



**International Convention for
the Protection of All Persons
from Enforced Disappearance**

Distr.: General
11 November 2021

Original: English
English, French and Spanish only

Committee on Enforced Disappearances

**Report submitted by Ukraine under article 29 (1)
of the Convention, due in 2017***

[Date received: 3 August 2021]

* The present document is being issued without formal editing.



Contents

	<i>Page</i>
I. Introduction	4
II. Part I: Preparation of the Report.....	4
III. Part II: Legal framework for the prohibition of enforced disappearances.....	4
IV. Part III: Step-by-step presentation of the implementation of the Convention	5
Article 1–10: Inaccuracy, responsibility and punishment for the crime of enforced disappearance	5
Articles 11–17: Ensuring the rights and legitimate interests, including of the prisoners	6
Articles 18, 20: Access to a prisoner and information about such a person	7
Article 19: Data protection	8
Article 21: Release of a person who has been deprived of liberty	9
Article 24: Ensuring rights and interests of the victim	11
Article 25: Child protection.....	11
Article 43: Compliance with the international humanitarian law	11

List of abbreviations

CEC	Criminal Executive Code of Ukraine
CCU	Criminal Code of Ukraine
CED	UN Committee on Enforced Disappearances
CPC	Criminal Procedure Code of Ukraine
Convention	International Convention for the Protection of All Persons from Enforced Disappearances
ICRC	International Committee of the Red Cross
NABU	National Anti-Corruption Bureau of Ukraine
PGOU	Prosecutor General's Office of Ukraine
UN	United Nations Organization
RF	Russian Federation
PTDC	Pre-Trial Detention Center

I. Introduction

1. On June 17, 2015 Ukraine acceded to the International Convention for the Protection of All Persons from Enforced Disappearance. In accordance with Article 29 of this internationally binding instrument, each participating country submits to the UN Committee on Enforced Disappearances an initial report on the measures taken to fulfill its obligations.
2. Under Article 31 of the Convention, Ukraine recognizes the competence of the Committee to receive and consider communications from persons under its jurisdiction or on behalf of those who claim to be victims of violations by Ukraine of the provisions of the Convention.
3. Ukraine declares that, in accordance with Article 32 of the Convention, it recognizes the competence of the Committee to receive and consider communications in which one State Party alleges that another State Party is failing to fulfill its obligations under the Convention.
4. In accordance with Article 29, Ukraine shall submit to the Committee a report on the measures taken to implement its obligations under the requirements of the Convention.

II. Part I: Preparation of the Report

5. The drafting of the report was coordinated by the Ministry of Internal Affairs of Ukraine.
6. The report was prepared by the National Police of Ukraine in consultation with other executive bodies, namely the Ministry of Internal Affairs, Ministry of Foreign Affairs, Ministry of Justice, Ministry of Defense and the Security Service of Ukraine.

III. Part II: Legal framework for the prohibition of enforced disappearances

7. In order to incorporate the protective function of the Convention into the national law, Ukraine adopted the Law of 12.07.2018 No. 2505-VIII “On the legal status of missing persons”. According to the Law, the Criminal Code of Ukraine was amended, supplementing it with the Article 146-1 “Enforced disappearance”. These amendments to the CCU were adopted in accordance with the provisions of the 1992 Declaration and the 2006 Convention for the Protection of All Persons from Enforced Disappearance.
8. Article 10 of the Law provides for the creation of the Commission on Missing Persons in Special Circumstances to ensure coordination of the state authorities authorized to register and/or search for missing persons, including the search for missing persons in the Joint Forces Operation (anti-terrorist operation) area in the temporarily occupied territories of Donetsk and Luhansk regions, as well as in the Autonomous Republic of Crimea. The implementation of measures to ensure the national security and defense, resistance and deterrence of armed aggression of the Russian Federation, and the search of persons missing due to an armed conflict, military actions, riots within the state or in connection with natural or man-made disasters or other events that could cause mass death of people, also fall within the scope of the mandate of the Commission.

Legal framework

9. For committing enforced disappearance the criminal liability is provided in accordance with Article 146¹ (Enforced Disappearance) of the Criminal Code of Ukraine. The sanction of this Article provides for the imprisonment for up to 7 years.
10. The investigation of such criminal offenses, in accordance with Article 216 (Jurisdiction) of the Criminal Procedure Code of Ukraine, are carried out by the pre-trial investigation bodies of the National Police of Ukraine.

11. Article 146-1 of the Criminal Code of Ukraine defines a wide list of illegal actions which the legislature considers as enforced disappearance, namely: arrest, detention, abduction, or imprisonment of a person in any form.

12. Taking into account the duration of the armed conflict in eastern Ukraine and the aggression of the Russian Federation, the above Article identifies representatives of a foreign state as perpetrators of enforced disappearance.

13. At the same time, in the interlinear note to Article 146-1 of the Criminal Code of Ukraine, the following notion is explained as follows: “representatives of a foreign state in this article shall be deemed persons acting as civil servants of a foreign state or serving with the military, police, state security agencies, intelligence bodies or persons who hold positions in 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 order of such persons, and also the representatives of illegal armed groups, armed gangs and groups of contractors set up, subordinated, managed and funded by the Russian Federation, as well as representatives of the occupation administration of the Russian Federation, composed of its state bodies and structures, which are functionally responsible for the management of the temporarily occupied territories of Ukraine, and representatives of the Russian Federation of self-proclaimed bodies that usurped the exercise of power functions in temporarily occupied territories of Ukraine”.

14. Regarding to the amendments to the CCU, the relatives of a person against whom the acts related to the enforced disappearance were committed are recognized as the victims in the criminal proceedings in accordance with the Article 56 (Rights of the victim) of the CPC of Ukraine and have the right to familiarize themselves with the criminal proceedings file for the committed crime.

IV. Part III: Step-by-step presentation of the implementation of the Convention

15. The article-by-article review of Ukraine’s implementation of the International Convention for the Protection of All Persons from Enforced Disappearance.

Article 1–10: Inaccuracy, responsibility and punishment for the crime of enforced disappearance

16. Articles 1 to 10 of the Convention provide that no one shall be subjected to enforced disappearance. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance.

17. Article 146-1 of the Criminal Code of Ukraine stipulates liability for enforced disappearance.

18. The part 1 of this Article stipulates liability for arrest, detention, abduction or deprivation of liberty of a person in any other form committed by a representative of a State, including a foreign one, with further refusal to acknowledge the fact of such arrest, detention, abduction or deprivation of liberty of a person in any other form or concealment of information about that person’s fate or whereabouts.

19. The sanction of part one of Article 146-1 of the Criminal Code provides for punishment by imprisonment from three to five years. According to the national classification of the severity of crimes, the Criminal Code defines the act of enforced disappearance provided for in the part one of Article 146-1 as a minor crime.

20. Part 2 of Article 146-1 of the Criminal Code provides for liability for the issuance of an order or instruction to commit the actions described in part 1 of the Article, or failure to act by a commander who has become aware of committing the actions by his/her subordinates referred to in part 1 of the Article, to take measures to stop such actions and non-notification of competent authorities of the crime.

21. The sanction of part two of the Article of the CCU provides for deprivation of liberty from five to seven years. According to the national classification of the severity of crimes, the Criminal Code defines the act of enforced disappearance provided for in the part two of the Article 146-1 as a serious crime.

22. The Note 1 to Article 146-1 of the CCU states that a representative of the State in the 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.

Articles 11–17: Ensuring the rights and legitimate interests, including of the prisoners

23. According to Article 24 of the Criminal Executive Code of Ukraine, without special permission (accreditation) at any time to freely visit penitentiaries for control and inspections (optional – accompanied by three medical workers for medical examination of convicts and two media representatives) the following persons have the right to:

- The President of Ukraine or his specially designated representatives (not more than five persons in each region, the Autonomous Republic of Crimea, the cities of Kyiv and Sevastopol);
- The Prime Minister of Ukraine or his specially designated representatives (not more than two persons in each region, the Autonomous Republic of Crimea, the cities of Kyiv and Sevastopol);
- The Verkhovna Rada of Ukraine Commissioner for Human Rights or his specially designated representatives;
- The Chairman, Deputy Chairmen and members of the Presidential Pardons Commission;
- The Minister of Justice of Ukraine or his specially designated representatives (not more than two persons in each region, the Autonomous Republic of Crimea, the cities of Kyiv and Sevastopol);
- The Minister of Internal Affairs of Ukraine, the Head of the National Police or their specially designated representatives (not more than two persons in each region, the Autonomous Republic of Crimea, the cities of Kyiv and Sevastopol);
- The members of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;
- The Chairman of the Council of Ministers of the Autonomous Republic of Crimea, the heads of the local public administrations on the territory of which they are located, or their specially authorized representatives (not more than five persons for the respective territory);
- The Members of the Parliament of Ukraine, their assistants-consultants, Members of the Parliament the Autonomous Republic of Crimea and the local councils;
- The Prosecutor General, as well as the prosecutors designated by him/her, and the prosecutors who monitor the compliance with the law in the relevant territory in the execution of the court decisions in criminal cases, as well as in the application of other coercive measures related to the restriction of personal liberty of the citizens;
- The Chairman, Deputy Chairman and members of the supervisory commission who carry out the organization of the public control over the observance of the rights and lawful interests of the convicts during the execution of the criminal punishments;
- The Village, Settlement, City Mayor or their specially designated representatives (not more than five persons) – on the territory of the relevant local council;
- The members of the public councils at the central body of executive power, which implements the state policy in the field of execution of the criminal punishments, and its territorial subdivisions – in the respective territory.

24. During visits of penitentiary institutions, such persons have the right to move freely through the territory of the facility, without the time constraint and with the maximum assistance of its officers, make audio and video recordings, disseminate the received information, to read reports, including statistical, to conduct audits, inspections, to submit oral or written requests, to monitor compliance with the law, appeal against illegal actions (inaction) of the officials of the penitentiary institution, demand immediate cessation of such actions (inaction) and prosecution of the perpetrators (followed by comprehensive written notification of the relevant person about the measures taken (not taken) within 10 days from the date of receipt of the respective request), to get acquainted with the personal files of the convicts, other documents, etc., communicate with any officials of the detention facility and convicts (including under condition of anonymity).

25. Other persons, as well as the close family members of the convicts may visit the penitentiary institutions with the special permission of the administration of such entities or their supervising authorities.

26. The representatives of the public organizations, experts, scientists and specialists invited by the Ukrainian Parliament Commissioner for Human Rights to perform the functions of the national preventive mechanism contractually shall visit the penitentiary institutions on the ground of the assignment letter of the Ukrainian Parliament Commissioner for Human Rights.

27. According to paragraph 8 of Article 13 of the Law of Ukraine “On the Ukrainian Parliament Commissioner for Human Rights” the Ombudsperson has the right to visit the pre-trial detention centre without prior notice of the time and purpose of the visit.

28. With regard to the pre-trial detention centres where persons deprived their liberty, in accordance with Article 22 of the Law of Ukraine “On Pre-Trial Detention” and sub-para 5.2 of the Section I of the Pre-trial Detention Centres Rules of Procedure, the observance of the law in the places of the pre-trial detention is carried out by the prosecutor through exercising powers to supervise the observance of the law in the execution of the court decisions in the criminal cases, as well as in other coercive measures taking related to the restriction of the personal liberty of the citizens. The supervising prosecutor has the right to visit the pre-trial detention centre at any time.

Articles 18, 20: Access to a prisoner and information about such a person

29. According to part three of Article 12 of the CPC, a person’s detention, taking into custody or other restraint in his right to freedom of movement, as well as his whereabouts, must be immediately brought to notice, as provided herein, of his close relatives, family members or other persons of such person’s own choosing.

30. Paragraph 7 of part three of Article 42 of the CPC envisages that the suspect shall have a right to when apprehended or when a preventive measure such as putting into custody has been applied, to have promptly notified of his apprehension and whereabouts of his family members or other persons as it prescribed by Article 213 of the CPC.

31. According to part 1 of Article 213 of the CPC a competent official who detains a person shall be under the obligation to allow the detainee to immediately inform his close relatives, family members, or other persons of his own choosing about detention and the whereabouts.

32. If the competent official who has carried out apprehension has grounds for a reasonable suspicion that notification of apprehension may jeopardize the pre-trial investigation, he may make such informing himself without, however, breaching the requirement concerning its immediacy.

33. According to Article 91 of the Criminal Executive Code and Section V of the Internal Regulations of the Penitentiary Institutions, upon arrival of the convict at the place of serving the sentence, the Administration of the institution shall notify the court which rendered the sentence within three days of its execution and of the place of serving the sentence by the

convict. At the same time, the message shall be sent to one of the family members or close relatives of the convict's choice, indicating the address of the penal establishment and explaining the convict's rights.

34. The visits to the detainees shall be provided under Article 12 of the Law of Ukraine "On Pre-trial Detention".

35. The provisions of this Article, in particular, stipulate that the visits by the relatives or other persons may be allowed the detainees by the administration of the pre-trial detention centre only with the written permission of the investigator or court conducting the criminal proceedings at least three times a month. The duration of the visit is stipulated from one to four hours.

36. Individuals who have been subject to temporary or extradition arrest are granted a meeting with relatives or other persons by the administration of the place of preliminary detention on the basis of the written permission of the authority conducting the extradition check. Under the Agreement between the Office of the United Nations High Commissioner for Refugees and the Government of Ukraine, the individuals who are subject to the temporary or extradition arrest are granted visits by the representatives of the Office of the United Nations High Commissioner for Refugees without any limitation of the number and duration of such visits.

37. A detained person has a right to meet with the defense counsel in private, without any limitation with regard to the number or duration of the visits, in free time from the investigative actions. The powers of the defender as to the protection of the detained person shall be confirmed in accordance with the Article 50 of the Criminal Procedure Code of Ukraine. The Administration of the institution must provide conditions for the visits, including those excluding during the visit with the defender the possibility for the third parties to have an access to the information provided during the visit.

38. Providing visits to a person sentenced to the arrest, restriction of liberty, imprisonment for a definite term and life imprisonment is provided in accordance with the provisions of Articles 51, 59, 110 and 151 of the Criminal Executive Code.

39. Convicted persons have the right to the visits: short-term visits, and the juvenile convicts – short-term visits without any limitation of their number.

40. Those sentenced to the restriction of liberty have the right to the short-term visits without any limitation of their number.

41. The convicts sentenced to the imprisonment for a certain period have a right to receive visits in the following number:

- Convicts who are in the prison of enhanced control are granted one short visit per month and one long visit for three months;
- Convicts in the institution of social adaptation and rehabilitation shall be provided with a short-term visit without restrictions and a long-term visit monthly.

42. In the minimum-security detention facilities convicts shall receive the visits in a number set up for the convicts in the social rehabilitation institutions.

43. The sentenced to the life imprisonment have a right to receive a short-term visit once a month and a long-term visit once in every two months.

Article 19: Data protection

44. According to Article 7 of the Law of Ukraine of 01 June 2010 No. 2297-VI "On Personal Data Protection" the processing of the personal data on the racial or ethnic origin, political, religious or ideological beliefs, the membership in political parties and trade unions, conviction to the criminal punishment, and also data relating to the health, sexual life, biometric or genetic data is prohibited.

45. The provisions of this Article shall not apply if the processing of the personal data relates to the court verdicts, performance of the tasks of the operative and investigative or

counterintelligence activities, fight against terrorism and is carried out by a state authority within its powers defined by the law.

Article 21: Release of a person who has been deprived of liberty

46. According to Article 20 of the Law of Ukraine “On Pre-trial Detention”, the grounds for release from custody are:

- Revocation of the preventive measure;
- Substitution of the preventive measure;
- Posting the bond determined by the investigating judge, by the court’s decision on the application of remand in custody as a preventive measure;
- Expiration of a decision of the investigating judge, the court on detention or expiry of the term of detention provided by the law, as a preventive measure, if this period is not extended in the manner prescribed by the law;
- Expiration of the maximum term of the provisional or extradition arrest provided by the CPC;
- Termination (cancellation) of the provisional or extradition arrest;
- Release of a person from the extradition arrest by the court.

47. The release of a person from custody in the event of revocation or changing of this preventive measure shall be carried out by the head of the pre-trial detention facility on the ground of a decision of the investigating judge, a ruling or a court verdict.

48. The head of the pre-trial detention facility is obliged to immediately release from custody a suspect or accused in respect of whom, on the day of the expiration of the decision of the investigating judge, the detention court or the expiration of the detention established by the Criminal Procedure Code of Ukraine, the decision of the investigating judge, court on the extension of such term was not received. In this case, the head of the pre-trial detention facility shall notify the official or body conducting the criminal proceedings and the relevant prosecutor supervising the observance of the law during the pre-trial investigation.

49. The head of the pre-trial detention facility shall immediately release the person from custody upon expiry of the maximum period of the provisional arrest provided for in the Part one of the Article 583 of the Criminal Procedure Code of Ukraine, notifying the prosecutor and the court decided to apply the provisional arrest. Five days before the expiration of the maximum term of the provisional arrest, the head of the pre-trial detention facility is obliged to send a notice to the prosecutor and the court which made the decision to apply the provisional arrest on the day of its expiration.

50. The head of the pre-trial detention facility is obliged to immediately release the person from custody in case of expiration of the maximum term of the extradition arrest provided by the Criminal Procedure Code of Ukraine, notifying the head of the regional prosecutor’s office, his first deputy or deputy, and the court on the application of the extradition arrest. Ten days before the end of the maximum term of the extradition arrest, the head of the pre-trial detention facility is obliged to send the head of the regional prosecutor’s office, his first deputy or deputy, as well as the court which decided to apply the extradition arrest, the date of its expiration.

51. The release of a person from custody in case of termination of the provisional or extradition arrest shall be carried out by the head of the pre-trial detention facility on the ground of the resolution of the head of the regional prosecutor’s office, his first deputy or deputy in accordance with the Article 586 of the Criminal Procedure Code of Ukraine.

52. The head of the pre-trial detention facility is obliged to release from custody a suspect or accused after the bail set by the investigating judge has been issued by the court in a decision to apply a preventive measure in the form of detention to such a person. Upon receipt of the document confirming the bail and its verification, the head of the pre-trial detention facility is obliged to immediately release the person from custody and notify the investigator,

prosecutor and investigating judge orally and in writing, and if the bail is paid during the court proceedings, – the prosecutor and the court. The verification of the document confirming the payment of the bail may not take more than one working day.

53. The sentence or decision on the release of a detained person shall be enforced immediately upon arrival at the place of the pre-trial detention.

54. The persons released from custody are provided with the free travel to their place of residence by the administration of the pre-trial detention. If necessary, they are given financial assistance and clothing.

55. Pursuant to parts two and five of Article 153 of the Criminal Executive Code, a persons sentenced to arrest, deprivation of liberty or imprisonment after serving the term of the sentence imposed by the court verdict shall be released in the first half of the last day of the sentence.

56. A full settlement shall be obligatorily made with the released person, the personal documents, valuable and other items belonging to him shall be returned, the money kept in his personal account shall be issued or transferred to the account specified by the convict or an account opened for him, and also the Certificate of the established sample, where the grounds for the release shall be indicated. Upon the request of the person being released, the Certificate shall be issued.

57. The passport of the released person from arrest, deprivation of liberty or imprisonment shall be issued upon his dismiss. In the absence of the passport in the personal file of the convict the administration of the penal institution shall take measures in advance to obtain it.

58. The early release from serving the sentence shall be carried out on the day of receipt of the relevant documents and if the documents are received after the end of the working day in the first half of the next day.

59. According to paragraphs 5.2, 5.5–5.10, 5.16, 5.17 of Section V of the Instruction on the functioning of the departments for control over the execution by penitentiary institutions of the court decisions, the release of sentenced (persons in custody) is carried out on the ground of the verified data on the sentence (detention) in the court decisions accounting documents and control cards of the convicts.

60. All the documents on the release or reduction in sentence shall be handed to the convict (person in custody) against his signature.

61. At least three months before the release the department notifies the relevant officials of the pre-trial detention centre in order to make timeous payment to released persons, providing them the travel tickets to the place of residence or work in Ukraine chargeable to the account of pre-trial detention centre.

62. For the convicts (persons in custody) released from the pre-trial detention centre shall be issued the Release Certificate.

63. Upon the release, a person shall be identified by the photo, prominent physical characteristics or via comparing his answers with the data contained in his personal file. In case of a good faith dispute with regard to identification, a fingerprinting shall be carried out, the fingerprint formula shall be established and verified with the data of the fingerprint's card.

64. For persons who have been sentenced by the court to additional sanction in terms of disqualification to hold certain positions or engage in certain activities, the remanent is replaced by a less restrictive punishment in the form of community correctional activity or by a pardon decree of the President of Ukraine, the officials, within twenty-four hours of release, send a certified copy of sentence or court decision (order of the Ministry of Justice of Ukraine on the enforcement of the Presidential decree of pardon), personal file that contains the personal data, date of release, name and surname of relatives and their place of residence, as well as a receipt of summons to appear in the penitentiary inspection within three days after release.

65. Within three days after receiving the court decision on parole, officials shall send to the authorized probation body in chosen place of residence a certified copy of the sentence or court decision (order of the Ministry of Justice of Ukraine on the enforcement of the pardon

decree of the President of Ukraine), personal file that contains the personal data, date of release, name and surname of relatives and their place of residence, as well as a receipt of summons to appear in the penitentiary inspection within three days after release.

Article 24: Ensuring rights and interests of the victim

66. According to parts one, two and three of Article 127 of the CPC, the suspect, accused, as well as upon his consent, any other person or entity shall have the right at any stage of the criminal proceedings to make amends to an aggrieved person, territorial community, state arising out of a criminal offence.

67. The damage caused by a criminal offence or other socially-dangerous act can be enforced by the court's decision made as a result of hearing a civil action in the criminal proceedings.

68. The damage caused to the aggrieved person arising out of a criminal offence shall be covered to him from the State Budget of Ukraine as it prescribed by the law.

69. Thus, according to part one of Article 128 of the CPC, the person to whom a pecuniary and/or non-pecuniary damage caused by a criminal offence or another socially dangerous act, have the right to bring a civil action in the course of the criminal proceedings before the trial has commenced against the suspect, accused or individual, or entity civilly liable in law for the damage caused by the acts of the suspect, accused or insane person who has committed the socially dangerous act.

Article 25: Child protection

70. According to Article 574 of the CPC, the central authority of Ukraine for extradition is the Prosecutor General's Office (extradition of the suspects accused in the criminal proceedings during the pre-trial investigation) and the Ministry of Justice of Ukraine (extradition of the convicted in the criminal proceedings during the court proceedings or execution of the sentence), unless otherwise specified by the international treaty of Ukraine.

71. According to Article 545 of CPC, the Prosecutor General's Office of Ukraine shall make requests for the international legal aid in the criminal proceedings during the pre-trial investigation and considers relevant requests of the foreign competent authorities, except for the pre-trial investigation actions of the criminal offenses under the jurisdiction of NABU, which in such cases performs the functions of the central authorities of Ukraine. The Ministry of Justice of Ukraine shall refer requests from the courts for the international legal aid in the criminal proceedings during the judicial proceedings and consider similar requests from the courts in the foreign states.

72. The procedure for sending a request to another state, the procedure for consideration by the designated (central) authority of Ukraine of a request of another state or international judicial institution for such assistance and the procedure for execution of such request shall be determined by the CPC and existing international treaties of Ukraine.

73. The Ministry of Justice has not receive and sent any kind of requests for extradition and court orders for the international legal assistance to the competent authorities of the foreign states as it envisaged by the International Convention for the Protection of All Persons from Enforced Disappearance.

Article 43: Compliance with the international humanitarian law

74. The institutions and bodies of the State Penitentiary Service of Ukraine cooperate constructively with the International Committee of the Red Cross.

75. The ICRC representatives are granted free access to the penitentiaries and pre-trial detention centres.