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# LEGAL FRAMEWORKS GOVERNING PERSONS UNACCOUNTED FOR IN ARMED CONFLICT

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## Abstract

*The phenomenon of persons missing under special circumstances has emerged as one of the most pressing legal and humanitarian challenges associated with contemporary armed conflicts and crisis situations. Against the backdrop of large-scale military aggression and its profound human consequences, ensuring the protection of individuals whose whereabouts remain unknown requires a coherent and effective legal response. This article explores the conceptual and legal foundations of the status of persons missing under special circumstances, with particular emphasis on the regulatory framework established by Ukrainian legislation. It examines the procedures for documenting disappearances, conducting search activities, and safeguarding the rights and interests of both missing persons and their family members. The study also assesses the responsibilities of competent state institutions and humanitarian actors involved in tracing, identification, and information-sharing processes. The analysis demonstrates that the issue extends beyond questions of legal status, encompassing broader concerns of human dignity, access to justice, and social protection. In this regard, the article highlights existing challenges in the implementation of national legislation and substantiates the need for further development of institutional and legal mechanisms capable of providing comprehensive protection for persons who have disappeared in connection with armed conflict and other extraordinary circumstances.*

**Keywords:** missing persons, armed conflicts, legal frameworks, role of state authorities

## Introduction

The twentieth century was marked by profound political, social, and legal transformations that reshaped the international order. The devastating consequences of the two World Wars exposed the vulnerability of individuals during periods of armed conflict and highlighted the urgent necessity of developing effective legal frameworks for the protection of human rights and human dignity. These historical experiences laid the foundation for the emergence of contemporary international humanitarian and human rights law.

In the modern era, one of the most pressing humanitarian and legal challenges concerns the protection of individuals whose fate or whereabouts remain unknown as a result of armed

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conflicts, natural disasters, technological accidents, or other large-scale emergencies. The disappearance of persons under such circumstances raises complex legal, social, and humanitarian issues, affecting not only the individuals concerned but also their families and communities. Ensuring effective mechanisms for the search, identification, and protection of missing persons, as well as safeguarding the rights of their relatives, has therefore become an essential component of both national and international legal systems.

On a daily basis, populations encounter natural cataclysms or technological factors of such magnitude that they are capable of annihilating entire residential settlements. In nations currently enduring the state of war, individuals frequently vanish within zones of active hostilities or remain trapped beneath the debris of destroyed buildings. These occurrences are categorized as "special" circumstances precisely because they seize individuals unexpectedly and represent a total departure from the established norms of a civilized society.

In numerous countries, and specifically within Ukraine, the precise determination of the legal status of persons who have gone missing under such special circumstances is of urgent significance for the overarching protection of human and civil rights and freedoms.

According to the official data provided by the International Committee of the Red Cross, in the year 2024 alone, the total number of missing persons registered globally reached approximately 284,400 [1].

In the specific context of Ukraine, as of the period of 2025, data regarding more than 90,000 individuals was published on the Unified State Portal for Persons Missing under Special Circumstances. This staggering number encompasses military personnel, civilians, and children [2].

For the family members and close relations of an individual whose whereabouts cannot be established, the legal determination of a person as missing under special circumstances represents a particularly complex and distressing process. This complexity is not confined to its psychological impact but is also rooted in the persistent ambiguity of the legal category itself and the procedural intricacies that arise throughout its application.

These challenges are further intensified by the multifaceted administrative procedures involved at different stages of recognition, including evidentiary assessment, inter-agency coordination, and engagement between affected persons and competent state authorities. As a result, the overall process is frequently characterized by legal uncertainty and procedural protraction, which significantly complicate the realization of the rights and legitimate interests of the individuals concerned.

## **Chapter 1. Conceptual and Legal Definition of Persons Missing under Special Circumstances in Ukrainian Legislation**

For the purpose of ensuring conceptual clarity and legal precision, the definition of a “person missing under special circumstances” must be derived primarily from the relevant statutory framework. The key normative act in this regard is the Law of Ukraine “On the Legal Status of Persons Missing under Special Circumstances,” adopted on 12 July 2017 and subsequently amended in response to the intensified security challenges following the onset of the full-scale armed aggression in 2022.

This legislative instrument establishes the foundational legal parameters for distinguishing between the general category of a “missing person” and the specifically regulated category of a “person missing under special circumstances.” Such differentiation is of particular legal significance, as it determines the applicable procedural regime, institutional competence, and scope of state obligations in relation to search, registration, and protection measures.

According to the aforementioned Law, a “missing person” is understood to be a physical individual for whom there is no information regarding their current location at the time an applicant submits a formal search request. Conversely, a “person missing under special circumstances” is defined as an individual who has gone missing in direct connection with an armed conflict, military hostilities, the temporary occupation of parts of the territory of Ukraine, or due to emergency situations of a natural or man-made character [3].

Consequently, the legislature highlights several distinctive features of these concepts: first, “special circumstances” refer to conditions that are not the norm in a civilized society, such as armed conflicts and military actions ; second, these involve circumstances that an individual is incapable of influencing or preventing, such as natural disasters; and third, while such events occur less frequently than standard disappearances, they tend to impact a significant number of people simultaneously[4].

Beyond the mere definition of legal status, this Law provides the necessary legal regulation of social relations associated with the acquisition of the status of persons missing under special circumstances. It covers the accounting, search procedures, and social protection mechanisms for such individuals and their respective families.

In an analysis of the Law, particular attention must be paid to Article 4, which dictates the procedure for recognizing an individual as missing under special circumstances. Pursuant to Article 4, an individual acquires this specific status from the moment information contained

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Special Circumstances. Furthermore, the individual is legally considered missing under special circumstances from the moment the applicant submits the initial report regarding the fact of disappearance [3].

An individual retains the legal status of a person missing under special circumstances until the formal termination of search activities by the competent authorities. This approach reflects the legislator's emphasis on the continuity of search efforts as a core procedural obligation, irrespective of the duration of absence or the passage of time.

Importantly, the cessation of search procedures is not automatically contingent upon the formal legal declaration of death. Even in cases where a person has been judicially declared deceased, the search process under the relevant legislative framework does not terminate if the actual circumstances of death remain unverified and the location of the body, burial site, or human remains has not been established. In such situations, the presumption of procedural necessity persists, requiring continued investigative and search measures.

This legal construct underscores a distinct separation between civil-law consequences of declaring a person deceased and the humanitarian and procedural obligations embedded in the search regime. The declaration of death serves primarily as a juridical mechanism for resolving issues of legal certainty, such as inheritance or civil status. However, it does not extinguish the state's duty to clarify the factual circumstances surrounding the individual's disappearance. Accordingly, the search obligation remains in force until the location of the person or their mortal remains is conclusively determined. This ensures that the legal framework prioritizes not only formal resolution of status but also the fulfillment of humanitarian imperatives, including the right of relatives to know the fate of the missing person and to obtain closure grounded in verified information.

Professor Kolpakov analyzed in his work "Missing Persons Under Special Circumstances in the Doctrine of Human Rights," this Law, noting several key points: «a) the legal fact of recording information about a person in the register serves as the simultaneous legal fact for the emergence of the individual's legal status as "missing under special circumstances"; b) a person is deemed missing from the moment the applicant submits the statement of disappearance; c) the moment an individual acquires legal status and the moment they are considered missing do not coincide; d) every individual, before acquiring the formal status of a missing person, exists for a certain duration in the status of a person considered missing.» [5].

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According to the further insights of prof. Kolpakov, the process of an individual acquiring the status of "missing under special circumstances" consists of two distinct stages. During the first stage, the individual acquires the status of a person who is *considered* missing under special circumstances. The legal fact of the emergence of this status correlates with the moment the applicant submits the report of disappearance. The duration of this stage is limited by the legal fact of entering the relevant data into the Unified Register of Persons Missing under Special Circumstances. In the second stage, the status of a person *considered* missing under special circumstances is transformed into the formal legal status of a person *missing* under special circumstances. The legal fact of the emergence of this primary, explicit status correlates with the act of entering the relevant data into the aforementioned Unified Register [5].

Article 5 of the Law further delineates the rights of individuals missing under special circumstances. According to this article, such persons possess all rights guaranteed by the Constitution and laws of Ukraine, including the right to a comprehensive investigation into the circumstances of their disappearance and the establishment of their location. The State is under a strict obligation to take all possible measures to conduct the search for persons missing under special circumstances. Additionally, it is specifically noted that the rights, interests, and property of the missing person are subject to protection until the search is terminated or until the person is declared deceased in accordance with the law [6].

Furthermore, Article 6 of the Law specifies the rights of close relatives and family members of missing persons. Specifically, they possess the following rights:

- a) The right to receive reliable information regarding the location of the person missing under special circumstances, the circumstances of their death (if applicable), and the burial site (if known).
- b) The right to obtain accurate information regarding the progress and results of the search efforts.
- c) The right to social protection as defined by Ukrainian legislation.
- d) The right to receive free legal assistance [3].

In a continuing analysis of the Law, it is vital to emphasize Article 9, which addresses the specific legal status of individuals authorized to perform state functions who go missing during armed conflict, hostilities, internal disturbances, or while performing official duties related to the liquidation of the consequences of natural or man-made emergencies. For such individuals, their place of employment, position, and average salary at the enterprise,

institution, or organization (regardless of its subordination) are preserved, but only until the moment the person is legally declared deceased [3].

## **Chapter 2. International Humanitarian Law as a Normative Foundation for the Protection of Individuals in Armed Conflict**

This legislative act represents a significant example of the domestication and practical implementation of international humanitarian law within the legal system of Ukraine. In doctrinal terms, international humanitarian law is widely regarded as an autonomous branch of public international law that governs the conduct of armed hostilities and seeks to mitigate their adverse humanitarian consequences. As emphasized in the scholarly work of M. V. Hrushko, V. V. Muzyka, T. S. Fedorova, and V. V. Vladyshevska, international humanitarian law comprises a coherent system of legal principles and norms regulating the permissible means and methods of warfare, ensuring the protection of persons affected by armed conflict, and defining the legal relationships between belligerent parties as well as between states not directly involved in hostilities. This normative framework is primarily oriented toward safeguarding human dignity and limiting suffering in conditions of armed conflict.

The primary purpose of international humanitarian law is to preserve human dignity and guarantee the protection of fundamental rights during periods of armed conflict. By establishing legal safeguards for civilians, prisoners of war, the wounded, the sick, and other protected persons, it seeks to limit the human suffering caused by warfare while ensuring compliance with universally recognized humanitarian standards. [7].

During the russo-Ukrainian war, the global community has witnessed a great number of human rights violations that has not been seen in recent history; it was not expected that such brutality could be repeated after the events of the 20th century.

Establishing the location of many individuals missing under special circumstances in Ukraine is nearly impossible as long as the war continues. Military personnel categorized as "missing" may be held in russian captivity, may have perished on the battlefield, or may be buried in mass graves. Until the individual or their remains are found, they will continue to be considered missing, as the search for them remains ongoing.

## **Chapter 3. Legal Nature and Institutional Framework of the Search for Persons Missing under Special Circumstances**

The search for persons missing under special circumstances constitutes a structured system of legally regulated and institutionally coordinated measures undertaken by competent

public authorities and their designated officials with the aim of establishing the whereabouts of such individuals. This system operates on the basis of normative legal acts that define both procedural mechanisms and the distribution of competences among involved actors.

Within this regulatory framework, the legislator has introduced a functional distinction between two categories of authorized subjects. The first category comprises bodies responsible for the registration, accounting, and maintenance of official records concerning missing persons. The second category includes institutions vested with operational powers to conduct investigative and search activities. This differentiation ensures a clear allocation of responsibilities, thereby enhancing the efficiency and coordination of efforts aimed at locating persons missing under special circumstances.

The first group includes several central and local executive authorities and prosecutorial bodies. These include: the Ministry of Defense of Ukraine, the Ministry of Health of Ukraine, the State Migration Service of Ukraine, the State Penitentiary Service of Ukraine, the State Emergency Service of Ukraine, the Ministry of Regional Development and Construction of Ukraine, the Ministry for Reintegration of the Temporarily Occupied Territories of Ukraine, the Administration of the State Border Guard Service of Ukraine, the National Guard of Ukraine, the National Police of Ukraine, the Security Service of Ukraine, prosecutorial bodies, and local executive authorities.

The bodies authorized to conduct the search primarily include the National Police of Ukraine. Additionally, this function is assigned to subjects carrying out operational-search activities, the list of which is contained in Article 5 of the Law of Ukraine "On Operational-Search Activity". The search for a person missing under special circumstances is initiated upon a statement submitted to the relevant territorial body of the National Police of Ukraine. The statement must include information that may facilitate the search, such as the individual's personal data, the circumstances of their disappearance, distinctive features (tattoos, scars, physical traits), and additional data—information about witnesses or contacts who may know details of the disappearance.

Such a statement may be submitted by: a relative of the person, a representative of a military formation, a state authority, a local self-government body, a public association, or any other person who becomes aware of the disappearance. These same entities may also report the disappearance to the Commissioner. In such instances, the search application is filed by the Commissioner for Persons Missing under Special Circumstances.

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#### **Chapter 4. The Institutional Role of the Commissioner for Persons Missing under Special Circumstances in Ukraine**

The legal status and operational mandate of the Commissioner for Persons Missing under Special Circumstances are defined by the Resolution of the Cabinet of Ministers of Ukraine “On the Commissioner for Persons Missing under Special Circumstances.” Under this regulatory framework, the Commissioner functions as an official within the Ministry of Internal Affairs of Ukraine and is entrusted with the coordination of activities related to the search for missing persons, as well as the resolution of interconnected legal and organizational issues in accordance with applicable legislation. The appointment and dismissal of the Commissioner are carried out by the Cabinet of Ministers of Ukraine upon the submission of the Minister of Internal Affairs [8].

In the exercise of these functions, the Commissioner is empowered to request and obtain relevant information from a wide range of actors, including state authorities responsible for the registration and search of missing persons, local self-government bodies and their officials, public associations, and international humanitarian organizations that may possess pertinent data. Such organizations include, *inter alia*, the Ukrainian Red Cross Society and the United Nations Office for the Coordination of Humanitarian Affairs.

Upon receipt of a request, the relevant domestic authorities and public associations are required to provide a written response within a three-day period, outlining the results of their review. The Commissioner subsequently consolidates the received information and transmits it, also within three days, to the competent territorial units of the National Police for the initiation or continuation of search activities. A central element of the Commissioner’s mandate is the oversight of the implementation of these measures, including the authority to request updated information from the National Police regarding the progress and outcomes of search operations.

V. K. Kolpakov, in the previously mentioned work, details the Commissioner’s role, noting that they are responsible for the coordination of search efforts and the resolution of contiguous issues. The Commissioner is entrusted with the coordination of the search for persons missing under special circumstances, as well as the resolution of related issues. Coordination is the process of ensuring the consistency of actions and efforts between different individuals, groups, or organizations to achieve a common goal. It is a crucial element of the management and organization of any activity and may include planning, organization, communication, resource provision, control, and adjustment of actions. Depending on the nature of the activity and specific tasks, coordination may require various approaches and

establishment of general rules and standards, as well as the determination of responsibility for the performance of certain tasks. To this end, the Commissioner interacts: firstly, with state authorities and local self-government bodies, various services of the President of Ukraine and the Cabinet of Ministers of Ukraine; secondly, with the relevant authorities of foreign states and international organizations; thirdly, with public associations, trade unions, and employers' organizations; fourthly, with enterprises, institutions, and organizations; fifthly, with physical persons (citizens, foreigners, and stateless persons) [5].

An important place in the activities of the Commissioner is occupied by the function of information support for the search. The Law provides that it is implemented through: a) receiving information from the subjects of the search; b) exchanging information with the Register, as well as with other state information resources; c) transferring generalized information to the National Police bodies, as well as to other state bodies authorized to record or search for missing persons; d) communicating with the relatives of missing persons to inform them of the search efforts. Within the framework of such communication, the Commissioner appeals to state authorities, local self-government bodies, public associations, and international humanitarian organizations with requests for information that may facilitate the search for a missing person. The heads of state authorities and local self-government bodies, as well as public associations that have received a request from the Commissioner, are obliged to consider it within a three-day period and provide a response in writing. At the same time, the legislator has established restrictions on the Commissioner's actions regarding information. The exchange of data obtained as a result of investigative actions or operational-search activities is prohibited [8].

## **Chapter 5. The Role of International Humanitarian Mechanisms in the Search for Missing Persons in Armed Conflict**

The significance of international humanitarian mechanisms in addressing the issue of missing persons has also been emphasized in contemporary legal scholarship. In particular, L. Prypolova, in her study on the legal status of persons missing in connection with armed conflict and other special circumstances, highlights the pivotal role of the International Committee of the Red Cross (ICRC) in tracing individuals whose whereabouts remain unknown during armed conflicts.

According to the author, the Geneva Conventions confer upon the ICRC a broad humanitarian mandate, including access to persons deprived of their liberty in relation to armed

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conflicts and the facilitation of family tracing activities. Within this framework, the ICRC coordinates the operation of specialized tracing mechanisms responsible for collecting, processing, and transmitting information concerning prisoners of war, civilian detainees, children, and other protected persons. These activities are aimed at restoring family links, clarifying the fate of missing individuals, and ensuring the exchange of humanitarian information between the parties to a conflict.

Particular importance is attached to the information and tracing systems established under the Geneva Conventions, which provide for the centralized collection and dissemination of data regarding prisoners of war and civilians affected by hostilities. Through these mechanisms, competent authorities and humanitarian organizations are able to conduct inquiries into the fate and whereabouts of missing persons, thereby contributing to the realization of the families' right to know and strengthening the protection afforded to victims of armed conflict under international humanitarian law. [9].

## **Conclusion**

In conclusion, the phenomenon of persons missing under special circumstances constitutes one of the most complex and enduring challenges at the intersection of international humanitarian law, human rights law, and domestic legal regulation. Its relevance within contemporary legal systems is not merely persistent but demonstrably expanding, reflecting both the scale of modern armed conflicts and the increasing fragility of civilian protection in conditions of protracted insecurity. Each year, thousands of individuals are reported missing across different jurisdictions, and this figure continues to rise in correlation with the intensification of military confrontations, systemic displacement, and large-scale humanitarian crises.

While historically the legal and sociological discourse on missing persons was predominantly associated with phenomena such as transnational human trafficking, irregular migration flows, or cases involving individuals with cognitive impairments – particularly conditions such as dementia that may lead to involuntary disappearance – the contemporary landscape has significantly transformed. These earlier paradigms, though still relevant, are now structurally supplemented and, in many contexts, overshadowed by the consequences of armed conflicts of varying intensity and duration. In particular, ongoing or recently escalated hostilities, including the war between Ukraine and the Russian Federation, the Israeli–Palestinian conflict, and other regional confrontations, have generated unprecedented numbers of missing

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persons, thereby reshaping both the empirical scope and normative urgency of this legal category.

Within this evolving context, the importance of a precise and functional legal definition of persons missing under special circumstances extends well beyond conventional scenarios of natural disasters or voluntary disappearance. It increasingly encompasses situations characterized by the direct exposure of civilians and combatants to hostilities, indiscriminate violence, and forced displacement. The legal category thus acquires a distinctly humanitarian dimension, grounded in the protection of human dignity under conditions of uncertainty and loss.

At the same time, the lived reality underlying this legal construct is marked by profound human suffering and prolonged psychological trauma. It reflects the experiences of parents searching for children separated in the aftermath of shelling or evacuation, children attempting to ascertain the fate of parents engaged in military service, and families enduring indefinite periods of uncertainty in the absence of verified information regarding the fate of their loved ones. This state of suspended knowledge produces a dual burden – legal uncertainty on the one hand and existential anguish on the other – thereby underscoring the necessity of robust institutional mechanisms capable of ensuring effective search procedures, reliable information exchange, and the realization of the “right to know” in accordance with international humanitarian standards.

Accordingly, the regulation of persons missing under special circumstances must be understood not as a purely technical legal framework, but as an essential component of a broader humanitarian architecture aimed at mitigating the consequences of armed conflict and preserving the minimum guarantees of human dignity in situations where certainty has been displaced by prolonged absence and unverified fate.

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