

## PROTECTION OF CHILDREN'S RIGHTS IN THE CONDITIONS OF RUSSIA'S ARMED AGGRESSION AGAINST UKRAINE

Dr. Alyona Dutko, Associate Professor

Lviv State University of Internal Affairs, Ukraine  
e-mail: [dutkoalona@gmail.com](mailto:dutkoalona@gmail.com); <https://orcid.org/0000-0002-5062-6947>

**Abstract.** The article draws attention to international standards for the protection of children's rights in wartime conditions, Ukrainian legislation that guarantees the protection of children's rights in wartime conditions, the main problems and challenges of implementing individual rights of children in wartime conditions. The author concludes that it is obvious that the state of war and active hostilities in Ukraine determine the new realities of today, and the general procedure for the protection of children's rights established by the current legislation, which operated in peacetime, simply stopped working in most cases.

**Keywords:** martial law; children's rights; evacuation of children; temporary placement of children in a family

### INTRODUCTION

According to the children's search portal Children of War, from February 24, 2022 to May 6, 2023, as a result of Russia's armed aggression in Ukraine, 480 children were killed, 980 children were injured, 403 children were considered missing, and 19,393 were deported.<sup>1</sup> These numbers are not final, as work is ongoing to establish them in places of active hostilities, in temporarily occupied and liberated territories.

During the war in Ukraine, every Ukrainian child, without exception, in any case suffered violations of their legally enshrined rights. Even if the child is not physically harmed, the child has not been subjected to exploitation prejudicial to any aspect of the child's well-being, sexual abuse, torture or other cruel, inhuman or degrading treatment or punishment, there is a violation of the child's fundamental rights, enshrined in the Constitution of Ukraine and norms of international law, such as: the right to personal life and protection against encroachment on it, the right to health care, the right to rest and leisure, the right to education and family. Unfortunately, this is not the entire list of violated rights.

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<sup>1</sup> See <https://childrenofwar.gov.ua> [accessed: 11.05.2023].

## I. INTERNATIONAL STANDARDS FOR THE PROTECTION OF CHILDREN'S RIGHTS IN CONDITIONS OF WAR

An important area of activity of our state in the field of protection of children's rights is the improvement of current legislation, the ratification of conventions, including the implementation of norms of international law. As a result, Ukraine is a party to a number of international documents in the field of ensuring children's rights. However, in the conditions of martial law, which has been introduced throughout the country, it is difficult to implement the functions assigned to the state to ensure the protection of children's rights.

Children growing up in the conditions of wars are protected by the norms of international humanitarian law as part of the civilian population. However, given the vulnerability and developmental needs of children, children have special protections.

Article 19 of the Convention on the Rights of the Child of 1989<sup>2</sup> provides a general rule that member states take all necessary legislative, administrative, social and educational measures to protect the child from all forms of physical and psychological violence, insult or abuse, lack of care or negligent and brutal treatment and exploitation, including sexual abuse, by parents, legal guardians or any other person concerned about the child.

Article 38 of the Convention establishes a special norm that states: "are obliged to respect the norms of international humanitarian law applicable to them in the event of armed conflicts and concerning children, as well as to ensure their observance," "to take all possible measures to ensure the protection of children who affected by the armed conflict, and their care," which to a certain extent is consistent with the norms of international humanitarian law, in particular, with the Geneva Conventions of 1949<sup>3</sup> and the Additional Protocols to them of 1977,<sup>4</sup> in which the protection of children is devoted to the provisions concerning both the civilian population in general and them as a separate category.

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<sup>2</sup> Convention on the Rights of the Child of 1989, [https://zakon.rada.gov.ua/laws/show/995\\_021#Text](https://zakon.rada.gov.ua/laws/show/995_021#Text) [accessed: 11.05.2023].

<sup>3</sup> Geneva Conventions of 1949, [https://zakon.rada.gov.ua/laws/show/995\\_154#Text](https://zakon.rada.gov.ua/laws/show/995_154#Text) [accessed: 11.05.2023].

<sup>4</sup> *Dodatkovy'j protokol do Zhenevs'ky'x konvencij vid 12 serpnja 1949 roku, shho stosuyet'sya zaxy'stu zhertv mizhnarodny'x zbrojny'x konfliktiv (Protokol I)*, vid 8 chervnija 1977 roku, [https://zakon.rada.gov.ua/laws/show/995\\_199#Text](https://zakon.rada.gov.ua/laws/show/995_199#Text) [accessed: 11.05.2023]; *Dodatkovy'j protokol do Zhenevs'ky'x konvencij vid 12 serpnja 1949 roku, shho stosuyet'sya zaxy'stu zhertv zbrojny'x konfliktiv nemizhnarodnogo xarakteru (Protokol II)*, vid 8 chervnija 1977 roku, [https://zakon.rada.gov.ua/laws/show/995\\_200#Text](https://zakon.rada.gov.ua/laws/show/995_200#Text) [accessed: 11.05.2023].

Thus, according to Article 24 of Geneva Convention IV on the Protection of the Civilian Population in Time of War of 1949, the parties to the conflict will take all necessary measures to ensure that children under the age of 15 who are orphaned or separated from their families as a result of war are not left to fend for themselves, and also to facilitate, under any circumstances, their education. According to Article 27 of the Geneva Convention IV, protected persons have the right, under all circumstances, to personal respect, respect for their honor, the right to a family, their religious beliefs and rites, habits and customs. They should always be treated humanely and protected, in particular from any act of violence or intimidation, from insults and the curiosity of the crowd. Subject to the provisions relating to health, age and sex, the party to the conflict under whose authority the persons are under protection, have the right to treat all of them equally, without any discrimination, particularly as to race, religion or political opinion, while the parties to the conflict have to apply to such persons such measures of control or security as may be deemed necessary in the conduct of the war.

Article 4(3) of Additional Protocol II of 1977 regulates the issue of providing children with the necessary care and assistance during armed conflicts of a non-international nature, in particular, education, religious and moral education, reunification of separated families; separately, it is emphasized that children under the age of 15 cannot be recruited into armed forces or groups, and they are not allowed to participate in hostilities.

If we talk about the actions of the Rashists, then they bear the signs of a specific genocide of the Ukrainian people. These are the facts of deportation and forced relocation, the fact that the President of the Russian Federation signed a decree on granting citizenship to unaccompanied children, statements regarding a simplified adoption procedure. All these are clear signs of the transfer of children from one nation to another, which is prohibited by the Geneva Convention.

According to the Human Rights Commissioner, about 150,000 children were illegally deported from Ukraine.<sup>5</sup> Such actions of the aggressor country are a gross violation of Article 7 of the UN Convention on the Rights

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<sup>5</sup> "There are 16,207 officially verified children on the territory of the Russian Federation. These are children that I, as an ombudsman, know about, which Ukrainian city these children are from and approximately where they are on the territory of the Russian Federation. In reality, this number of children is much higher. We assume that this number reaches approximately 150,000 children. Russia says that there are 733,000 Ukrainian children they keep on their territory. However, in our opinion, this figure is exaggerated," said ombudsman Lubinets. According to him, most children were taken to Russia from those regions that were temporarily occupied, namely Luhansk, Donetsk, Kherson, Zaporizhzhya and Crimea, <https://www.ukrinform.ua/rubric-ato/3671478-kilkist-nezakonno-vivezenih-urosiu-ukrainskih-ditej-moze-sagati-150-tisac.html> [accessed: 11.05.2023].

of the Child and a violation of Article 49 of the Geneva Convention on the Protection of Civilian Population in Time of War, which prohibits forced individual or mass relocation or deportation.

## 2. UKRAINIAN LEGISLATION ON THE PROTECTION OF CHILDREN'S RIGHTS

In the conditions of the war, there was an urgent need for legislative settlement of a number of issues regarding the protection of children's rights, which could not be resolved under the general order that operated in peacetime. The question of the possibility of real protection of the rights of children who became victims of Russian aggression and were left without parental care or are in difficult life circumstances arose [Mendzhul 2023, 107].

Ensuring the rights of children under martial law requires the consolidation of the efforts of a large number of organizations and institutions, especially since in recent months a significant number of new documents have appeared that regulate their actions, as well as the actions of parents, other relatives, guardians, etc.

The Law of Ukraine "On the Protection of Childhood"<sup>6</sup> is the main law of Ukraine regulating the situation with children in conditions of military operations. According to it, a child injured as a result of hostilities and armed conflicts is considered to be "a child who, as a result of hostilities or armed conflict, was injured, contused, maimed, suffered physical, sexual, psychological violence, was abducted or illegally taken outside Ukraine, involved to participate in military formations or was illegally detained, including in captivity." The state is obliged to take all necessary measures to ensure the protection of these children, care for them and their reunification with family members (in particular, search, release from captivity, return to Ukraine of children illegally taken abroad).

Resolution No. 302 of the Cabinet of Ministers of Ukraine dated March 17, 2022, "On the Formation of the Coordination Staff for the Protection of Children's Rights in Martial Law"<sup>7</sup> entered into force.

The coordination headquarters is a temporary consultative and advisory body of the Cabinet of Ministers of Ukraine, which was created to facilitate the coordination of activities of central and local bodies of executive

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<sup>6</sup> Pro oxoronu dytynstva: Zakon Ukrainy' vid 26.04.2001 № 2402-III, <https://zakon.rada.gov.ua/laws/show/2402-14#Text> [accessed: 11.05.2023].

<sup>7</sup> Postanova Kabinetu Ministriv Ukrainy' «Pro utvorenniya Koordynacijnogo shtabu z pytan' zaxystu prav dytyny' v umovax voyennogo stanu» vid 17.03.2022 № 302, <https://zakon.rada.gov.ua/laws/show/302-2022-%D0%BF#Text> [accessed: 11.05.2023].

power, other state bodies, local self-government bodies on issues of protection of children's rights under martial law.

It is worth noting that during the period of operation of the Coordination Headquarters, thanks to the efforts of the representatives who were part of it, a significant amount of work was carried out, namely: 1) agreed decisions were made regarding the definition of the tasks of state bodies involved in the implementation of the policy on the protection of children's rights; 2) evacuation of children from dangerous areas and coordination of their safe movement to places of temporary accommodation was carried out; 3) coordinated the work of regional military administrations and local self-government bodies to prepare and organize safe places for temporary accommodation of evacuated children and meeting their needs; 4) registration of children who left for the safe territory of Ukraine or outside of Ukraine is ensured. In particular, the government made a decision to introduce information on children who are temporarily displaced (evacuated) on the territory of Ukraine, where hostilities are not taking place, or outside of Ukraine. Thus, the Unified Information and Analytical System "Children" was created to keep appropriate records in it and ensure the protection of the information contained therein; 5) compliance with the Rules for crossing the state border by citizens of Ukraine, children with legal representatives or organized groups of children is monitored in cooperation with central and local executive bodies, local self-government bodies; 6) through authorized representatives, monitoring of the conditions of children's stay in Ukraine and abroad, monitoring of compliance with social standards and the rights of children in the country of their stay, and implementation and protection of the rights and interests of children who are abroad are carried out together with consular institutions and diplomatic missions of Ukraine of Ukraine; and others [Drobyazko 2022].

In view of the above, it can be concluded that the state, thanks to the authorized members of the Coordination Staff, provides decent support and protection of children's rights under martial law.

Another significant step for the protection of children during martial law was the introduction of the nationwide program "The child is not alone." This program was introduced by the Office of the President of Ukraine together with the United Nations Children's Fund UNICEF Ukraine and the Ministry of Social Policy. The program is a chatbot "The child is not alone" – a resource for helping children in wartime, the content of which can be found on the Internet. Thanks to the introduction of the "The child is not alone" chatbot, every citizen of Ukraine can get answers to any questions regarding the temporary placement of a child in a family, finding a lost child; and also every concerned person can report cases known to him of a child being unattended. In addition, this resource contains a lot of useful

information for people who are not familiar with how to protect the rights of children in martial law, namely: 1) a number of norms and standards that form a legal framework for the protection of children's rights in conditions of armed conflict, consisting of Ukrainian legislation and norms of international law, are given; 2) contacts of services and bodies for the protection and support of children are indicated depending on the situation (violation of children's rights, provision of psychological support to a child, child trafficking, etc.); 3) highlighted the main questions and answers on the topic: "What to do and where to go if the rights of the child were violated during the war;" 4) there is a section for relatives and carers which provides guidance on what relatives and carers should do and how to communicate with traumatized children; 5) instructions and rules for communication with children who have experienced trauma are provided for psychologists and journalists.

It is also worth paying special attention to the fact that the bot has an attachment for submitting an application by citizens of Ukraine and foreign organizations that wish to temporarily shelter a child or groups of Ukrainian children. In order to shelter a child without parental care during the war, the family (person) must meet certain criteria that can be checked directly in the bot. In addition, people who have sheltered a child are offered online training on placement, adaptation and care of a child.

As can be seen from the mentioned chatbot, Ukrainians have already submitted almost 20,000 applications to temporarily shelter a child. But their number is growing every day.

From August 1, 2022, the state child tracing portal "Children of War" (<https://childrenofwar.gov.ua>) became operational in Ukraine – an information platform on which information about children who suffered as a result of military operations during the full-scale aggression of the Russian Federation is updated daily against Ukraine (disappeared, wounded, deported). In addition, citizens have the opportunity to submit an application regarding the deportation or disappearance of a child, and receive counseling. As of May 6, 2023, according to the "Children of War" state portal: 1) 480 children died and 964 were injured (according to the Office of the General Prosecutor); 2) 403 children went missing (according to the National Police of Ukraine); 3) illegally deported to the Russian Federation or to the temporarily occupied territories of Ukraine: a) 19393 (according to the data of the National Information Bureau); b) 744,000 children (according to data from open sources, voiced by the Russian Federation); c) 364 children were returned to the territory of Ukraine from the territory of the Russian Federation and occupied territories (according to the National Information Bureau of Ukraine).

### 3. THE SAFETY OF CHILDREN DURING WAR IS AN URGENT ISSUE TODAY

Every child feels safe when he knows how to act correctly in this or that extreme situation. It is very important for children of any age to feel safe. And for this, it is necessary to acquire the simplest skills of personal and collective safety during martial law, skills of self-protection during situations that threaten life and health.

On August 23, 2022, Resolution No. 940 of the Cabinet of Ministers of Ukraine "On Amendments to Certain Resolutions of the Cabinet of Ministers of Ukraine Regarding Improvement of the Mechanism of Evacuation" was adopted, which at the legislative level defines the forms of refusal of an individual, legal representatives of children from mandatory evacuation.

In the event that the legal representatives refused the mandatory evacuation of orphans, children deprived of parental care, including those raised in foster families, family-type children's homes, under their care or custody, arranged in the family of foster carers, guardianship or guardianship of such children is terminated.

Guardianship and guardianship bodies can unilaterally terminate agreements on the placement of such children in a foster family, on the organization of the activities of a suitable family-type orphanage, on the patronage of such a child.

The National Social Service together with local state administrations, local self-government bodies in safe areas determine the list of foster families, family-type children's homes, families of foster carers, institutions in which children are expected to stay around the clock, to which orphans, children deprived of parental care, children left without parental care, taking into account their age and state of health.

By signing the refusal to evacuate, the natural parents familiarize themselves with the duties of the parents regarding the upbringing of the child, established by Articles 150 and 155 of the Family Code of Ukraine and the responsibility provided for by Article 184 of the Code of Ukraine on Administrative Offenses and Article 166 of the Criminal Code of Ukraine: starting from February 24, 2022, 4.8 million Ukrainian children changed their place of residence, of which: 2.5 million children moved within Ukraine, the rest went abroad.

As of December 16, 2022, according to the National Social Service, 6,730 children who are pupils of educational, health care, social protection

and private institutions (2,100 within Ukraine and 4,630 outside Ukraine) continue to be evacuated.<sup>8</sup>

Regions of Ukraine and foreign countries where children are relocated: 1) within Ukraine, the largest number of displaced (evacuated) children is in the Lviv region (474 children), Chernivtsi region (339), Transcarpathian region (240), Ivano-Frankivsk region (139) and the city of Kyiv (96); 2) outside Ukraine, the largest number of displaced (evacuated) children are in Poland (1,533 children), Germany (736), Turkey (299), Italy (267), Austria (255), Romania (254), Switzerland (181), the Netherlands (159) and Spain (129).

#### 4. THE MAIN PROBLEMS AND CHALLENGES OF REALIZING THE RIGHT TO EDUCATION IN THE CONDITIONS OF THE RUSSIAN-UKRAINIAN WAR

The right to education is a fundamental socio-cultural right that ensures the stable development of a child. Violation of the right to education is part of armed conflict and part of a deliberate and systematic attempt by the aggressor to deprive children of the opportunity to receive an education, as well as attempts to legitimize repression and reproduce patterns of brutal behavior and total militarization of society.

After the full-scale invasion of the Russian Federation into Ukraine on February 24, the sphere of education, like all spheres of social life, underwent strong changes. The intensity of hostilities, the bombing of almost all Ukrainian cities and towns, migration processes, and the occupation of parts of Ukrainian territories have complicated the realization of the right to education and the implementation of the educational process.

In the conditions of the Russian-Ukrainian war, the destruction of educational institutions and the impossibility of realizing the right to education is not an accident, it is part of Putin's "denazification plan". And it is not surprising that the issue of preserving education should become one of the priority tasks of the Ukrainian state, because education plays an important role in the formation of society [Potapova 2022].

According to Article 19 of the Law of Ukraine "On Childhood Protection" dated April 26, 2001 No. 2402-III, every child has the right to education. In 2019, Ukraine joined the Safe Schools Declaration, which, confirming the importance of UN Security Council Resolutions 1998 (2011)

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<sup>8</sup> Prava ditej: Shhorichna dopovid' Upovnovazhenogo Verxovnoyi Rady' Ukrayiny' z prav lyudyny' Dmytra Lyubyncya Pro stan doderzhannya i zaxystu prav i svobod lyudyny' i gromadyanyna v Ukrayini u 2022 roci, <https://ombudsman.gov.ua/report-2022/dity-viiny> [accessed: 11.05.2023].



and 2143 (2014), calls on the parties to the armed conflict to refrain from actions that impede children's access to education, states to consider specific measures to limit the use of schools by armed forces and armed non-state formations in violation of applicable norms of international law.

The Ministry of Education and Science of Ukraine issued Order No. 274 dated March 28, 2022 "On some issues of the organization of general secondary education and the educational process under martial law in Ukraine", according to which it is necessary to ensure and organize, among other things, the enrollment of general secondary education graduates, who were forced to change their place of study and/or residence (stay) and live (stay) in Ukraine or abroad, to educational institutions; general secondary education for students in any form that can be provided by the educational institution and is the safest for them.<sup>9</sup>

Education seekers during the special period are guaranteed the organization of the educational process in a remote form or in any other form that is the safest for its participants. Therefore, during the period of martial law, children are provided with conditions for obtaining education in safe conditions, in particular remotely (Article 57-1 of the Law of Ukraine "On Education" dated September 5, 2017 No. 2145-VIII).<sup>10</sup>

However, a significant number of children did not have access to the Internet (due to damaged power lines) or equipment for distance learning, as thousands of Ukrainian families were forced to leave their places of permanent residence, go abroad, or stay in the occupied territories [Pylypyshyna and Turchenko 2022, 68].

According to the Institute for Educational Analytics, before the full-scale invasion in February, there were 4.31 million students in Ukrainian schools. As of the beginning of 2023: 1) 7,764 schools operate in a traditional and mixed format; 2) 5,160 in online mode.

According to the given data, almost 70% of students study remotely or in a mixed form of education, which is due to the massive attacks of the Russian Federation on the critical infrastructure of Ukraine, which led to the absence of electricity, heating, water, access to high-speed Internet and mobile communications. 505,000 students and more than 13,000 teaching staff continue to stay abroad.

Thus, the children found themselves in a situation that makes it impossible for them to study and, accordingly, to exercise their right to education.

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<sup>9</sup> Nakaz MON Ukrayiny' vid 28 bereznya 2022 roku No274 «Pro deyaki pytannya organizaciyi zdobuttya zagal'noyi sered'noyi osvity' ta osvith'ogo procesu v umovax voyennogo stanu v Ukrayini», <https://zakon.rada.gov.ua/rada/show/v0274729-22#Text> [accessed: 11.05.2023].

<sup>10</sup> Zakon Ukrayiny «Pro osvitu» vid 05 veresnya 2017 roku №2145-VIII, <https://zakon.rada.gov.ua/laws/show/2145-19#Text> [accessed: 11.05.2023].

Therefore, although the state formally at the legislative level has complied with the requirements to ensure the safety of children from violence, in practice it is impossible to protect children from crimes committed by the country – an aggressor, contrary to the norms of international law.

## 5. LEGAL REGULATION OF PLACEMENT OF CHILDREN LEFT WITHOUT PARENTAL CARE

One of the main problems is the placement of children who were left without parental care as a result of the invasion of the Russian Federation into the territory of Ukraine.

On March 22, 2022, the Resolution of the CMU No. 349 “On Amendments to Certain Resolutions of the Cabinet of Ministers of Ukraine Regarding the Protection of Children’s Rights During a State of Emergency or Martial Law”<sup>11</sup> amended the Regulations on Family-Type Children’s Homes, approved by the Resolution of the Cabinet of Ministers of Ukraine dated April 26, 2002 of 2002 No. 564 and the Regulation on foster families, approved by Resolution No. 565 of the Cabinet of Ministers of Ukraine dated April 26, 2002, respectively, provide that during a state of emergency or martial law in Ukraine, family-type orphanages and foster families children left without parental care can be accommodated under the conditions of temporary accommodation within the stipulated maximum number of children in a family-type orphanage and in a foster family, respectively.

Also, with this Resolution, the Procedure for conducting activities related to the protection of children’s rights by guardianship bodies, approved by the Resolution of the Cabinet of Ministers of Ukraine dated September 24, 2008 No. 866 “Issues of activities of guardianship and guardianship bodies related to the protection of children’s rights” Section “Peculiarities of placement of children left without parental care, including children separated from their families, orphans, children deprived of parental care, in the event of a state of emergency or martial law being introduced on the territory of Ukraine,” which, in particular, also provides for a temporary placement of children in functioning foster families and family-type children’s homes.

Therefore, in the conditions of martial law, only temporary placement of children left without parental care in family-type orphanages and foster families is allowed.

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<sup>11</sup> See <https://zakon.rada.gov.ua/laws/show/349-2022-%D0%BF#Text> [accessed: 11.05.2023].

## CONCLUSIONS

In view of the above, the following conclusions can be drawn. Firstly, states, as the main responsible entities for the life and safety of their population, need to increase the level of coordination and interaction regarding the needs of children and youth during armed conflicts and in post-conflict situations; secondly, the parties to the armed conflict must clearly comply with their obligations regarding the protection of civilians in general, children in particular, not only under international humanitarian law, but also under the norms of general international law.

It is obvious that the state of war and active hostilities in Ukraine determine the new realities of today, and the general procedure for the protection of children's rights established by the current legislation, which operated in peacetime, simply stopped working in most cases.

In the conditions of war, children need proper protection, social support, guarantee of quality legal assistance, implementation of the right to housing, education, family reunification, etc. Martial law is not a reason to limit the application of the principle of the best interests of the child.

Today, our state adequately implements the functions entrusted to it to ensure the protection of children's rights. At the same time, it is extremely difficult, therefore, in these difficult and important times for our country, every caring citizen of Ukraine should help protect and realize the rights of the most unprotected category of persons – children.

The first and most important rule of protection for children during war is to ensure their right to family and care. By all possible means, it is important to prevent and prevent the forcible abduction of minors or orphans from the territory of Ukraine.

Minors must be accompanied by adults, parents, relatives or legal guardians, have copies of documents, information about parents, contact phone numbers with them, in case the child gets lost. When staying in Ukraine or when traveling abroad, it is important to take care with all your might to protect minor children from behavior that degrades their dignity, from torture, harsh or inhumane treatment towards them.

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