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INTERNATIONAL AND NATIONAL STANDARDS IN THE FIELD OF PROTECTION OF CHILDREN'S RIGHTS AND INTERESTS: EXPERIENCE OF UKRAINE IN SITUATION OF THE ARMED CONFLICT

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Summary. *Russia's full-scale invasion of Ukraine caused mass migration of Ukrainian children to European countries. The governments of countries provided shelter and protection for children who arrived with or without families. However, the difference in the legislation of Ukraine and European countries creates a situation of forced removal of children from their accompanying persons, which can negatively affect the best interests of these children.*

Because legal representation of the child's interests in the sense of Ukrainian legislation does not mean the same legal representation in the sense of the legislation of European countries.

The purpose of the article is to review the main problems that arise when providing protection to Ukrainian unaccompanied children in Europe. The article contains the main conflicts of legislation and proposals for their resolution.

The adoption of a single law on the regulation of the legal representation of Ukrainian children on the territory of the EU countries or the conclusion of international bilateral agreements between Ukraine and European countries can be tools for solving the issue of ensuring the best interests of children and regulating the legal representation of children.

Keywords: *unaccompanied children, refugees, Russian aggression against Ukraine, the best interests of the child, international standards for the protection of refugee children*

In 2014, the military aggression of the Russian Federation against Ukraine began in Crimea and in part of the territories of Donetsk and Luhansk regions.

On February 24, 2022, the war covered the entire territory of Ukraine.

At the beginning of 2022, approximately 7.5 million children lived in Ukraine. Currently, in connection with the invasion of Russian troops, according to the United Nations Children's Fund (UNICEF), about 2/3 of children (4.5 million out of 7.5 million) have left their homes. About 2.5 million children became forced migrants within Ukraine, and another 2 million children left abroad [1].

Fleeing the war, children and families with children have found a safe haven in European countries and have the opportunity to receive education, social and medical services, psychological assistance, etc.

However, not all children who moved to the EU were accompanied by their parents. Some of the displaced children are still abroad accompanied by other legal representatives, who are authorized to do so by the legitimate bodies and laws of Ukraine.

Yes, children arrive in European countries together with relatives, acquaintances, whose parents have notarized authorization to accompany them. And children who, in accordance with Ukrainian legislation, were placed in family forms of education (guardianship/care, foster family, family-type orphanage) or enrolled in institutions of various types and forms of ownership, left the borders of Ukraine together with their legal representatives.

Due to the difference in legislation and the lack of special legal acts regarding children from Ukraine, the legality of representation/parental responsibility in the sense of Ukrainian legislation is not equal to the same representation in the sense of the legislation of European countries.

Therefore, the European bodies of migration and social protection consider such legal representation inappropriate, and children as those who arrived unaccompanied.

The Institution of the Ukrainian Ombudsman cooperates with law enforcement agencies, ministries and international organizations, and also monitors information about Ukrainian children from open sources.

Reuters published an article that 26,000 unaccompanied children continue to be in Europe [2].

According to Interpol, the number of such children is 6,905. However, this information cannot be considered complete, as it was shared exclusively by such countries as: the Republic of Lithuania, the Republic of Bulgaria, the Kingdom of Liechtenstein, the Republic of Slovenia, the Republic of Finland, the Republic of Cyprus, the Kingdom of Denmark, Hungary, Republic of Poland, Republic of Moldova.

Unfortunately, it is currently not possible to obtain information about the exact number of unaccompanied Ukrainian children due to the lack of an obligation in European countries to notify the Ukrainian side of such cases.

Faced with a massive influx of Ukrainian citizens, the governments of the countries are guided by common standards and norms. In particular, the Convention Relating to the Status of Refugees of 1951, the Protocol Relating to the Status of Refugees of 1967 and the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children of 1996, which determine the main actions of parties to the Conventions to ensure the rights of children of such categories [3, 4, 5].

Ukraine, as a party to these Conventions, has also ratified them and adopted special laws and by-laws that establish the main measures of protection and asylum for refugee children: this is the Law of Ukraine "On Refugees and Persons in Need of Additional or Temporary Protection ", resolution of the Cabinet of

Ministers of Ukraine dated November 16, 2016 No. 832 "On the peculiarities of social protection of children separated from their families who are not citizens of Ukraine", etc. [6, 7].

The main provisions of the 1996 Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Child Protection Measures are that for refugee children and children who have been displaced to other states as a result of social unrest in their country, the Contracting Parties States, on the territory of which these children are located as a result of their displacement, have the jurisdiction to take measures aimed at protecting the child's person or property [5].

Like European countries, Ukraine uses Article 17 of the said Convention regarding refugee children, which stipulates that the exercise of parental responsibility is determined by the law of the state of the child's habitual residence. If the child's habitual residence changes, it is determined by the law of the state of the new habitual residence [5].

However, it is worth noting that the generally accepted norms do not fully correspond to the situation in Ukraine and do not take into account the peculiarities of the legal relationship "child-citizen of Ukraine and the country of relocation".

The classic concepts/categories of "refugee", "asylum seeker", which refer to persons who arrive in a country of protection and seek to live there permanently, cannot be applied to the situation with citizens of Ukraine who moved to countries of protection exclusively for the period before the end of hostilities.

Currently, children who moved accompanied by a grandfather, grandmother, older brother, sister, other relatives or a guardian, custodian, or parent-educator appointed by Ukraine will be considered as having arrived without proper accompaniment and will be selected. Such children will be appointed a new legal representative in accordance with the legislation of the host country from among its citizens.

The Ukrainian Parliament Commissioner for Human Rights has information about the facts of such selections.

The Italian Republic makes decisions on the separation of Ukrainian orphans, children deprived of parental care, from legal representatives of Ukraine and their transfer to the families of Italian citizens, as well as documenting the children with passports of citizens of the Italian Republic.

According to Italian law, all children who have arrived in the country together with relatives, guardians or other legal representatives are considered unaccompanied children (bambini non accompagnati/minore straniero non

accompagnato). The Law of the Italian Republic No. 47 dated 04/07/2017 "On measures to protect unaccompanied foreign minors" and Legislative Decree No. 220 dated 12/22/2017 established the legal term "foreign minor unaccompanied by parents" [8].

The website of the Ministry of Labor and Social Policy of the Italian Republic contains statistical data on the number of unaccompanied children, indicating the countries from which such minors arrived. According to published information, as of July 31, 2022, there were 5,577 unaccompanied children from Ukraine in Italy [9].

A similar situation occurred in the French Republic. The child left with the mother, while the father remained in Ukraine due to the martial law. Due to the deterioration of her health, the child's mother was hospitalized. The child was taken away and placed in a children's shelter. After learning about this, the child's father gave a notarized power of attorney to his mother (the child's grandmother) to fulfill the duties of raising the child abroad. However, the management of the shelter did not give the grandson to the grandmother.

These cases testify to the difference in the legislative rules governing the representation of the child's interests in Ukraine and Europe.

Ukraine welcomes the adoption of the Resolution of the European Parliament on the protection of EU children and youth fleeing the war in Ukraine (2022/2618 (RSP)) dated 07.04.2022, paragraph 30 of which the European Parliament called on member states to stop adopting children in order to avoid further or permanent separation of children from parents and families against their best interests [9].

However, taking into account the conflict of laws, it is worth remembering that separating children from their relatives, guardians, custodians, foster parents, with whom the children have established contact, with whom they feel safe, is a threat to the best interests of the child no less than adoption.

After the appointment of a legal representative from among the citizens of the host country, the child, who has not yet recovered from the events of a military nature, finds himself in a situation of additional psychological stress in the form of a foreign family, an unknown language, a change of residence, etc. There may be problems with establishing a trusting relationship between the child and the new guardian.

Under such circumstances, frequent changes in the environment, environment, and loved ones will not contribute to the rehabilitation and integration of a child affected by an armed conflict into the children's society. On the contrary, such circumstances carry the risk of repeated traumatization of the child's psyche.

We note once again: the stay of children in the territory of EU and European countries is temporary. After the end of the war, the children will be returned to

Ukraine to those families who are considered legal representatives in the sense of Ukrainian legislation. After all, it is Ukraine that is responsible for orphans and children deprived of parental care, in accordance with Article 52 of the Constitution of Ukraine [11]. Ukraine provides financial and material support for children and the families in which they live. Therefore, separating and then reuniting children with their legal representatives will not only be an additional stress trigger for the child (because the child will have to adapt to new living conditions again), but also additional financial costs for the state.

The only country that changed its approach to the situation with unaccompanied Ukrainian children was the Republic of Poland.

According to the Law of the Republic of Poland dated March 12, 2022 "On assistance to citizens of Ukraine in connection with the armed conflict on the territory of that state", guardianship over a minor child from Ukraine is established in the event that she arrived in Poland without responsible adults[12] . Temporary guardianship can be established by blood relatives of the child, relatives of the mother/father, and those persons who guarantee the proper performance of the guardian's duties. A temporary guardian is appointed by the guardianship court at the child's place of residence.

Thus, Poland not only complied with international standards, but also created conditions to ensure the best interests of displaced children.

In view of the above, there is a need for a separate legal regulation of the situation of temporary relocation of Ukrainian children at the level of the entire EU and Europe.

Russia's military attack on Ukraine became the largest military conflict in recent decades. In connection with this, the world community has changed the standards and approaches to Ukraine as a state as a whole. The European Union accelerated Ukraine's accession to the EU, and the whole world simplified the rules of financial and military aid.

Therefore, the question arises about the possibility of changing standards and rules also in the field of protection of children's rights in the context of the Ukrainian situation and in relation to Ukrainian children. After all, as the UN Refugee Agency testified, the war in Ukraine caused one of the biggest crises of displacement of people in the world today [13]. Children should not suffer as a result of the absence/impossibility of adults implementing legislative mechanisms to ensure their rights and best interests.

The ways of regulating the mentioned relations are the adoption of a separate law for all host EU countries, the conclusion of bilateral agreements between Ukraine and European countries regarding registration and registration of unaccompanied children, mutual information between countries about

identified children and their needs, recognition of legal representation established by countries, definition the rights and obligations of persons exercising legal representation, the grounds and procedures for removing the duties of a legal representative of a child, etc.

The adoption of such acts will allow not only to settle the issue of ensuring the rights of unaccompanied children, but also to harmonize the legislation of Ukraine with the legislation of the EU.

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