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ANALYSIS OF THE PROBLEMS OF THE CIVIL ASPECT OF INTERNATIONAL CHILD ABDUCTION IN PRIVATE INTERNATIONAL LAW OF UKRAINE[1]

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Abstract. Cross-border cases of wrongful removal or retention of a child violate the personal non-property rights of the child and parents to communicate. In numerous situations of international child abduction, the best interests of the child are violated. The return of children to their state of habitual residence is too lengthy and complex. This is due to the peculiarities of national legislation and the workload of national courts. Cases on the return of «abducted», wrongfully removed (retained) children are cases with a foreign element, which are resolved through the Hague Convention on the Civil Aspects of International Child Abduction. The purpose of the article is to analyze the legal issues and problems of the civil aspect of international child abduction by persons having the right to custody (guardianship). The article presents an analytical and research view of the problem of the civil aspect of child abduction from the habitual residence.

Key words: unauthorised removal of a child, wrongful removal of a child, Hague Conference on Private International Law, best interests of a child, parental responsibility.

Introduction. The increase in the number of international marriages (marriages complicated by the presence of a foreign element) and divorces increases the number of disputes over the exercise of parental rights, determination of the child's place of residence and the possibility of communication with the child. In addition, the war in Ukraine has provoked a massive displacement of children from Ukraine to foreign countries and their non-return, which gives rise to disputes over the exercise of the right to custody (guardianship).

The relocation of a child or one of the parents to a foreign country may create situations in which the child is deprived of the opportunity to communicate with the other parent. Sometimes one parent moves a child to a foreign country without the other's prior consent. Such a situation negatively affects the psychoemotional state of parents and children and their relationships. The return of children to the state of habitual residence is too lengthy and complex. This is due to the peculiarities of national legislation and the workload of national courts.

Cases on the return of abducted children cannot be resolved without the application of the rules of Private International Law.

The national legislation of Ukraine on the protection of children's rights stipulates that every child has the right to live in a family with his or her parents or in the family of one of them and to be cared for by their parents. Fathers and mothers have equal rights and responsibilities towards their children. The primary concern and primary duty of parents is to ensure the interests of their child (Article 11, Law of Ukraine «On Childhood Protection», 2001). In numerous cases of child removal to the territory of a foreign state, the best interests of the child are violated. In seeking to resolve the matter of child's return to his or her habitual residence, many inter-related issues arise, in particular: the procedure for applying the Convention on the Civil Aspects of International Child Abduction («HCCA»); the definition of the concept of «civil aspects of international child abduction»; the determination of the child's habitual residence; the determination of the jurisdiction in cases of child return, etc. Thus, the issue of civil aspects of international child abduction is extremely relevant and requires scientific substantiation.

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Analysis of recent research and publications. The study of the problems of the civil aspect of international child abduction has been the subject of scientific achievements of Ukrainian and foreign scholars. For example, I. Atamanchuk and Y. Kovalchuk (Atamanchuk, Kovalchuk, 2023), O. Dashkovska and O. Yavor (Dashkovska, Yavor, 2020), V. Yevko (Yevko, 2020), T. Fuley and O. Kuchiv (Fuley, Kuchiv, 2019), O. Khorosheniuk (Khorosheniuk, 2023), Y. Chernyak (Chernyak, 2015), O. Shyrokova-Murash and V. Zatserkovnyi (Shyrokova-Murash and Zatserkovnyi, 2023). This issue has also generated considerable interest among foreign researchers. In particular, considerable attention has been paid to the specifics of the application of the Convention on the Civil Aspects of International Child Abduction: J. Todd (Todd, 1995), A. Gavrilescu (Gavrilescu, 2013), K. Trimmings and O. Momoh (Trimmings, Momoh, 2023). M. Dzeletovic (Dzeletovic, 2023), M. Stanivuković and S. Djajić (Stanivuković, Djajić, 2022), E. Schnitzer-Reese (Schnitzer-Reese, 2004), J. Niemi and L-M. Poikela (Niemi, Poikela, 2022).

Despite the considerable interest of scholars in the topic of wrongful displacement of children from their habitual residence by persons with the right of custody (guardianship), as of this date this topic remains relevant and contains a large number of uninvestigated problems.

The purpose of the article is to analyze the legal issues and problems of the civil aspect of international child abduction by persons having the right to custody (guardianship). The article presents an analytical and research view of the problem of the civil aspect of child abduction from the habitual residence.

Materials and methods. To achieve the article's goal, this study used general and special scientific methods. The application of the comparative legal method made it possible to study the national legislation of Ukraine and the Hague Convention on the Civil Aspects of International Child Abduction. Using the method of legal analysis, the author analyzed the ECtHR cases on the civil aspects of international child abduction involving Ukraine, and as a result, identified the problems of application of the Convention on the Civil Aspects of International Child Abduction. A comprehensive literature review made it possible to determine the state of research on the issue in Ukraine and other countries. The application of the formal legal method results in the proposed definition of the concept «civil aspects of international child abduction» and the identification of the features of the civil aspect of international child abduction which characterize its specific features.

Results and discussion. The separation of parents often causes problems in determining the child's place of residence, especially when the parents live in different countries. The worst-case scenario is that one of the parents may «abduct» the child to another country from the child's habitual residence without the other parent's consent. In such a situation, in order to return the wrongfully removed child to the state of habitual residence, it becomes impossible to regulate relations solely by the norms of national law, since legal relations go beyond the borders of one state and acquire the character of relations with a foreign element.

The Constitution of Ukraine (1996) stipulates that children shall be equal in their rights regardless of their origin and whether they are born in or out of wedlock (Article 52). The principle of equality of rights and obligations with respect to children is reflected in Article 141 of the Family Code of Ukraine (2002) which states that «both the mother and father have equal rights and responsibilities towards the child, regardless of whether they are married to each other and the dissolution of the marriage between the parents, as well as separate living arrangements of the parents from the child, do not affect the extent of their rights and obligations towards the child» (Article 141(1) and (2)). The Law of Ukraine «On Private International Law» (2005) establishes the procedure for regulating private law relations, which, at least through one of their elements, are related to one or more legal orders other than Ukrainian legal order (Preamble). In accordance with the Article 66(1) of the Law of Ukraine "On Private International Law" in cross-border family relations, the rights and obligations of parents and children are determined by the child's lex personalis or by the law that has a close connection with the relevant relationship and if it is more favourable to the child (2005).

Kruger T. stated, «When a child is abducted by one of their parents, the courts dealing with a return application must consider several legal instruments. First, they must take into account private international law instruments by the Hague Conference on Private International Law. Second, they have to take into account children's rights law instruments, including mainly the UN Convention on the Rights of the Child» (Kruger, 2023). There are effective tools in Private International Law to address the issue of the return of wrongfully removed children. The Hague Conference on Private International Law originated the 1980 Hague Convention on the Civil Aspects of International Child Abduction (HCCA, 1980) and the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (The Hague Convention on Parental Responsibility, 1996). Ukraine is a party to both conventions. These conventions are international treaties in matters of determining the jurisdiction of a dispute and determine the authorities of which state have jurisdiction to take measures aimed at protecting the person and property of the child. It is worth noting that Ukraine acceded to the HCCA under the Law of Ukraine «On Ukraine's Accession to the Convention on the Civil Aspects of International Child Abduction» dated January 11, 2006. The mechanism of interaction between executive authorities in the process of resolving issues in accordance with the HCCA is determined by the Procedure for the Implementation of the Convention on the Civil Aspects of International Child Abduction in Ukraine of 2006. For Ukraine, a party to this Convention is a state that has recognized Ukraine's accession to the Hague Convention or whose accession to the Convention has been recognized by Ukraine under the Article 38 of the Hague Convention.

In addition, at the EU regional level, international child abduction is regulated by Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast) (Brussels IIb, 2019). Ukraine is not a party to this convention, but Brussels IIb contains an addendum to the HCCA ((2) Preamble, Brussels IIb).

The HCCA is an international multilateral treaty plays an important role in regulating issues related to the civil aspect of the wrongful removal of children to a foreign country and contains an effective mechanism for resolving such a situation. Today, 103 states are parties to this Convention, and they cooperate using the effective mechanism of the Convention to secure the prompt return of children wrongfully removed to or retained (Status Table: Hague Convention on the Civil Aspects of International Child Abduction). Cases on the return of children to the state of their habitual residence in accordance with the Hague Convention are cases with a foreign element (Hulko, Luspenyk, 2015). The literature notes that the significant legal reform have been effected both nationally and internationally to introduce uniform rules specifying which court should have jurisdiction in such cases, to promote the recognition of the orders of the countries and to secure the return of abducted children to the country from which they were abducted (Christopher, Clarkson, Hill, Jaffey, 2002, p. 452).

An analysis of the HCCA gives rise to a series of questions. The first question that arises is what does the term «civil aspects of international child abduction» mean? The analysis of modern scientific publications, the subject of which were the civil aspects of international child abduction, gives grounds to note that at the theoretical and legal level there is no clear, understandable and complete definition of the term "civil aspects of international child abduction". In addition, the Convention itself does not reveal the content of this concept. It is worth noting that although the title of the Convention contains the word "abduction", in the context of the Convention it means the wrongful removal of a child and/or the retention of a child and is not considered to be a crime. Article 3 of the HCCA establishes an exhaustive list of circumstances in which the removal or retention of a child is considered to be wrongful. These are as follows: «a) breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the state in which the child was habitually resident immediately before the removal or retention; and b) at the time of removal or

retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention» (HCCA, 1980).

The same rule is contained in The Hague Convention on Parental Responsibility in Article (2) 7 (1996).

The removal of a child to a foreign country without the consent of one of the parents may be considered as international child abduction. However, it should be emphasized that international child abduction can have both civil and criminal law nature (if there is a crime under Article 146 of the Criminal Code of Ukraine (2001). The civil aspect of international child abduction occurs in the case of wrongful removal of a child to a foreign country from the child's habitual residence by one of the parents or another person with custody rights without the other's prior consent or the court permission. Sometimes such situations are the subject of litigation at the level of national courts and at the level of the European Court of Human Rights. In the author's opinion, in the context of the HCCA, it is more appropriate to use the term «unauthorised removal of a child», which is carried out against the will of the person who has the right of custody (guardianship), rather than «abduction». Applying the category of «abduction» to private relations leads to a substitution of concepts and an inaccurate understanding of terminology.

O. Shyrokova-Murash and V. Zatserkovnyi, analyzing the implementation of international conventions into national law to prevent international child abduction, pointed out that «the civil aspect of international child abduction occurs when one of the parents takes a child outside their country without the other's prior consent or the court permission» (Shyrokova-Murash, Zatserkovnyi, 2023: 43). This definition proposed by the authors triggers certain questions. In particular, what is meant by the words «...outside their country...»? By «their country» did the authors mean the country of citizenship or the country of residence of one of the parents or the state of habitual residence of the child? If we proceed from the provisions of the Law of Ukraine «On Private International Law» (2005), conflict of laws issues related to the legal status of an individual are resolved by means of the lex personalis. Article 16 of this law stipulates that the lex personalis of an individual shall be governed by the law of its citizenship. However, the HCCA uses the term «state of habitual residence», i.e. lex domicilii, and for person with no known citizenship – lex patriae. The provisions of the HCCA shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights (Article 4). That is, for the purposes of the Convention, the child's place of habitual residence is relevant, not citizenship.

It is also worth noting that the regulation of cross-border child removals (abductions) does not pay much attention to the reasons why the removal has taken place, but prioritizes the prompt return of the child (Niemi, Poikela, 2022).

Although the HCCA defines an exhaustive list of circumstances in which the removal or retention of a child is considered wrongful, the scenarios of international child abduction in Ukraine may differ significantly in each individual case. As noted by P. Danylenko, «the most common scenarios of international child abduction in Ukraine are the following: a father or a mother (a foreigner) crosses the border with the child, using the child's passport as a citizen of a foreign country; a mother or a father (a citizen of Ukraine) crosses the border with the child, using the child's passport as a citizen of Ukraine and the birth certificate, stating that the other parent is a foreigner (in this case, his or her consent for the child to travel abroad is not required); a mother or a father (a citizen of Ukraine) obtains a document confirming the joint residence of the child (in this case, one of the parents may solely decide, without the consent of the other parent, to travel abroad with the child for a period not exceeding 1 month per year) and crosses the border with the minor to never come back again» (Danylenko P., 2014).

In general, supporting the author's position, it is worth pointing out the following comments. It seems that it is too narrow to consider the scenarios of international «abduction» of a child exclu-

sively by parents. One of the parents is one of the possible subjects who wrongfully removes the child. Of course, the mother or father is most often a party to such situations, but not the only one who can carry out the wrongful removal of a child and/or the retention of a child. This is based on the following:

first, the definition of the concepts of «custody rights» and «right of access». These terms are defined as: a) «rights of custody» shall include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence; and b) «rights of access» shall include the right to take a child for a limited period of time to a place other than the child's habitual residence (Article 5 of the HCCA, 1980);

secondly, the content of Article 3 of the HCCA. It is noteworthy that the HCCA also applies to other persons vested with the right of custody. The rights of custody referred to in Article 3(a) may arise, in particular, on the basis of any legislative act, or by virtue of a decision of a judicial or administrative authority, or as a result of an agreement that produces legal effects under the laws of such state. The analysis of these provisions suggests that such persons, in addition to one of the parents, may include other relatives (sisters, brothers, grandparents, etc.).

Analyzing the practice of the Supreme Court, T. Fulei and O. Kuchiv found that «in most cases, wrongful removal and/or retention is carried out by the child's mother, who takes the child to the territory of Ukraine by the father's authorisation for a fixed-term trip (with certain dates of return) and subsequently refuses to return with the child to the place of habitual residence or return the child to the father. There are cases when a child arrives in Ukraine accompanied by both parents, but one of the parents, most often the father, is forced to return earlier, while the mother and child remain with the agreed return dates, but refuses to return in the future» (Fuley, Kuchiv, 2019, p. 76).

Snizhko M. B. notes that «in such cases, usually, the child is removed or not returned to the state of habitual residence by one of the parents, another relative, or even a person who has no family ties with the child (for example, godparents) without authorisation of the person with the right of custody. The applicant may be the child's mother, father, guardian, or other person who has the custody right for the child, including an authorised representative of a childcare facility, for example, where the child deprived of parental care lived» (Snizhko, 2011).

Thus, based on the analysis of the provisions of the HCCA and scientific works, we can distinguish the features of the civil aspect of international child abduction:

1. The age of the child. Removal or retention of a child under the age of 16. The Convention shall cease to apply when the child attains the age 16 (Article 4 of the HCCA).

2. The removal (retention) of the child is of a cross-border nature – the child changes the country of residence from the state of habitual residence to a foreign country.

3. The removal becomes wrongful if it is not agreed with the person who has the right of custody (guardianship), i.e., if it is carried out against his or her will. As for wrongful retention, it can occur after the agreed removal of a child from the state of habitual residence. For example, the child's father gave the parental authorisation to the child's departure with the mother abroad for a certain period of time, and after this period, the mother and child did not return.

4. The child is moved by a person who has the right of custody (guardianship).

5. The removal or retention of a child does not contain signs of a crime.

6. The return of a child must be in compliance with the principle of the best interests of a child.

7. A child may be returned under an immediate procedure before the expiration of one year.

8. The HCCA clearly establishes the cases in which an order for the return of a child may be refused: a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation. The child objects to being returned and has attained an age and degree of maturity at

which it is appropriate to take account of its views (Article 13); after the expiration of the period of one year, the return of the child may be refused if it is proved that the child is now settled in his or her new environment (Article 12).

9. A person with the right of custody (guardianship) whose rights have been violated, under the clause 3 of the Procedure for the Implementation of the Convention on the Civil Aspects of International Child Abduction in Ukraine, may apply to the Ministry of Justice or the central authority of any other state that is a Party to the HCCA (hereinafter referred to as the Foreign Central Authority) with a request to facilitate the return of the child (regardless of the direction of his or her removal (trafficking) – from abroad to the territory of Ukraine or from the territory of Ukraine abroad) and a request to ensure the exercise of the right of access to the child. However, as O. Stupak notes, «the approach to the consideration of cases applying the norms of the HCCA was changed by the decision of the Civil Court of Cassation of the Supreme Court dated August 17, 2022 in case No. 613/1185/19. The court faced an atypical situation. The applicant, a Ukrainian, applied to a court of Ukraine (and not to the court of the children's state of habitual residence) with a request to return the children to Ukraine at their habitual residence. At one time, he had given parental authorisation to temporarily travel the children to visit relatives in the Russian Federation, accompanied by his wife. After the permit expired, the mother and children did not return, but, according to the father's words, moved to Armenia» (Stupak, 2023).

The war in Ukraine has created numerous situations of children of Ukrainian citizens moving abroad accompanied by one of their parents, a relative, or a person who has no family ties to the child and was authorized by the parents to accompany the child, under a simplified procedure for crossing the customs border of Ukraine in accordance with the Rules for Crossing the State Border by Citizens of Ukraine (On Approval of the Rules for Crossing the State Border by Citizens of Ukraine: Resolution of the Cabinet of Ministers of Ukraine, 1995; Sushch, 2024). Fleeing the war, children received temporary protection in the EU countries, which made it possible to realize the right to education and social security in the host country (Sushch, 2024: 57–60). Today, as a practical matter and at the theoretical and legal level, many questions arise regarding the determination of the habitual residence of such children, as well as the possibility of considering applications regarding such children as international child abduction in circumstances of non-return of the child. It is clear that the status of temporary protection is an obstacle to a quick return if martial law is extended, and in certain cases leads to the responsibility of parents or accompanying persons who wish to return a child to the country that is in a state of war. Temporary protection is valid for a maximum of 3 years (Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof; Sushch, 2024: 20). In the case of non-return of a child at the request of one or both parents who are in Ukraine and wish to return the child, the question arises whether it can be regarded as «wrongful removal (retention) of a child» even though the child's removal was with their consent?

When determining the child's habitual place of residence, Ukrainian courts proceed from the principle of the best interests of the child. The judicial practice of Ukraine indicates that the child's habitual (permanent) place of residence changes over time and this is influenced by various factors. Safe and comfortable for a child is only the environment in which he/she stays for a period sufficient for social, cultural and linguistic adaptation, and which makes sense for him/her, provides an opportunity to freely carry out any social interactions (education, medical care, social communication, etc.). Therefore, when assessing the "usualness" or "permanence" of the place of residence, the most relevant period that has elapsed, as well as the age characteristics of the child, are important (Case No. 545/2247/18, United Chamber of the Civil Cassation Court, September 18, 2023). Also, when considering this category of cases, Ukrainian courts consider the security situation in the country. A child may not

be left in a situation that is dangerous to his or her physical and mental health. Therefore, among other circumstances of significant importance, the courts should investigate the security situation and restrictions related to the conduct of hostilities and their consequences. At the same time, the very fact of the introduction of martial law on the territory of Ukraine is not a sufficient basis for determining the child's place of residence with one of the parents, in particular with the one who lives outside Ukraine. Based on the results of consideration of case No. 750/9620/20 in cassation, the Supreme Court agreed with the conclusion of the court of appeal on determining the child's place of residence with the mother. At the same time, the mother's argument that after the outbreak of hostilities in Chernihiv in 2022, she offered to take her son out of Ukraine, but the father refused to hand over the child to her, was not assessed by the court of appeal as one that testifies in favor of the child's living with the mother (Synelnykov, 2023: 7).

The courts of the European Union countries have resolved a number of disputes regarding the return of children who have found refuge in the territory of these states. Four court decisions were made on the return of children, in particular from Poland and Germany to Ukraine (Vyshneve, Uzhhorod). In 11 cases, the return of a child to Ukraine was denied, mainly with reference to security issues. Five cases ended with the approval by the court (Germany, Switzerland, Poland) of settlement agreements, which, among other things, stipulate that the child will remain living with the mother abroad until the end of martial law in Ukraine, after which the mother and child will return to Ukraine (Synelnykov, 2023: 5).

An analysis of the European Court of Human Rights (ECtHR) case law involving Ukraine in cases concerning the civil aspect of international child abduction suggests that there are still problems with the application of the Hague Convention.

1. Impossibility of applying the provisions of the Convention on the Civil Aspects of International Child Abduction. Although Ukraine is a Party to the Convention, there are cases when it was impossible to apply the provisions of the Convention to child abduction. These are cases when a child is removed to a country that is not a party to the HCCA. A vivid example of this situation is the ECtHR Judgment dated 31.08.2023 in the case of Öksüzoğlu v. Ukraine, 2023.

The applicant's son had been abducted, but investigators faced significant obstacles related to the presence of the person whom the applicant suspected of involvement in the events (according to the applicant, her son was abducted by his father) outside the jurisdiction of the Ukrainian authorities and the lack of legal instruments that would guarantee her interrogation – Ukraine did not have relevant bilateral treaties with the Republic of Djibouti and this country was not a party to the HCCA. Despite the fact that the Republic of Djibouti and Ukraine do not have relevant bilateral treaties and the latter is not a party to the Hague Convention, the ECtHR stated that «the national authorities had to make other efforts to find the applicant's child, namely within the framework of the pre-trial investigation and through diplomatic channels:

- to contact their counterparts in Djibouti in order to obtain their assistance in clarifying whether the child might have been taken to that country and whether his father was implicated in the events in issue;
- to use international law enforcement cooperation to try to locate the father or any of his relatives, friends or acquaintances living in Djibouti or elsewhere who might be able to provide information about the child's whereabouts;
- to send an international warrant to the judicial authorities of Djibouti in order, at least, to obtain statements from the child's father» (Case of Öksüzoğlu v. Ukraine, 2023).

2. The impossibility of applying the mechanism of rapid return of the child, provided for by the HCCA raises the problem of maintaining family ties and communication between the removed child and another person with custody rights. The analysed considerations are sufficient to enable the Court to find in the present case that the authorities failed to take all the measures that could reasonably

be expected of them in order to fulfil their positive obligation under Article 8 to enable the applicant and her child to maintain and develop their family ties and contact (Case of Öksüzoğlu v. Ukraine, 2023). This problem is closely related to the following problem.

3. There are problems with the promptness of the Ukrainian courts in considering this category of cases. Article 2 of the Convention stipulates that «The Contracting States shall take all appropriate measures to secure within their territories the implementation of the objects of the Convention. For this purpose they shall use the most expeditious procedures available». Thus, in clause 19 of the Information Letter «On the practice of consideration by courts of civil cases with application of the Convention on the Civil Aspects of International Child Abduction dated October 25, 1980 (Hague Convention)» (2014). The High Specialized Court of Ukraine for Civil and Criminal Cases noted that the courts should strictly observe promptness in resolving this category of disputes, as violation of the time limits for consideration of cases on the return of a child may lead to a complaint against Ukraine to the European Court of Human Rights and become the basis for accusing Ukraine of failing to fulfill its international obligations under the Hague Convention (2014).

The ECtHR's case law indicates that Ukraine has not used expeditious procedures. Excessive duration of proceedings in cases under the Convention on the Civil Aspects of International Child Abduction, which leads to a violation of Articles 6 and 8 of the European Convention on Human Rights (1990), for example, the ECtHR Judgment dated May 04, 20 23, Bakharov v. Ukraine (Application No. 28982/19). Referring to Articles 6 and 8 of the Convention, the applicant complained that in this case the proceedings at the national level, during which he could not see his minor child, were excessively lengthy. This, it was alleged, had led to the alienation of the child from the applicant (clause 3). General principles regarding the requirement for urgent consideration of cases under the HCCA, when the passage of time may have irreparable consequences for the relationship between the child and the nonresidential parent, were given, among other sources, in the Judgment in Vilenchik v. Ukraine, Application No. 21267/14, clause 53, dated October 03, 2017 (clause 7). In addition, Art. 13 on the Right to an effective remedy ECtHR judgment in the case of Lyakh v. Ukraine (Application No. 53099/19), Judgment in the Case of Omelchenko v. Ukraine (Application No. 44158/19) dated March 23, 2023 and Judgment in the Case of Öksüzoğlu v. Ukraine dated 31.08.2023.

Therefore, it follows that the ECtHR case law is based mainly on the principle of the best interests of the child when considering cases on returning an wrongfully removed child to his or her habitual residence. The fundamental principles that ensure an effective return mechanism are the principle of the best interests of the child and the principle of prompt return of the child.

Conclusions. All cases involving the return of a wrongfully removed (retained) child to the state of habitual residence must be considered in compliance with the principle of the best interests of the child.

The analysis of the sources of legal regulation of the problem of civil aspects of international child abduction leads to the conclusion that the Hague Convention on the Civil Aspects of International Child Abduction contains an effective mechanism for addressing such problems, but still has some imperfections. In particular, the HCCA does not define the concepts of «civil aspects of international child abduction» and «habitual residence of the child», which leads to different understandings of the content of these concepts. In addition, the list of persons who carry out the wrongful removal of a child in accordance with the HCCA is not defined.

It is worth emphasizing that Ukrainian legislation does not contain any special provisions that would regulate the civil aspects of international child abduction.

The analysis of scientific sources gives rise to the conclusion that most authors consider international child abduction as a wrongful removal (retention) solely through the actions of one of the parents, but in the author's opinion, this approach is too narrow. Any person with the right of custody (guardianship) may take actions regarding the wrongful removal (retention) of a child without the consent of another person with the same right.

The author of this article identifies the features of the civil aspect of international child abduction and proposes a definition of this concept.

In the author's opinion, it is more appropriate to apply such categories as «unauthorised removal (retention)», i.e. without the will, without the consent of the person with the right of custody (guardianship), rather than «wrongful removal» or «abduction» to cases of cross-border removal of a child in the context of HCCA.

The analysis of the ECtHR case law involving Ukraine in cases concerning the civil aspect of international child abduction made it possible to identify and classify the problems of applying the HCCA. In particular, these problems include: the impossibility of applying the provisions of the Convention on the Civil Aspects of International Child Abduction; the impossibility of applying the mechanism of rapid return of a child provided for by the HCCA creates a problem of maintaining family ties and communication between the removed child and another person with custody rights; problems with the promptness of Ukrainian courts in considering this category of cases.

The civil aspects of international child abduction are the relevant area for further research in the current context.

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