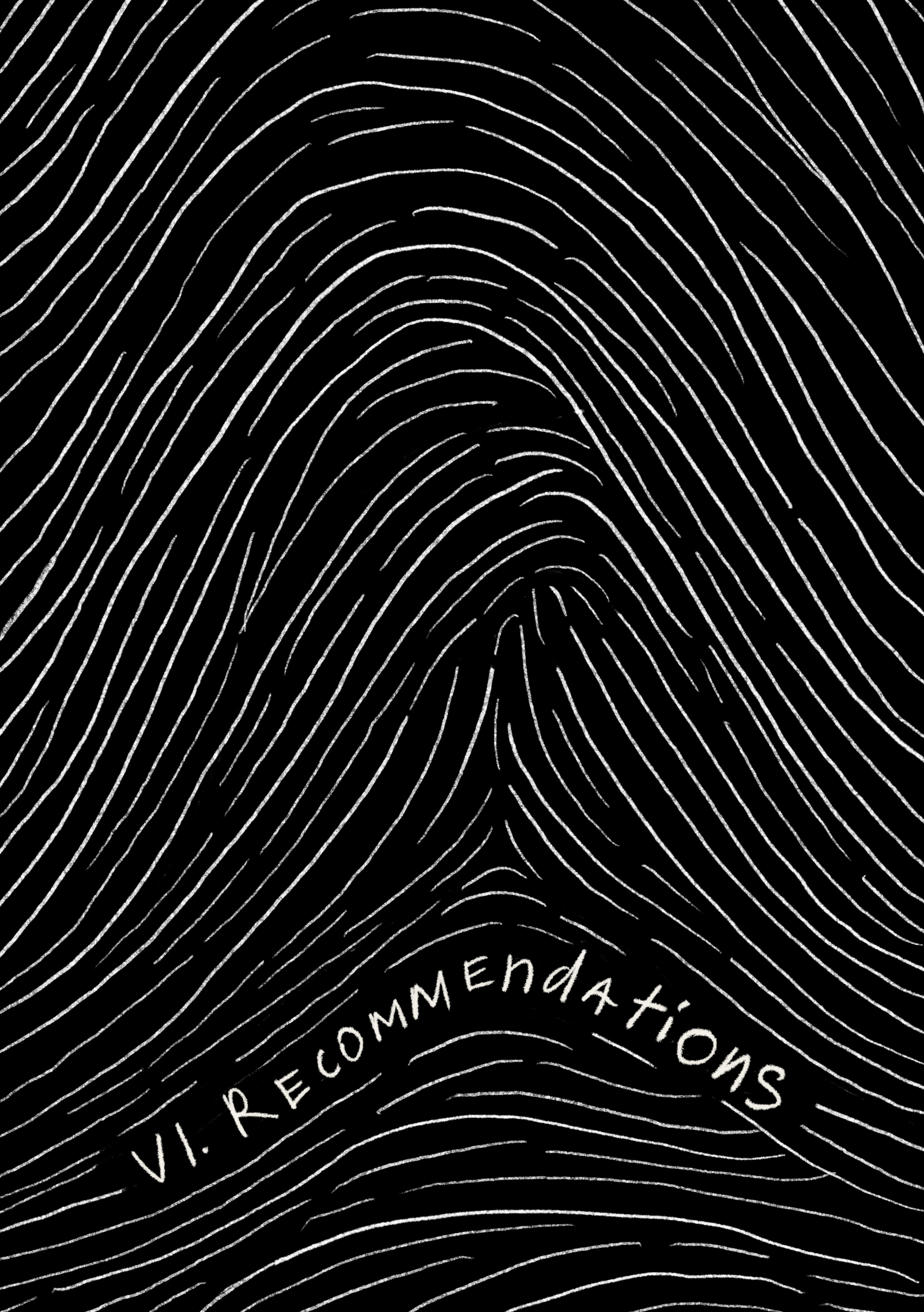
Verifying and processing DNA data and entering it into the Register is a lengthy process. At the same time, relatives of the missing observe that these actions are often untimely and inadequate.

A DNA examination can not be performed of one's own initiative or abroad.

As a supplement to this information, it is also worth collecting fingerprint data and dental records of all individuals serving in the defense forces.







## VI. RECOMMENDATIONS

# 1. Modify the system of authorities involved in the search for missing persons

We believe that to improve the effectiveness of the search mechanism for missing persons, it is necessary to redistribute the powers of authorities that have evolved within the existing system and to choose a more expedient model for the national search mechanism to align with the primary objective of establishing the fate and whereabouts of persons missing due to the war.

Modifying the search model from a police-led to a specialized one involves the establishment of a dedicated body with functions and powers set out by law to formulate policy in this area and conduct searches for missing persons beyond the scope of criminal proceedings, or granting such powers to the existing institution. The realities of Russia's war against Ukraine also suggest that, in our context, it would be more appropriate to establish a dedicated body to search for missing civilians and missing service personnel.

In parallel, yet without placing an undue mutual burden, a national criminal investigation system should function within this structure, as it also plays a crucial role in the process of establishing the truth. However, approaches to investigating these categories of criminal cases should be modified.

We believe that the search for and clarification of the fate of military personnel missing in action should be entrusted to, during and after the war, a state agency (hereinafter referred to as the Agency) directly linked to the defense sector (within the structure of the Ministry of Defense of Ukraine), which will ensure that the information is processed, protected and stored effectively. This solution offers many advantages:

- Military personnel are better informed about where and by whom specific combat missions were performed.
- Military personnel mark the terrain where a disappearance likely occurred and must indicate this in their documentation, based on which they can draw conclusions and conduct the necessary range of search activities.
- Military personnel have easier access to internal investigations and important classified information that can be utilized for an effective search.
- This system will establish an adequate communication channel with the intelligence department that clarifies what happened to specific servicemembers, and will ensure that classified information is retained within the country's defense sector.

We believe that this body could cooperate closely with the DIU and the SSU, which could search for and return missing persons, including the deceased, from other countries, occupied territories, and combat zones.

Furthermore, this Institution would organize and coordinate the actions of search parties on the ground, particularly following the end of active hostilities and upon reaching agreements regarding their operations.

Shifting away from the police-led search model will make it possible to choose a framework that will primarily, or at least largely, focus not on finding victims and perpetrators and bringing the latter to justice, but on finding out what happened to, and locating, prisoners of war and those missing in action due to the war. This mechanism will be able to function on a permanent basis and remain a permanent structural element within the system of the Ministry of Defense of Ukraine and the Ministry of Internal Affairs. This would transform the existing system, bring it to a new level of functional capacity, and provide an operational response to any potential sharp increase in the number of missing persons for any reason in the future. For instance, it is highly probable that reports of missing civilians will significantly increase after the end of hostilities, as people will search for their relatives and seek to find out what happened to them. The U.S. system, recognized as one of the most effective, began its existence after World War I out of the necessity to create a mechanism capable of processing a sudden, rapid increase in missing persons and prepare for a sudden, large-scale war.

The Agency under the Ministry of Defense should engage in searching for all missing persons who disappeared in the combat zone, or who may be staying in occupied territories or other countries.

Also, the Ministry of Defense should take care of the return of the missing, including prisoners of war, as well as the return of the bodies of the deceased.

The Commissioner for Persons Missing under Special Circumstances within the Ministry of Internal Affairs should search for, find out what happened to, and establish the whereabouts of civilians missing due to the war. The Commissioner should be granted the role and powers for administrative search (as it is the practice in Colombia, Peru, Sri Lanka, and other countries, where search and investigation are separated and do not interfere with one another) within the country. These powers should include, among other things, referrals for DNA and other examinations for relatives of the missing and the collection of information from communication channels (telecom operators) and from other state registers. There is no legal or any other necessity to overburden the investigators of the police or the SSU with these functions.

It is equally important that the Commissioner maintain a Unified Register of Persons Missing under Special Circumstances and liaise with the families of missing persons via the Commissioner's offices in all regions of Ukraine.

In general, a "Single Window" for the relatives of missing persons should be established on the basis of this agency, where they can report all available information and receive updates accordingly. Other government authorities lack the organizational capacity to provide effective communication with relatives, primarily because they do not have regional branches across the country. However, there are many additional reasons why it is worth reserving this function for the Commissioner.

Furthermore, the Commissioner should ensure that arrangements are made for the identification of found bodies: in particular, they should be authorized to request DNA examinations and the collection of DNA samples, as well as to coordinate other related processes. Amendments to the Criminal Procedure Code should allow the use of findings of examinations conducted at the request of the Commissioner, in the interests of criminal investigations as well.

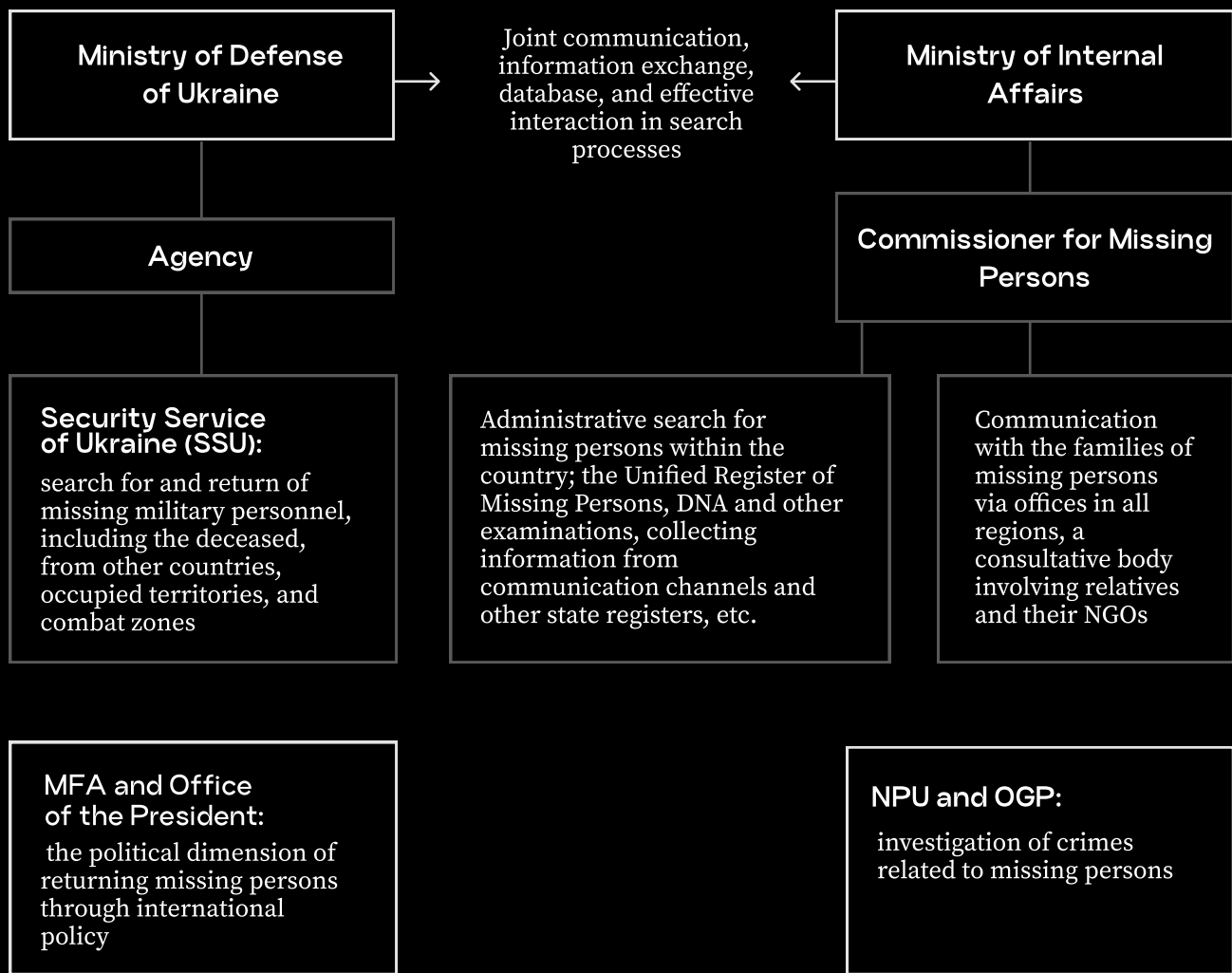
Crimes related to missing persons should be investigated separately from searching for such individuals, specifically by the Office of the Prosecutor General, the National Police, and the SSU, while maintaining communication channels and exchanging up-to-date information with other authorities. It is appropriate to centralize investigations into cases of missing civilians in order to prioritise promising investigations where there is evidence of war crimes or crimes against humanity, or the use of mass graves for civilians and military personnel. It is far more effective to investigate these cases by forming investigative teams than to treat each disappearance as a separate criminal case. Centralized investigation should substantially improve its quality, which, in turn, can open flows of additional information to clarify the whereabouts of missing persons.

It should be emphasized that for the effective fulfillment of their duties, all public authorities involved in the search processes (the Agency under the jurisdiction of the Ministry of Defense and the Office of the Commissioner for Persons Missing under Special Circumstances under the jurisdiction of the Ministry of Internal Affairs) must maintain effective, regular, and comprehensive joint communication, information exchange, and cooperation in the search for all missing persons.

The tentative distribution of powers between the Ministry of Defense of Ukraine and the Commissioner for Missing Persons is illustrated in the attached table



# Recommendation of the Center for Civil Liberties on the Redistribution of Powers of Authorities with Regard to Missing Persons



# An alternative system of authorities involved in searching for missing persons

As an alternative to the previous model, another option for redistributing the workload on the system of searching for people missing in action could be explored, which, in our view, also more closely matches the objectives of such searches in a wartime context. As we have already discussed, the police-led search model is not being, and cannot be, effectively implemented in a wartime context. We are therefore discussing a shift to a different state-led approach to the issue (the large number of people missing in action due to a full-scale war of aggression) and avenues for addressing it in order to achieve tangible results: recording every case, a thorough search for prisoners, bodies and remains, repatriation, the identification process, and the realization of families' right to know the truth and to have all missing persons returned, whether military or civilian.

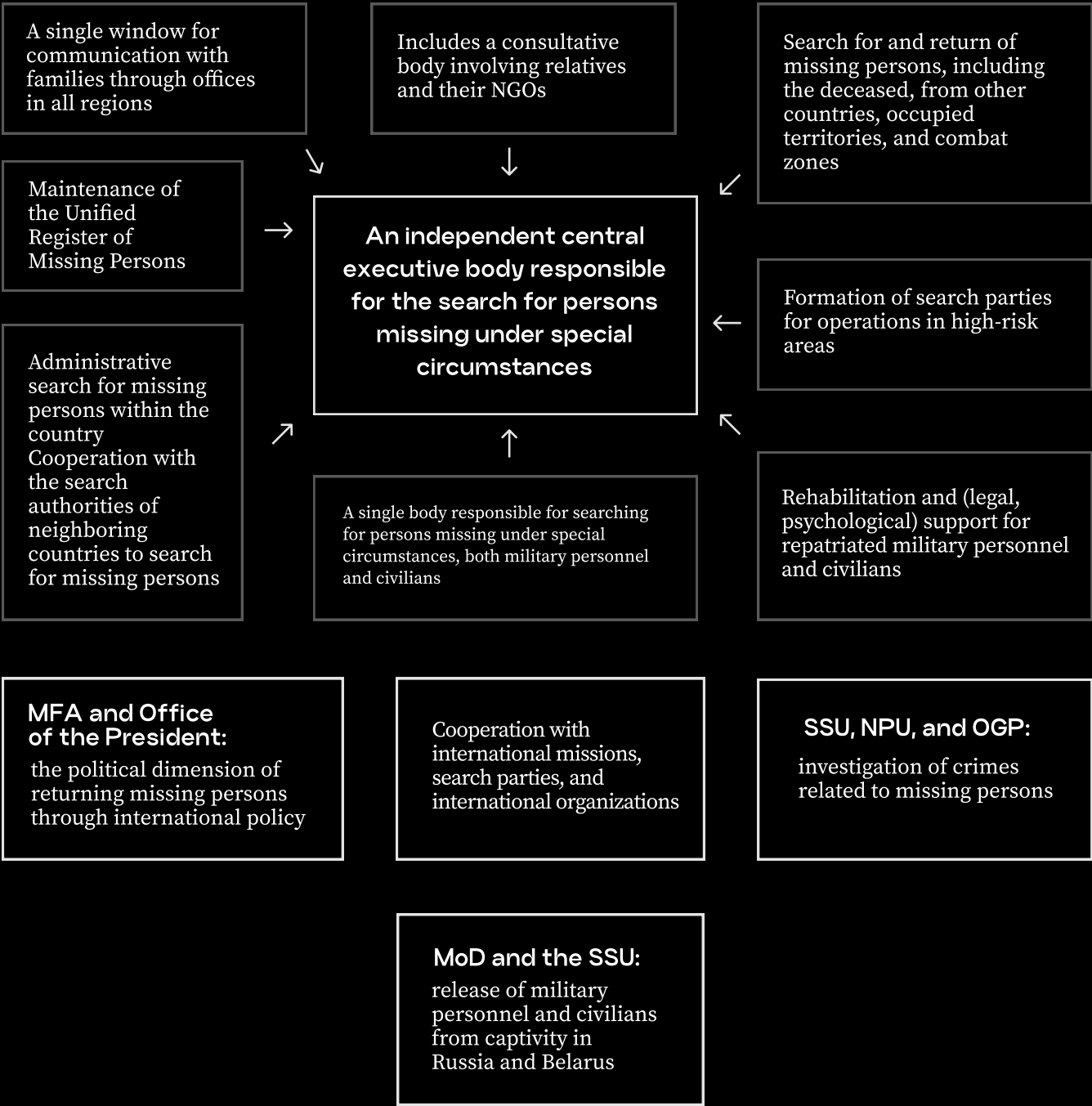
In such a situation, separate mechanisms for military and civilian personnel can be created, as we proposed earlier (the first model). However, this mechanism can also function if a single responsible central executive body is established to be accountable for the search for both military and civilian individuals. This new central body would essentially combine the functions of the Ministry of Defense and the Ministry of Internal Affairs, although their individual roles would remain: for the MIAU, it would be criminal investigations, and for the MoD, specific work with military personnel, the release of persons held in captivity, etc.

This new state body must be granted legislative powers for administrative search within the country, including conducting DNA and other examinations (ordering such examinations), obtaining information from communication channels, and collecting information from other state registers specifically to populate the Unified State Register of Missing Persons. Such legislative powers will make it possible to significantly speed up search operations for missing civilians and military personnel beyond the scope of criminal proceedings. In particular, the relatives of the missing will no longer have to navigate a vast number of institutions to perform a single procedural action; instead, it will be sufficient for them to contact a regional office of this responsible body, which would act as the "Single Window." This independent body should also be responsible for searching for and returning missing persons, including those deceased, from other countries, occupied territories, and combat zones; forming search teams to carry out operations, including in high-risk areas; and cooperating with the search authorities of neighboring countries in the search for missing persons. No less important is overseeing the issues of rehabilitation and (legal and psychological) support to repatriated military personnel and civilians. Furthermore, the internal supervisory bodies of this independent agency should include representatives of the families of the missing and their associations, as after all, they are the very ones who are most motivated to see effective performance and results.

In parallel, yet without placing an undue mutual burden, a national criminal investigation system should function within this structure, as it also plays a crucial role in the process of establishing the truth. However, approaches to investigating these categories of criminal cases should be modified.

This model is shaped based on international practices from contexts similar to that of Ukraine (active armed conflict and/or the period following it, and a large number of missing military personnel and civilians). The proposed national search model is a specialized multidisciplinary model of humanitarian search, and similar structural elements can be found in Colombia, Peru, Bosnia and Herzegovina, Sri Lanka, Mexico, and the USA.

# Recommendation of the Center for Civil Liberties on the Redistribution of Powers of Authorities with Regard to Missing Persons



## 2. Expand the procedures for administrative search for missing persons

It is worth amending the procedures provided for by the Law on Missing Persons. In particular, the frameworks for administrative search should be expanded, including the following:

Reports on missing persons should be collected by the Commissioner for Missing Persons; based on their information, criminal proceedings may be instituted in cases where individuals have not previously contacted the police.

The Commissioner should be granted the authority to collect information on individuals reported as missing. Specifically, after a case is registered, they should be authorized to collect data from registers maintained by other government authorities, request information from telecommunications operators, order DNA and other examinations, make requests about internal investigations, and collect any other information necessary for the effective search for the possible location of the missing person, their body, or their remains. Since these powers are not exercised for the purpose of criminal prosecution, international law allows for these actions to be performed through simplified procedures, provided they are based on a clear law regulating how and for what purpose the collected information can be used. Furthermore, this expands potential sources of information about missing persons, as this authority will not primarily seek to record certain evidence or ensure its legality and admissibility, but rather to clarify the fate of specific individuals.

To ensure effective oversight against potential abuses, control powers could be granted to the Ukrainian Parliament Commissioner for Human Rights for the purpose of exercising parliamentary control over the use of these powers by the Commissioner for Missing Persons.

## 3. Create a "Single Window" for the relatives of missing persons

If these changes are implemented, the relatives of the missing will obtain a "single window" for communication with government authorities through the Commissioner for Missing Persons. It is vital that such communication takes place closer to people's residences, at least in every regional center. This will make these procedures more human-centric. Consequently, there will be no need for people to provide information to various government authorities, the information will not be distorted, and relatives will avoid re-traumatization from repeatedly submitting identical information. This will also contribute to the preservation of more accurate data.

Furthermore, this will take some pressure off the National Police, the Ministry of Defence, the Security Service of Ukraine, the Human Rights Commissioner, and other authorities, as liaising with relatives requires that significant human and other resources be allocated on an ongoing basis.

## 4. Change the approach to the investigation of crimes related to missing persons

It would be appropriate to cease instituting criminal proceedings for every single instance of a military or civilian disappearance due to the war, and instead do so exclusively when there is additional information on a potential crime committed. It would also be appropriate to distinguish between instances where enemy combatants commit war crimes against Ukrainian military personnel or civilians – for which criminal proceedings must be opened – and deaths of military personnel resulting from combat operations or during the performance of a combat mission, which would not give rise to criminal proceedings.

Accordingly, the criminal investigation strategy must be changed. Instead of dispersing all reports on missing persons into individual proceedings, as is currently done, it is better to group these proceedings based on instances of possible mass crimes, war crimes, crimes against humanity, or the search for mass burial sites. Such prioritization, involving investigative teams, should yield more effective results in terms of both search efforts and the investigation of the most serious crimes.



This should relieve National Police investigators of the burden of administrative and paperwork, as they currently must process tens of thousands of criminal investigations.

On the other hand, this would provide an opportunity to concentrate on the effectiveness of investigations.

At the same time, it is important to grant the National Police the authority to investigate crimes related to missing persons, as there is a risk of a change in jurisdiction for such cases, which could negatively impact the quality of the investigations.

## **5. Improve the quality of internal investigations into the circumstances of disappearances in military units**

It is essential to legislatively regulate the problem that is related to internal investigations in military units. The internal investigation report is an official document that is central for finding out what happened to and establishing the whereabouts of a servicemember, their body, or their remains. If internal investigations in military units are not properly regulated by laws, the clarification of all the circumstances around disappearances of servicemembers (which are most fully known to these military units) and, if necessary, holding all responsible parties accountable, will be an extremely problematic endeavor. The procedure for preparing the investigation report must be clearly regulated. Furthermore, it is evident that the Commissioner and investigators should have access to the report and all investigation files. Also, the law should more clearly regulate the right of the relatives of the missing to receive a copy of the investigation report.

## **6. Ensure in practice that DNA examinations are conducted in other countries or by international organizations**

If our initial proposals are implemented and DNA examination is removed from the scope of the criminal process, it will allow for the involvement of a wider range of entities capable of performing such examinations both in Ukraine and abroad. Furthermore, from the perspective of international human rights law, nothing prevents these examinations from being used for the purposes of criminal investigation. However, this requires making amendments to the Criminal Procedure Code of Ukraine.

This will significantly accelerate the examination process and, consequently, the search for the missing person, as this stage remains one of the key elements for the medical identification of the bodies (remains) of deceased individuals.

We recommend introducing a system for the mandatory collection of additional information from all military personnel and other individuals serving in the defense forces, specifically the National Guard, the Border Guard Service, the SSU, and others.

This matter can be regulated exclusively at the legislative level and must include the mandatory collection of the following information:

- DNA samples;
- Dactyloscopic data;
- Dental records.

This information should be stored in electronic registers and used for the medical identification of the bodies (remains) of deceased individuals. This will significantly accelerate the search process and reduce the number of unidentified bodies (remains).

These procedures will not constitute a violation of human rights, provided that:

- this data is used exclusively for this purpose;

- a legal prohibition is established against using this data for any other purposes;
- violation of this prohibition results in appropriate liability;
- there is a system in place for the independent monitoring of the collection, processing, storage, and use of this information, particularly in the context of personal data protection.

It is important to develop an effective procedure for collecting reports on missing persons from relatives or other individuals staying in the occupied territories or abroad.

These communication channels must be neutral while ensuring a certain level of security for the individuals transmitting the information. In particular, such information cannot be directly shared with the defense or security forces.

The procedures should include identification methods accessible to people in the occupied territories or abroad who would wish to submit this information.

## **7. Involve the relatives of missing persons and public organizations established by them in the development and implementation of the state policy on missing persons**

The relatives of missing persons should be engaged more extensively and involved in the development of procedures or the assessment of existing ones for the purpose of their improvement. This can be achieved by creating special advisory or expert bodies under the Commissioner or the Agency of the Ministry of Defense. Furthermore, organizations of relatives of the missing serve as an effective tool for conducting awareness-raising, educational, and communication campaigns at both national and international levels. They can also participate in the activities of search parties.

## **8. Expand cooperation with international organizations in matters regarding missing persons**

It is necessary to legislatively recognize the mandate of the International Commission on Missing Persons and to join the Global Alliance for the Missing<sup>106</sup>, which has been an important coalition of 13 countries since 2021. Participation in this and other similar international organizations focused on searching for missing persons will make it possible to pool efforts to advocate for the cause of missing persons before other international actors and states at the regional and international levels, and, which is equally important, to exchange technological solutions in the field of searching for missing persons.

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106. For more information, please visit <https://missingpersons.icrc.org/global-alliance>

## **9. Develop a strategy for promoting international agreements for the search for missing persons**

The issue of searching for people who have gone missing due to the war should be a priority in the political and diplomatic negotiations between the parties to the conflict. International experience demonstrates that while the political will of the parties is an extremely complex issue, the matters of prisoners of war and missing persons are, as a rule, a priority that is mandatory for all parties to a conflict willing to resolve it. In view of this, the Ministry for Foreign Affairs should have a long-term strategy for exerting pressure on Russia in order to have prisoners of war and civilians released and permits for the search for bodies and remains granted.







