

**JUSTICE FOR PEACE
IN DONBAS**

*Coalition of Human Rights
Organizations*



**CHARITABLE FOUNDATION
“EAST-SOS”**

MISSING PERSONS

**PROBLEMS WITH REGULATION OF THE LEGAL STATUS
OF PERSONS MISSING DURING THE ARMED CONFLICT IN UKRAINE**

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ВОСТОК SOS

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"JUSTICE FOR PEACE IN DONBAS" COALITION

The Coalition was established in December 2014 and includes 17 NGOs, mainly from the Ukrainian regions of Donetsk and Luhansk.

The Coalition members are:

Alchevsk Human Rights Analytical Centre, Centre for Civil Liberties
/ Euromaidan SOS, Civic Organization "Kharkiv Human Rights Protection Group," Donbas SOS,
Donetsk "Memorial," Eastern-Ukrainian Centre for Civic Initiatives, Ecological and Cultural Centre
"Bakhmat," Human Rights Centre "Postup" / Vostok SOS, Luhansk Regional Human Rights Centre
"Alternative," Luhansk Rights Defence Group, Public Committee for Protection of Constitutional Rights
and Freedoms of Citizens, Public Movement "Ochyshchennya," Public Organization "Mirny bereg,"
"Social Action" Centre NGO, Starobilsk District Public Human Rights Women's Organization "Victoria,"
Starobilsk Public Organization

CONTEXT

According to the International Committee of the Red Cross, more than 1,000 people went missing during the armed conflict in Ukraine. The fourteenth report of the UN Human Rights Monitoring Mission in Ukraine OHCHR referred to 3,687 criminal proceedings ex post regarding missing persons in the Luhansk or Donetsk Oblasts. According to the data of “East-SOS”, collected in conjunction with the NGO “Mirniy Bereg”, information about the fate and whereabouts of 562 people is missing.

According to official figures revealed by the First Vice-speaker of the Verkhovna Rada of Ukraine Iryna Gerashchenko, the number of missing persons is 498.¹ However, in the absence of a special mechanism of accounting for persons missing during the conflict, it is not possible to assess the actual extent as well as the efficiency of tracing the missing.

Unfortunately, to date, the legislation has not defined a procedure for granting legal status to a missing person nor the content of such a status. Furthermore, it made no provisions for a mechanism of accounting for such persons and the exchange of information on missing persons between governmental and non-governmental organizations. There is no mechanism of state support for relatives of missing persons either.

MONITORING METHODOLOGY

East-SOS Charitable Foundation analysed subject legislation of Bosnia and Herzegovina, Kosovo, ICRC Model Law on Missing Persons, as well as the provisions of the draft law "On the prevention of disappearances and assistance in tracing missing persons" presented by the Ministry of Justice of Ukraine.

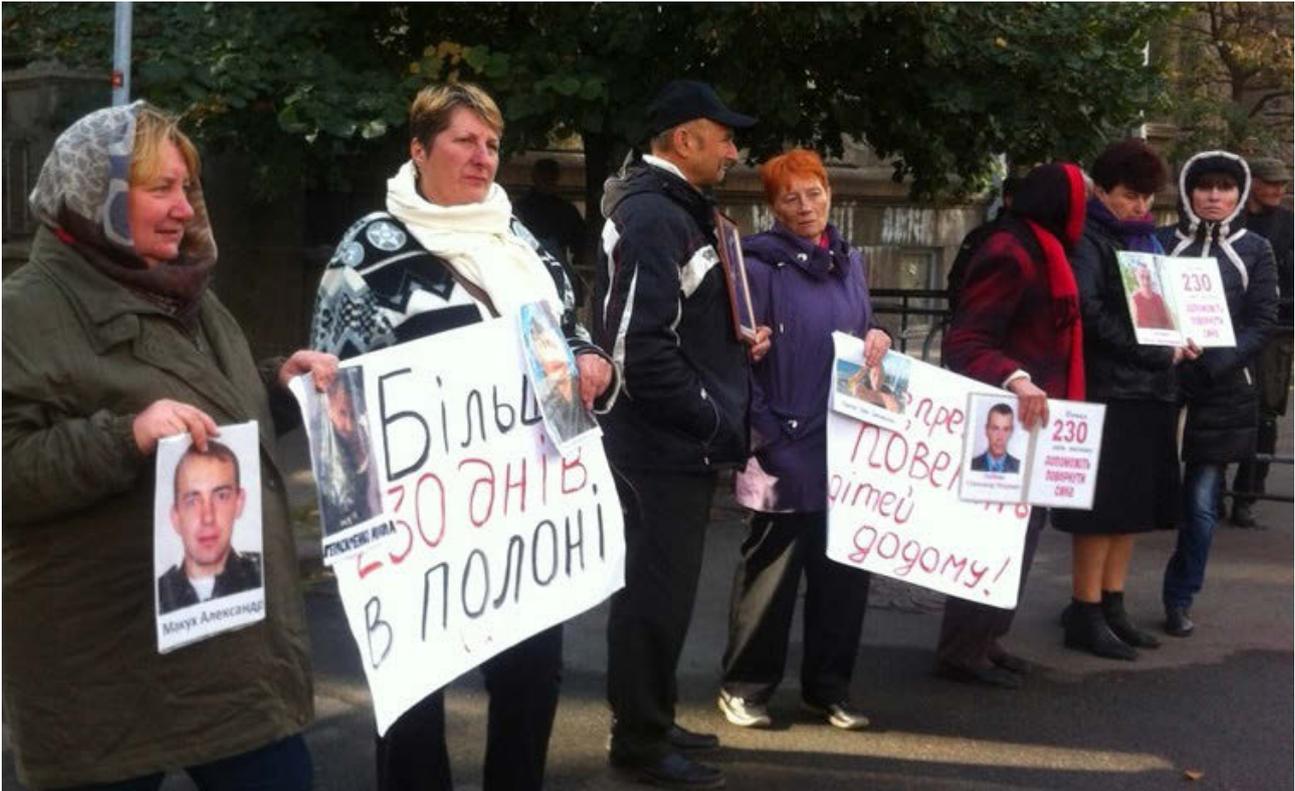
MONITORING RESULTS

In March 2016, the Ministry of Justice of Ukraine presented the draft law "On the prevention of disappearances and assistance in tracing missing persons" which, according to its provisions, must resolve issues of preventing disappearances and providing legal assistance in locating missing persons. This includes persons missing in the conditions of armed conflict, riots or violence inside the country, during a natural disaster, accidents or other emergency situations. The draft law is also supposed to resolve issues of protecting the rights and interests of the missing persons and their relatives.

This draft, in its form and content, is a transformation of the CIS Model Law on Missing Persons from 2008. It retains the model, descriptive character of the regulations. In this form, it cannot be used as a source of legal regulation and needs considerable refinement.

According to the draft, the competent authority which is empowered to trace missing persons is “the National Police and other public bodies that have powers in this sphere.” However, this approach is not sufficiently justified.

¹ www.facebook.com/iryna.gerashchenko/posts/1077815325639613?pnref=story



Mothers of prisoners and missing picketing at the Presidential Administration, 29 September 2015

In the process of implementing the provisions of this law, if adopted, there may appear tasks the fulfilment of which goes beyond the criminal process. This would, for example, be the case with maintaining a register of missing persons, issuance of relevant documents to relatives, appointment and payment of financial assistance to relatives of the missing persons, etc., which obviously cannot be assigned to a broad and indefinite circle of competent authorities, including the National Police.

The existing practice in the experience of Bosnia and Herzegovina or Kosovo, as well as the principles set forth in the Model Law on Missing Persons developed by the International Committee of the Red Cross shows the feasibility of establishing a separate entity entrusted with the task of facilitating the process of tracing missing persons during certain events.

However, in these countries the relevant laws were adopted after the fighting ended and most of the information about persons who had gone missing had already been collected. The specificity of establishing such a body in Ukraine is that the military operations on the territory of Ukraine are ongoing. Unfortunately, this means that there continue to appear new cases of missing people.

In addition, in the context of the current armed conflict, representatives of State bodies of Ukraine do not have access to the temporarily occupied territories of the Luhansk and Donetsk oblasts, as well as the Crimea and Sevastopol. At the same time, non-governmental organizations, including international ones, work in these areas, visit the places of unlawful deprivation of liberty, interview persons who were unlawfully deprived of their liberty or have become victims of enforced disappearance, their relatives, witnesses of these crimes, carry out investigation and the exhumation of remains. Thus, depending on the circumstances of the disappearance, various public bodies, non-governmental organizations and private individuals can have at their disposal the information on the whereabouts of the disappeared person or their remains.



Oleg - the search for him has been going on for 511 days.

It would, therefore, be advisable to create a special coordinating body (a commission) composed of representatives of various institutions and organizations (both governmental and non-governmental) engaged in tracing missing persons. In particular, such commission should include representatives of the Ministry of Justice, Ministry of Interior, Ministry of Social Policy, Ministry of Foreign Affairs, State Service for Emergency Situations, Anti-Terrorist Centre of the Security Service, Ministry of Defence, as well as the relatives of missing persons and/or their associations, non-governmental organizations that are directly involved in tracing missing persons or in tracing and/or identifying bodies during the events that could lead to disappearances.

In addition, it is necessary to create an executive body of this commission which would have to work directly with applicants and relatives of missing persons. To improve the effectiveness of such an executive body it would be useful to impose a duty on public bodies to provide information regarding missing persons or unidentified remains. We believe it necessary to establish an executive body as the one exercising control over the activities of other state bodies in the area of tracing missing persons.

The draft law does not contain any provisions on the prevention of disappearances of persons. The draft needs to be supplemented by provisions concerning the prevention of enforced disappearances, guarantees of the rights of missing persons and their relatives, as well as the rights of arrested, detained or interned persons.

Additionally, social protection of relatives of missing persons who are dependants of the latter should also be ensured. And the legal status of a missing person should be defined with an emphasis on the need to distinguish between the concepts of a "missing person" and a "permanently absent person".

RECOMMENDATIONS

- The authorities of Ukraine, namely a specialized ministry (e.g. the Ministry of the Temporarily Occupied Territories and Internally Displaced Persons of Ukraine) in cooperation with various national and international organizations, should make efforts to develop and adopt legislation concerning the issues associated with tracing persons gone missing during the military conflict in Ukraine.
- Such an act should create a real mechanism of accounting for missing persons, tracing them and organizing interaction between governmental and non-governmental bodies which are involved in the process of tracing missing persons and/or identifying their bodies To that end, taking the CIS Model Law as a basis will not be an adequate action relevant for the current situation in Ukraine.

PARTNER ORGANISATIONS

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