

## MODERN CRIMINAL-LEGAL PROBLEMS FORCED DISAPPEARANCE

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### Summary

The article is devoted to the investigation of criminal and legal problems of enforced disappearance in Ukraine, taking into account the realities of today. The prerequisites for the criminalization of enforced disappearance are considered. Separate elements of the composition of the criminal offense in question have been analyzed. Disagreement with the correctness of the legislator's definition of the object of the considered criminal offense has been justified. Attention is focused on the peculiarities of the subject of enforced disappearance, including in view of the changes made to the Criminal Code of Ukraine. Separate problems of responsibility for enforced disappearance have been identified. Emphasis is placed on the prevalence of the practice of enforced disappearances in Ukraine during the war, taking into account statistical data. The stages of regulation of the legal status of missing persons in Ukraine are studied: the key concepts of the adopted law, as well as the amendments made to it, are analyzed. Based on the results of the study, positive achievements of Ukrainian legislators were determined. At the same time, problematic issues that require legal settlement were emphasized. A conclusion was made about the need to take further measures for the formation of an effective mechanism aimed at attraction to the criminal liability of persons guilty of crimes of enforced disappearance, in order to avoid impunity.

**Key words:** enforced disappearance; missing persons, torture.

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### 1. Introduction

Enforced disappearance is one of the most brutal crimes today, which is primarily due to the extreme danger and seriousness of this offense. The lack of a unified approach to the qualification of enforced disappearance creates problems for Ukraine in bringing the perpetrators to justice.

Taking into account the fact that not so long ago a norm was enshrined in the national legislation, which provides for responsibility for the commission of enforced disappearance, the question of the construction of this norm, its place in the Special Part of the Law of Ukraine on criminal responsibility and application practices are practically not investigated in the science of criminal law.

The purpose of the study is to analyze the legal regulation of the prohibition of enforced disappearances in Ukraine, to identify problematic issues related to the imperfection of the established norm of enforced disappearances, and to find ways to solve them.

The task of the submitted material is to highlight the specifics of defining and establishing enforced disappearance as a crime in the legislation of Ukraine, researching the issue of responsibility for enforced disappearance in the realities of war.

During the research, the methods of analysis, comparison, generalization, as well as the statistical method were used, which made it possible to obtain positive results.

## 2. Socio-legal prerequisites of criminalization enforced disappearance

Since February 2014, our state has been in a state of undeclared war with the Russian Federation, which initially occupied and later annexed the Autonomous Republic of Crimea and the city of Sevastopol, and subsequently began military aggression in certain areas of the Donetsk and Luhansk regions. On April 14, 2014, the National Security and Defense Council of Ukraine announced the beginning of an anti-terrorist operation (ATO) aimed at countering the activities of illegal Russian and pro-Russian armed groups; as of April 30, 2018, its format was changed to a Joint Forces operation (JOF). The new phase of the armed aggression of the Russian Federation, which began on February 24, 2022, led to numerous casualties among military personnel and law enforcement officers, as well as among the civilian population, the occupation of part of the territories, significant economic losses for our country.

Ever since the occupation of Crimea in March 2014, Russia has been using enforced disappearances as a method of waging war, intimidation and suppressing resistance. Later, this practice became even more widespread in certain areas of Donetsk and Luhansk regions, but from February 24, the Russians began to really mass kidnap Ukrainians. To date, enforced disappearance is one of the most common crimes systematically committed by representatives of the aggressor state on the territory of Ukraine.

Back on June 17, 2015, Ukraine joined the International Convention for the Protection of All Persons from Enforced Disappearance (hereinafter referred to as the Convention) – an international legal act of a universal nature, which enshrines the right of a person not to be subjected to enforced disappearance (*Law of Ukraine, 17.06.2015, No. 525-VIII*). It is worth noting that until this moment, human rights defenders have been demanding Ukraine's ratification of the specified document for almost ten years (*Tsentr informatsiyi pro prava lyudyny, 2015*).

The international legal obligations undertaken by Ukraine led to the criminalization of enforced disappearance. According to the Law of Ukraine dated July 12, 2018 No. 2505-VIII "On the legal status of missing persons" (*Law of Ukraine, 12.07.2018, No. 2505-VIII*), the current Criminal Code of Ukraine was supplemented by Article 146-1 "Forcible disappearance".

## 3. Problematic aspects of the criminal legal norm

The simple composition of this criminal offense (Part 1 of Article 146-1 of the Criminal Code of Ukraine) provides for the arrest, detention, kidnapping or deprivation of liberty of a person in any other form, committed by a representative of the state, including a foreign one, with subsequent refusal to recognize the fact of such arrest, detaining, abducting or depriving a person of his liberty in any other form or concealing data about the fate or whereabouts of such a person. Part 2 of this article criminalizes the giving of an order or order to commit the actions specified in part one of this article, or the failure of the manager, who became aware of the performance of the actions specified in part one of this article, by his subordinates to take measures to stop them and not notify the competent authorities about the crime (*Law of Ukraine, 05.04.2001, No. 2341-III*).

Given that Art. 146-1 "Enforced disappearance" of the Criminal Code of Ukraine is relatively new for the domestic law on criminal responsibility, the question of its place in it, the construction of the norm and its application practice, given the large number of cases and the prevalence of this crime, require an urgent and at the same time thorough solution. Every enforced disappearance begins with the deprivation of the victim's freedom. One of the constituent elements of this criminal offense of its objective party is the refusal to recognize the fact of

deprivation of liberty and to inform about the fate and location of the victim. At the same time, such a refusal, as can be seen from the content of Part 1 of Art. 146-1 of the Criminal Code of Ukraine, may be expressed in any form and at any time after deprivation of liberty. In this way, enforced disappearance actually differs from many related crimes.

The current version of the disposition of Part 1 of Art. 146-1 of the Criminal Code of Ukraine – despite the fact that it literally repeats certain provisions of Art. 2 of the aforementioned Convention – does not take into account an important constructive element of enforced disappearance (in the international legal sense), namely the socially dangerous consequence of leaving a person without the protection of the law. I. B. Gazdaika-Vasylyshyn and T. I. Sozansky draw attention to this. (*Hazdayka-Vasylyshyn I.B., Sozans'kyi T.I., 2018: 24-27*). As a result of long discussions during the adoption of the text of the Convention, the ambiguous wording "as a result of which the person is left without the protection of the law" was adopted, which leaves it to the states to consider it either as a constituent element of the act of enforced disappearance, or as its consequence. At the same time, according to Andrushko A. V. At the same time, as A.V. Andrushko claims, the refusal to recognize the fact of deprivation of liberty or the concealment of data about the fate of such a person or his whereabouts automatically means leaving the victim without the protection of the law, and therefore there is no way to reproduce the convention provisions verbatim in national legislation need (*Andrushko A.V., 2021: 142-150*).

It should be emphasized that in international criminal law, enforced disappearance is recognized as a crime against humanity. Yes, in Art. 5 of the Convention states that "the widespread or systematic practice of enforced disappearances is a crime against humanity as defined in applicable international law and entails the consequences provided for by such applicable international law." (*International Convention adopted by UN General Assembly resolution 61/177, 2006*). According to subparagraph "i" of clause 1 of Art. 7 of the Rome Statute of the International Criminal Court, the enforced disappearance of persons committed as part of a large-scale or systematic attack on any civilian is classified as a crime against humanity (*Ryms'kyi statut Mizhnarodnoho Kryminal'noho Sudu, 1998*).

However, domestic parliamentarians placed the norm on this criminal offense in Chapter III "Criminal Offenses Against the Will, Honor and Dignity of a Person" of the Special Part of the Criminal Code of Ukraine. This approach is probably due to the essential characteristics of enforced disappearance in Art. 2 of the Convention, which specifies illegal actions in the form of "kidnapping" and "deprivation of liberty." Therefore, the direct object of a criminal offense according to Art. 146-1 of the Criminal Code of Ukraine is considered the will of a person.

In our opinion, the object of the encroachment under consideration is wrongly defined. The main immediate object of forced disappearance should be recognized as the social relations of the security of humanity. Therefore, we consider it expedient, for the sake of a correct understanding of the socio-legal nature of enforced disappearance, to move the rule on this criminal offense from Chapter III to Chapter XX of the Special Part of the Criminal Code of Ukraine "Criminal Offenses Against Peace, Human Security and International Legal Order" (Article 444-1).

Considering the content of the dispositions of parts 1 and 2 of Art. 146-1 of the Criminal Code of Ukraine, only a representative of a state, including a foreign state, can be recognized as a subject of enforced disappearance. That is, the subject of the researched action is special. According to the mentioned article (as amended at the time of its introduction into the Criminal Code of Ukraine), "state representative in this article should be understood as an official, as well as a person or group of persons acting with the permission, support or consent of the state"; "representatives of a foreign state in this article should be understood as persons who act as civil servants of a foreign state or undergo military service in the armed forces, police bodies, state

security bodies, intelligence agencies, or persons who hold positions in the specified or any other state bodies or bodies of local self-government of a foreign state, formed in accordance with its legislation, or acting on the orders of such persons, and also representatives of irregular illegal armed formations, armed gangs and groups of mercenaries created, subordinated, managed and financed by the Russian Federation, as well as representatives of the occupation administration of the Russian Federation, which consists of its state bodies and structures, functionally responsible for the management of the temporarily occupied territories of Ukraine, and representatives of self-proclaimed bodies controlled by the Russian Federation, who usurped the performance of official functions in the temporarily occupied territories of Ukraine" (*Law of Ukraine, 05.04.2001, No. 2341-III*).

However, in accordance with the Law of Ukraine dated December 1, 2022 No. 2812-IX "On Amendments to the Criminal Code of Ukraine on Improving Liability for Torture" Art. 127 of the Criminal Code of Ukraine, which criminalizes torture, was presented in a new version. Given the fact that the concept of "representative of a state, including a foreign state" is common to the new edition of Art. 127 of the Criminal Code of Ukraine and for Art. 146-1 of this Code, specified by the Law in the note to Art. 146-1 is excluded, instead of Art. 127 of the Criminal Code of Ukraine is supplemented by a note, according to paragraph 1 of which "state representatives in this article and article 146-1 of this Code should be understood as officials, as well as persons who act as officials, or act at their instigation or with their knowledge, or with their tacit consent." Thanks to this change, the concept of "representative of a state" now complies with the provisions of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984. It is worth noting the change in wording according to the note to Art. 127 of the Criminal Code of Ukraine: instead of "a person or a group of persons who act with the permission, with the support or with the consent of the state" appeared "persons who act as officials, or act at their instigation, or with their knowledge, or with their tacit consent".

According to paragraph 2 of the same note, "representatives of a foreign state in this article and Article 146-1 of this Code should be understood as persons who act as civil servants of a foreign state or undergo military service in the armed forces, police bodies, state security bodies, intelligence agencies bodies, or persons who hold positions in the specified or any other state bodies or local self-government bodies of a foreign state, formed in accordance with its legislation, or who act on the orders of such persons, and also representatives of irregular illegal armed formations, armed gangs and groups of mercenaries formed, subordinated, managed and financed by the Russian Federation, as well as representatives of the occupation administration of the Russian Federation, which includes its state bodies and structures functionally responsible for the management of the temporarily occupied territories of Ukraine, and representatives self-proclaimed bodies under the control of the Russian Federation, which usurped the performance of power functions in the temporarily occupied territories of Ukraine". As you can see, part 2 of the note does not differ from the note to Art. 146-1 of the Criminal Code of Ukraine, which was excluded.

Given the special legal status of military personnel, crimes committed by them pose a greater public danger than similar crimes committed by general subjects (*Orobets'K., 2006: 145*). The peculiarity of the subject of enforced disappearance is that he can be a serviceman of a foreign state: both a leader and his subordinate (a person who acts on his orders).

Examining the compliance of the provisions of the criminal law of Ukraine with the requirements of Art. 6 of the Convention, K. P. Zadoya came to the conclusion that the legislation does not provide comprehensive punishment for the actions of the chief in the presence

of the circumstances provided for in the specified contractual provision, since the norms of the Criminal Code of Ukraine do not cover the entire set of situations of failure by the chief to take measures to prevent or stop enforced disappearance (in the conventional sense) by his subordinates (*Zadoya K.P., 2015: 68-69*). The question of the responsibility of the direct manager of officials who committed actions related to the enforced disappearance of a person requires special attention of the legislator.

#### 4. Topical issues of realization of criminal responsibility for enforced disappearance

The armed aggression against Ukraine actualized the need to ensure a quick, complete and impartial investigation of criminal offenses against peace, human security and international legal order and crimes against the foundations of Ukraine's national security, including enforced disappearance. In this context, the issue of adequate criminal-legal counteraction to enforced disappearance is quite important, including taking into account the need to ensure criminal prosecution of persons who currently hold managerial (especially higher) positions in the authorities of the so-called "DPR", "LPR", and also officials of state authorities (services, units), units (units) of the Armed Forces, law enforcement agencies and special services of the aggressor state involved in the commission of these crimes.

To date, despite the large number of cases of enforced disappearances, there is not a single verdict in criminal proceedings under Art. 146-1 of the Criminal Code of Ukraine. The latter simply do not come to court with indictments. At the same time, the rulings of local courts issued in criminal proceedings opened on the grounds of enforced disappearances indicate that data on the commission of these criminal offenses were entered into the Unified Register of Pretrial Investigations as early as 2018. However, these investigations have not been stopped even today. Based on the results of consideration of the submitted petitions, the investigative judges extend the period of the pre-trial investigation, since the implementation of all necessary investigative actions to identify the guilty parties requires additional time. Thus, the proceedings opened in 2018 and 2019 are still being investigated.

The above may indicate both the ineffectiveness of the pre-trial investigation, caused, among other things, by its specificity (the commission of a criminal offense provided for in Article 146-1 of the Criminal Code of Ukraine in the occupied territory), as well as problems in the application of the specified criminal law norm – the debatable nature of the definition of the object of the action, the question of the forms of the objective party and the special subject.

Among the main problems that arise and exist during investigations, it is worth mentioning:

- failure to enter information about a criminal offense into the Unified Register of Pre-trial Investigations;
- problems with determining the place of territorial jurisdiction for pre-trial investigation;
- lack of efficiency in the actions of law enforcement officers;
- lack of thoroughness during investigative (search) actions;
- lack of access by investigators to the crime scene (if it is about the occupied territory);
- insufficient exchange of information about criminal proceedings between various bodies of pre-trial investigation;
- lack of proper procedural management of pre-trial investigations, etc.

In addition, since most of the disappeared are residents of temporarily occupied territories, it is objectively impossible to investigate their disappearance.

## 5. Prevalence of enforced disappearances in wartime conditions

Human rights organizations collect data on the missing through direct contact with the families of the disappeared, and also send information requests to local self-government bodies, which in certain cases better than state bodies, keep records of missing persons in their territorial communities. Thus, the database of the "Peaceful Shore" NGO has collected data on 2,878 missing persons for the entire duration of the military conflict in the east of Ukraine, including 1,425 military personnel, 1,453 civilians, among the latter 56 children. At the end of May 2018, the database contained 1,148 missing persons, of which 150 were military, 998 were civilians, including 33 children, and 152 were unidentified dead. (*Asyeyev YU., Yehorova A., Zakharov B., Zakharov YE., Smelyans'ka YA., Tokarev H., 2018: 9*).

Since February 24, 2022, the non-governmental organization "ZMINA Human Rights Center" has documented at least 311 cases of enforced disappearance of Ukrainians in the occupied territories. The victims are active members of local communities, including representatives of local governments, journalists, volunteers, educators, religious and cultural figures, activists who did not agree with the occupation, or members of their families. Human rights activists point out that Russia also often kidnaps relatives of Ukrainian servicemen, veterans, representatives of law enforcement agencies, local businessmen and other people.

Of that number, 181 people were released, but 118 are still missing or in Russian captivity. The largest number of missing Ukrainians was recorded in the occupied south of Ukraine: 119 people were abducted in the Kherson region, 90 in the Zaporizhzhia region. There are currently 27 cases of enforced disappearances in the occupied areas of the Kharkiv region.

The aggressor state keeps Ukrainians in the occupied Crimea, in the Bryansk, Belgorod, Kursk, Rostov, and Ryazan regions. Civilians are often found next to military personnel, even in the same cells. Also, many Ukrainians are kept in the temporarily occupied territories of Ukraine (*Materials of the online conference of the ZMINA Center for Human Rights, 2022*).

The Kharkiv human rights group, together with its partners in the "Tribunal for Putin" (T4R) coalition, has been documenting war crimes since the first day of the full-scale war, using information from open sources and statements of victims or relatives. As of June 23, 2022, the database of the T4R initiative documented 1,625 victims of disappearances, among them 800 in Kharkiv Oblast, 399 in Kherson Oblast, 236 in Luhansk Oblast, 136 in Zaporizhzhia Oblast, and 54 in other oblasts.

Most of the victims of enforced disappearances were abducted from their homes. This indicates a clear intention to kidnap these people and excludes the factor of chance. At the same time, persons who were at work, on the road between populated areas, at roadblocks, and at rallies also experienced violent disappearances. Unlike those who disappeared at home, these are random people who became victims of a coincidence of circumstances, the behavior of the occupiers, the order to "detain everyone", etc.

According to preliminary qualification, 510 cases of enforced disappearances belong, including 77 in Kharkiv Oblast, 268 in Kherson Oblast, 26 in Luhansk Oblast, 111 in Zaporizhzhia, and 28 in the rest of the oblasts. Thus, during the first 120 days of the full-scale war, the number of enforced disappearances is already almost the same as in the 8 years of the previous stage of the war (*Information portal of the Kharkiv human rights group, 2022*).

## 6. Legal regulation of missing persons status

The term "missing person" usually means a person whose whereabouts are unknown to his relatives and/or who, on the basis of reliable information, has been declared missing in accordance with national legislation in connection with an international or non-international armed conflict, a situation of violence or unrest within the country, natural disasters, or in connection with any other situation that may require the intervention of a competent state authority (*Guidelines/Model Law on Missing Persons*).

Back in 2015, the Parliamentary Assembly of the Council of Europe emphasized the need to regulate the legal status of missing persons in Ukraine. In particular, in its Resolution 2067 (2015) "Disappearing persons during the conflict in Ukraine", it called on the Ukrainian authorities to create a specialized government body that would coordinate the work of all state and non-governmental organizations working on the issue of missing persons. Attention was also focused on the expediency of introducing provisions into the legislation guaranteeing the right of individuals to know what happened to their missing relatives; this would allow to ensure proper legal protection of missing persons and their relatives, as well as to settle the search issue in accordance with the standards of international humanitarian law and the recommendations of the Council of Europe (*Resolution 2067 of Parliamentary Assembly, 25.06.2015*).

The Law of Ukraine "On the Legal Status of Missing Persons" was based on a document developed by the International Committee of the Red Cross and as close as possible to the standards of international humanitarian law. It contains the basic norms intended to be used by any state in the world when developing legislation aimed at protecting missing persons. The advantage of the law is the individualization of the legal status of persons who have disappeared in connection with the armed conflict, since the conditions that contributed to the disappearance are specific and the risks to life are high.

In the sense of the Law of Ukraine dated July 12, 2018 No. 2505-VIII "On the Legal Status of Missing Persons", a "missing person" is a natural person for whom there is no information about his whereabouts at the time the applicant submits a statement about him search (*Law of Ukraine, 12.07.2018, No. 2505-VIII*). A person acquires the status of missing person from the moment of submission of the relevant search application; also the basis for this is a court decision. The entire search procedure – from filing an application to establishing the fact of death, exhuming the remains and handling them – is defined in detail. The recording of the list of relatives of a missing person deserves a positive assessment, thanks to which it is possible to avoid cases of refusal to search for a person with reference to an inappropriate applicant. For the first time in domestic practice, the law prohibits discrimination against missing persons and their relatives on the basis of any signs, which indicates the establishment of the principle of respect for the honor and dignity of citizens, foreigners and stateless persons in the state.

It is also necessary to create:

– The Commission on Missing Persons, which will ensure the cooperation of state bodies responsible for the search, will involve national and international organizations, and will coordinate their efforts. The Commission should include representatives of the National Police, the SBU, the Prosecutor General's Office, the Ministry of Defense, the Commissioner for Human Rights of the Verkhovna Rada of Ukraine, the Red Cross, and others. The main task of the Commission is to find out the fate and whereabouts of missing persons;

– The unified register of missing persons – an electronic database that will contain information about missing persons, information about unidentified remains, as well as the presence or absence of a court decision to recognize wanted persons as missing or declared dead.

The task of the register is to accumulate and centralize information about such persons, record information necessary for effective search.

At the same time, normative legal acts for the implementation of the Law of Ukraine "On the Legal Status of Missing Persons" were adopted only after the Human Rights Commissioner of the Verkhovna Rada of Ukraine submitted a submission to the Prime Minister of Ukraine regarding the implementation of the provisions of this law. As a result, the order of the Cabinet of Ministers of Ukraine dated April 10, 2019 No. 248-r "On the formation of the Commission on issues of persons missing under special circumstances" and the resolution of the Cabinet of Ministers of Ukraine dated May 22, 2019 No. 433 "On approval of the Procedure for the payment of average earnings to persons authorized to perform the functions of the state, who went missing during armed conflict, hostilities, disturbances within the state or in connection with the performance of official duties" to eliminate the consequences of emergencies of a natural or man-made nature" the creation of a corresponding body was initiated, but in 2019 it did not become operational (the regulation on the operation of the commission was approved only in 2020).

On April 14, 2022, the Law of Ukraine "On the Legal Status of Missing Persons" was amended (*Law of Ukraine, 26.04.2022, No. 2191-IX*). The title (by adding the phrase "under special circumstances") and the preamble underwent editorial clarifications; from now on, the Law defines the legal status of persons missing under special circumstances and provides legal regulation of social relations related to the acquisition of the legal status of persons missing under special circumstances, with registration, tracing and social protection of such persons and their family members. For the purposes of this Law, armed conflict, military operations, temporary occupation of a part of the territory of Ukraine, emergency situations of a natural or man-made nature are considered special circumstances.

To Art. 1 of the Law, instead of the term "person missing in connection with an armed conflict", the term "person missing under special circumstances" was excluded. According to the Law, such a person is a person who went missing in connection with an armed conflict, hostilities, temporary occupation of a part of the territory of Ukraine, natural or man-made emergencies (*Law of Ukraine, 26.04.2022, No. 2191-IX*). The above testifies to the expansion of the circle of persons to whom this Law applies.

The Law is also supplemented with the term "search group", which should be understood as the humanitarian mission of bodies authorized to register and/or search for persons who have gone missing under special circumstances, as well as to perform other functions related to the implementation of this Law, organizations and/ or individual persons, aimed at searching for persons missing under special circumstances, their remains, searching for and fixing burial places of persons missing under special circumstances, carrying out the removal of bodies (remains) of deceased (deceased) persons and removal of their remains. Search groups have the right to collect information (information, data), human remains and other materials in agreement with the National Police of Ukraine. For this purpose, if necessary, with the permission of the central executive body that implements state policy in the field of compliance with the norms of international humanitarian law throughout the territory of Ukraine, search groups have the right to establish contacts with legal entities and individuals in the temporarily occupied territories in the Donetsk and Luhansk regions, the Autonomous The Republic of Crimea and the city of Sevastopol, other temporarily occupied territories of Ukraine. The procedure for the creation and operation of search groups is determined by the Cabinet of Ministers of Ukraine (*Law of Ukraine, 26.04.2022, No. 2191-IX*).

The article of the Law on acquiring the legal status of a person who has disappeared under special circumstances has also undergone changes. Now, a person acquires the status

of missing under special circumstances from the moment of entering the information about him, contained in the statement about the fact of disappearance, into the Unified Register of Persons Missing under Special Circumstances, in accordance with the procedure provided for by this Law, and is considered such, who went missing under special circumstances, from the moment the applicant submitted a statement about the fact of the person's disappearance (*Law of Ukraine, 26.04.2022, No. 2191-IX*).

It is worth noting that in the text of the Law, the word "Commission" in all cases is replaced by the word "Commissioner" in the corresponding case in connection with the establishment of the institution of the Commissioner for Issues of Persons Disappeared Under Special Circumstances. The law stipulates that the authorized person is an official of the central executive body that implements state policy in the field of compliance with the norms of international humanitarian law throughout the territory of Ukraine, which is entrusted with the authority to coordinate the search for persons who have gone missing under special circumstances, and to resolve other issues related to related to this (*Law of Ukraine, 26.04.2022, No. 2191-IX*).

So, we can talk about the positive dynamics of the settlement of issues related to missing persons, taking into account the fact that the legislation of Ukraine is developing in accordance with the norms of international law, balancing the system of concepts and the creation of appropriate bodies and procedures for the search for missing persons in the conditions of military operations on the territory of Ukraine.

However, to date, the Unified Register of Persons Disappeared Under Special Circumstances has not been created; however, by order of the Ministry of Internal Affairs of Ukraine dated August 29, 2022 No. 535, the Regulation on the Unified Register of Persons Disappeared Under Special Circumstances was approved, which determines the procedure for its maintenance, filling, the procedure for accessing the Register information, etc (*Order of the Ministry of Internal Affairs of Ukraine, 29.08.2022, No. 535*).

Since the beginning of the armed conflict, various data on the missing have been published. However, such information does not reflect the real scale of the situation, as it is usually data only on those persons who went missing during hostilities. Records of civilians who have gone missing in the temporarily occupied territories are not kept. It is also impossible to name the exact number of persons who were abducted and moved to the territory of the Russian Federation.

On January 27, 2022, the Parliamentary Assembly of the Council of Europe adopted a resolution on ending enforced disappearances on the territory of the Council of Europe states with amendments by the Ukrainian delegation regarding relevant incidents in occupied Crimea, certain areas of Donetsk and Luhansk regions, and temporarily occupied territories of Ukraine. One of the approved amendments of the Ukrainian delegation refers to the call to the member states of the Council of Europe to introduce sanctions against state bodies, state-controlled groups and persons involved in cases of enforced disappearance on the territory of the member states of the Council of Europe or who obstruct the effective investigation of such cases. (*Resolution of Parliamentary Assembly of the Council of Europe, 2022, No. 2425*). In addition, the Ukrainian side managed to add the clause on the definition of the crime of enforced disappearances in accordance with the UN Convention, proposing that "the statute of limitations, if it is applied to enforced disappearances, should be long and proportional to the extreme gravity of this crime, and also take into account its long-term nature."

It is worth noting that most of the disappeared are ordinary citizens who did not express their civic position actively, did not work in state structures or religious organizations. It is difficult, and sometimes impossible, to establish the reasons for their disappearance. According to one of the versions, such chaotic abductions were carried out to terrorize the local population.

On the other hand, it also means that there are no special risk groups, entering into which there is a high chance of becoming a victim of enforced disappearance, and not belonging to them, one can claim that a person is safe. In fact, all residents without exception are at risk in the temporarily occupied territories (*Information portal of the Kharkiv human rights group, 2022*).

It is important to focus the efforts of the law enforcement and judicial systems of Ukraine on ensuring the principle of inevitability of criminal responsibility and punishment of guilty persons, the basis of which is, first of all, the introduction of uniform qualification standards. Along with this, we consider it necessary to provide in the law of Ukraine on criminal liability a punishment that adequately reflects the severity of enforced disappearance.

Quite often, enforced disappearances are combined with torture or ill-treatment. There are also frequent reports that before the disappearance, witnesses saw the victim being beaten or abused. It happened more often when the victim tried to hide or run away. In addition, released victims reported that physical violence against them continued even in places of detention (*Information portal of the Kharkiv human rights group, 2022*).

The qualification of enforced disappearance as a criminal offense, which is not subject to the statute of limitations, is an important guarantee against impunity. This also applies to amnesty or similar measures, which should not be extended to this act. Taking this into account in national legislation will help to avoid impunity for the commission of enforced disappearance.

## 7. Conclusions

Today enforced disappearance is one of the most common crimes, especially considering the war in Ukraine. And unfortunately, the practice of enforced disappearances still remains unpunished, since since 2018 not a single sentence under Art. 146-1 of the Criminal Code of Ukraine was not adopted.

The reasons for this are both the ineffectiveness of the pre-trial investigation, caused, among other things, by its specificity, and problems in the application of the specified criminal law norm.

In our opinion, at the root of the problems with bringing the perpetrators to justice is the lack of a unified approach to the qualification of enforced disappearance, which is an issue that needs an urgent solution.

We consider it necessary to emphasize that the main direct object of enforced disappearance should be recognized as the social relations of the security of humanity, enshrining what is indicated in the law of Ukraine on criminal responsibility. This will lead to a correct understanding of the essence of the investigated criminal offense. In addition, it is worth reviewing the provisions of Art. 146-1 of the Criminal Code of Ukraine, the amount of punishment and to establish such that would correspond to the gravity of this crime.

Also, the issue of responsibility of the direct manager of officials who committed actions related to the enforced disappearance of a person requires special attention of the legislator.

And although the legislation of Ukraine is currently actively developing and improving, as evidenced by the latest changes to the laws of Ukraine analyzed during the study, many issues necessary for the formation of an effective basis for effective criminal-legal counteraction to acts of enforced disappearance still need to be resolved.

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