

THEORY AND PRACTICES OF LAW

DOI <https://doi.org/10.30525/2592-8813-2024-3-25>

IMPROVEMENT OF THE EVACUATION PROCEDURE FOR CHILDREN UNDER MARTIAL LAW IN THE COURSE OF STATE POLICY IMPLEMENTATION IN THE FIELD OF MAINTENANCE AND RAISING OF ORPHANS AND CHILDREN DEPRIVED OF PARENTAL CARE

Zhanna Boiko,

*Deputy Chief of Staff of the Eastern Commercial Court of Appeal,
Postgraduate Student at the Department of Personnel Management
and Entrepreneurship, ESI "Institute of Public Administration"
of V. N. Karazin Kharkiv National University (Kharkiv, Ukraine)*

ORCID ID: 0000-0002-9424-6655

boyko.zhanna@gmail.com

Abstract. The article examines the ways of improving the procedure for organising the evacuation of children under martial law in the course of implementation of the State policy in the field of maintenance and raising of orphans and children deprived of parental care. The changes in the regulatory framework and organisational provision for the transfer of children of the mentioned category within Ukraine and also abroad introduced by the regulatory acts of the Cabinet of Ministers of Ukraine since the beginning of the military invasion of Ukraine by the Russian Federation have been analysed. The article highlights the problems which experts and scientists emphasise the need to solve, in particular, the safe evacuation of orphans and children deprived of parental care from the areas where hostilities are taking place, and also focuses on possible ways to improve the relevant organisational procedures with a view to ensuring effective protection of children and observance of their rights guaranteed by the Law of Ukraine.

Key words: state policy, children's rights, defence, evacuation, orphans, children deprived of parental care.

Introduction. With the beginning of the full-scale military invasion of Ukraine by the Russian Federation, it turned out that many institutions and persons responsible for the destiny of orphans and children deprived of parental care were not prepared for the organised and safe evacuation of children from the hostilities. The reason for this was, primarily, the absence of a unified and focused, pre-formulated state policy on this important issue. Priority actions have been and continue to be taken in the course of child rescue activities. It is therefore of particular importance to analyse and systematise the problems that arise in the course of these activities and to identify effective ways to overcome them.

Analyse recent research and publications. Various aspects of the implementation of the State policy in the field of maintenance and raising of orphans and children deprived of parental care are researched in the works of domestic experts, including: Kyrychenko T., Tverdokhlib E., Zaborovskiy V., Hrabovska H. However, no comprehensive study of this issue, taking into account the conditions of martial law, has been conducted.

Basic theoretical and practical provision. Orphanhood as a social phenomenon exists in every society: there have always been, are and will be children who are deprived of their parents for various reasons, and their growth is carried out either in another family or in institutions specially created for this purpose. However, today the problem of social orphanhood is particularly urgent. As 98% of orphans are social orphans, and only 2% are biological orphans. The reasons that cause children to be left without parental care and upbringing are different, but the result is the only one – the child is deprived of the constitutional right to family upbringing, so in many ways the future fate of orphans depends on the attitude of both society and the State to this problem (Cherneta, 2012: 245).

The events of 24 February 2022 are still the most tragic page in the modern history of our young country. Terrible circumstances of irresistible force have caused a rapid increase the number of children deprived of parental and/or legal care.

Ukraine faces the third wave of mass orphanhood and homelessness, which began to emerge in the 1990s (Komar, 2022: 187).

Many children have not received orphan status or even don't have any information about their parents and location where they can be, or have lost contact with their parents and/or legal guardians. All of them need immediate solution to the issue of shelter and further placement in safe environment.

In such a difficult time for our country, it is extremely important to ensure the safety of children as one of the highest values of society and the State.

In this context, child safety is the main factor determining the security of the nation, and thus the national security of the country. The priority of ensuring the safety of the child is conditioned by the real processes currently taking place in Ukrainian society, which indicate the necessity of protecting the child from various threats (Maksymova, 2022: 90).

According to Hrabovska H., and Lysiuk A., the rights protection of orphans and children deprived of parental care during wartime is an important and urgent issue in Ukraine. Children deprived of parental care become highly vulnerable in the context of military conflicts. Ensuring their proper protection and well-being is an important task for all citizens and government agencies (Hrabovska, Lysiuk, 2023).

Despite the extremely difficult conditions of martial law imposed throughout Ukraine, the Government is making every effort to ensure the respect and realisation of the constitutional rights of the child, to ensure their protection, and to fulfil its obligations under the Constitution of Ukraine regarding security guarantees and the priority of family upbringing. In this context, it was important to establish the Coordination Headquarters for the Protection of Children's Rights under Martial Law in accordance with the Resolution of the Cabinet of Ministers of Ukraine No. 302 of 17.03.2022 (Cabinet of Ministers of Ukraine, No. 302 of 01.03.2022).

It should be noted that due to the introduction of martial law in Ukraine from 24.02.2022, the Procedure for the implementation by guardianship and custody authorities of activities related to the protection of children's rights, approved by the Cabinet of Ministers of Ukraine No. 866 of 24.09.2008 (Cabinet of Ministers of Ukraine, No. 866 of 24.09.2008), has undergone certain changes regarding the specifics of the placement of children left without parental care, including children separated from their families, orphans, and children deprived of parental care. Thus, by Resolution of the Cabinet of Ministers of Ukraine dated March 22, 2022, No. 349, a number of resolutions of the Cabinet of Ministers of Ukraine were changed to simplify the procedure for adopting children in family-based care.

The procedure for placing a child in a patronage family during martial law was also simplified in accordance with the Resolution of the Cabinet of Ministers dated May 05, 2022, No. 581 "On Amendments to the Procedure for the Formation and Functioning of a Foster Care Family, Adoption, and Stay of a Child in a Foster Care Family" (Cabinet of Ministers of Ukraine, No. 581 of 10.05.2022).

Thus, the state regulated a simpler and faster procedure for the placement of children left without parental care in various forms of family-based care under martial law.

The experts of the Partnership "For Every Child" prepared an analytical report in February-June 2022 to fulfil the tasks of the project "Monitoring the needs and support of children in war" with the support of the UN Children's Fund UNICEF (Report 1 Children and War in Ukraine). The subject of the monitoring was the state of safety and the level of satisfaction of the basic needs of children of the target group during the war. The monitoring found that as of 01.07.2022, 1320 family-type children's homes and 3035 foster families continued to work, the number of which decreased by 14 over six months. These families are home to 15072 children. The increasing number of children in these families is mainly due to the rising number of children deprived of parental care during the war and their

temporary placement in existing family-type children's homes and foster families. Since April 2022, project experts and regional coordinators working in 25 regions of Ukraine, in cooperation with the children's services of regional military administrations, have mainly formed a database of families of guardians/caregivers, their location during the war, and started work on identifying the basic needs of children in care. The location of 33043 families of guardians/carers with 45314 children was identified during the war on 01.07.2022.

In this regard, the simplified procedure for the temporary placement of children in existing family-based forms of placement of children deprived of parental care, foster families, family-type children's homes, as well as actual fostering, when concerned citizens are ready to accept and provide shelter to a child in difficult circumstances, have become, of course, extremely necessary actions to ensure the maintenance of children in family-based care even during the war.

It should be noted that the adoption procedure, which is different in legal nature and has other legal consequences for the child and his/her adoptive parents, has not been simplified to ensure unconditional respect the rights of children and their safety. Adoption procedures were temporarily interrupted during the period of temporary inability of electronic state registers to function and the corresponding special conditions in the work of judicial institutions, but now, according to the Unified Register of Court Decisions, work in this area has been resumed.

However, the longer the war continues, the more new challenges and problems arise, in particular, those related to the evacuation of children from the hostilities zone.

Back in 2013, the Civil Defence Code of Ukraine (with further amendments) was adopted (The Parliament of Ukraine, 2012), which regulates relations related to the defence of the people, territories, environment and property from emergencies, fires and other hazardous events, response to them, functioning of the unified state civil defence system, and defines the powers of the Cabinet of Ministers of Ukraine, ministries, other central executive authorities, state authorities that are not part of the system of central executive authorities, the Council of Ministers of Ukraine, and the Council of Ministers of Ukraine.

This Code contains a system of general norms that require timely and effective specification to ensure that all civil defence subjects specified in Article 6 of the Code (central executive authorities, other state authorities, the Council of Ministers of the Autonomous Republic of Crimea, local state administrations, local self-government bodies, business entities, and public organisations) promptly take coordinated actions to realize the relevant national policy direction on providing effective assistance to the population in case of emergencies and disasters.

Article 33 of the Civil Defence Code of Ukraine provides for the implementation of evacuation actions at the state, regional, local or facility level, including, in particular, evacuation planning, identification of safe areas suitable for the accommodation of evacuated population and property, organisation of notification of business entities' managers and the population about the start of evacuation, training of the population in evacuation actions, etc.

In other words, the relevant subjects at all levels had to take systematic and well-coordinated organisational actions in this way.

However, in the first weeks and months after the start of Russia's full-scale military invasion of Ukraine, this process was spontaneous to some extent, and over the time the state began to take systematic measures to organise it.

According to experts (The Government Introduced Mandatory Evacuation of Children Along with Their Parents Who Are in Combat Zones (Analysis), the legal mechanisms of influence on parents who did not want to evacuate their children as of the beginning of hostilities cannot be called effective: removal of the child from the parents without deprivation of parental rights (Article 170 of the Family Code of Ukraine); bringing to administrative (Article 184 of the Code of Administrative Offences) or criminal liability (Article 166 of the Criminal Code of Ukraine) for failure to fulfil their obligations.

This is due to the fact that the relevant procedures often require significant time and the participation of certain persons and authorities (prosecutor, guardianship and custody authority, court), which is difficult to ensure in the war zone when the situation requires a prompt response.

For this reason, Resolution of the Cabinet of Ministers of Ukraine No. 209 of 07.03.2023 (Cabinet of Ministers of Ukraine, No. 209 of 07.03.2023) provides for the forced evacuation of children together with their parents or other legal representatives in areas where hostilities are taking place.

The Cabinet of Ministers of Ukraine, in its resolution dated August 23, 2022, No. 940 improved the evacuation mechanism, in particular, it provided that in the event of mandatory evacuation in case of a threat or occurrence of an emergency, during a state of emergency or martial law in Ukraine or in certain areas of Ukraine, the National Social Service, based on information from local state administrations, local self-government bodies on the available adoptive families, family-type orphanages, foster care families, institutions, in which there is possible a non-stop presence of children, determines adoptive families, family-type children's homes, families of foster carers, institutions to which orphans, children deprived of parental care, children left without parental care will be evacuated, taking into account their age and health (Cabinet of Ministers of Ukraine, No. 940 of 23.08.2022).

The Cabinet of Ministers of Ukraine, in its resolution dated June 01, 2023, No. 546 approved the Procedure for the temporary relocation (evacuation) of children and persons residing or enrolled in institutions of various types, forms of property and subordination for a round-the-clock stay, and their return to the place of permanent residence (stay), and in case of travelling outside Ukraine – to Ukraine (Cabinet of Ministers of Ukraine, No. 546 of 01.06.2023), which, in particular, stipulates that during martial law, the temporary relocation (evacuation) of children and persons who stay in institutions around the clock is mandatory, located at a distance of less than 2 kilometres from business entities that are important for the national economy and defence of the state, assigned to the relevant categories of civil protection (of particular importance, first or second), and/or less than 100 kilometres from the administrative border between the temporarily occupied territory and another territory of Ukraine where there are no hostilities, the line of combat, or less than 50 kilometres from the state border of Ukraine with the Russian Federation, the Republic of Belarus.

In other words, the government has defined the territorial limits of temporary relocation (evacuation), although it hasn't defined the notion of "safe areas".

Despite the complexity of this issue (given that the whole of Ukraine is currently suffering from enemy missile and drone strikes), we believe that this concept should be given a legislative definition in order to create a clear algorithm of actions for the relocation of children.

In addition, an effective mechanism of organisational cooperation should be established in each case – between the territorial community from which children are evacuated and the one to which they arrive.

With regard to the removal of children abroad, on the one hand, this measure certainly protects them from the risks to their lives associated with hostilities and long-range shelling.

At the same time, all parties involved don't always agree to the transfer of children outside Ukraine.

For example, in case No. 461/2098/22, a mother who was unable to fulfil her parental responsibilities due to a long-term illness (which resulted in her minor child being granted the status of a child deprived of parental care and placed in the Child Support Centre at the Prosvita School of the Lviv City Council, but the mother was not deprived of her parental rights) applied to the court. The plaintiff stated that after the introduction of martial law in Ukraine, her minor child was taken to Switzerland without her permission and without a court decision, and requested a decision to return the child from abroad, referring to the fact that Lviv is a centre for receiving refugees from all over Ukraine, is the most favourable political, economic and cultural centre where there are no hostilities. However, the decision of the Halytskyi District Court of Lviv of 25 January 2023, upheld by the decision of the Lviv Court of Appeal of 02 May 2023 and the decision of the Supreme Court of 27 September 2023

(Supreme Court of Ukraine) dismissed the claim on the grounds that the border crossing was legal and that the return of the child during the hostilities would not be in his or her best interests, as it posed a threat to his or her life. The court decisions also noted the mother's guilty behaviour in evading the upbringing of the child and in deliberately neglecting her parental responsibilities.

Of course, in each case, the guardianship should make the most appropriate decision based on the wishes of the child, but there should be effective mechanisms to ensure the protection of the rights of children abroad.

As rightly noted, control over travel abroad and subsequent return to Ukraine in the current circumstances requires constant close attention from ministries and agencies, public and international organisations. Such challenges require a comprehensive solution with the involvement of both state authorities and representatives of civil society (Kyrychenko and Tverdokhlib, 2022: 57).

Thus, in Ukraine, the guardians are chosen by the guardianship and trusteeship authorities, while in the European Union, this is done exclusively by the court – this problem has been repeatedly drawn to the attention of the Ukrainian Parliament Commissioner for Human Rights, emphasising the need for legislative regulation of this issue.

It is therefore necessary to harmonise the relevant rules of domestic legislation with European law, conclude international agreements on this issue, etc.

In addition, it is necessary to take into account the numerous cases (currently, according to the Office of the Ukrainian Parliamentary Commissioner for Human Rights, about 240) when children in Western countries were taken away from their parents or guardians by local special services for reasons that would not raise any questions in Ukraine (talking to a child in a high voice or vice versa, lethargy and drowsiness, which gave rise to suspicion of drug use, etc.). In order to prevent such situations, it is necessary to carefully study the legislation on this issue in each of the countries to which children are evacuated from Ukraine and provide qualified legal assistance to the persons who care for them.

Hrabovska H., and Lysiuk A. (Hrabovska & Lysiuk) underline that it is necessary to establish a system of coordination between state bodies, public organisations and international organisations, to create programmes and projects focused on protecting the rights of orphans and children deprived of parental care in the case of hostilities, including information and psychological support. It is also necessary to involve public and international organisations that can provide financial and technical support (Hrabovska, and Lysiuk, 2023: 4).

And, of course, from the first days of our children's stay abroad, there was an urgent necessity to determine the reasons and organisational possibilities for their return to Ukraine.

The Cabinet of Ministers of Ukraine, in its resolution dated July 7, 2022, No. 794, addressed certain issues regarding the return of children who have been temporarily displaced (evacuated) outside Ukraine for the purpose of obtaining temporary protection during the state of war in Ukraine. In particular, it was established that in cases where administrative or judicial bodies of the host country make decisions, or if there are other circumstances that prevent the legal representatives, duly authorized by the competent authorities of Ukraine, from fulfilling their functions to protect the rights of children, the diplomatic missions of Ukraine abroad, based on a decision by the executive body of the city, town, or village council, district, or the Kyiv City State Administration, or the regional military administration/National Social Service of Ukraine, will take measures to protect the rights and represent the interests of these children until they can be returned to their legal representatives, who are appointed in accordance with Ukrainian legislation, or transferred to an authorized person for their return to Ukraine; based on a decision by the executive body of the city, town, or village council, the district or the Kyiv City State Administration, or the regional military administration/National Social Service of Ukraine regarding the return of displaced (evacuated) children who are citizens of Ukraine and the appointment of an authorized person to ensure their return to Ukraine and act as their

legal representative during the return process, including if necessary to obtain documents that verify the identity and confirm the citizenship of the child from the diplomatic mission of Ukraine abroad, preparations for the documentation and organization of the children's return to Ukraine are carried out.

By the order of the Ministry of Social Policy of Ukraine, the Ministry for Reintegration of Temporarily Occupied Territories of Ukraine, and the Ministry of Internal Affairs of Ukraine dated August 9, 2023, No. 274-H/215/651 "On Certain Issues of Returning Temporarily Displaced (Evacuated) Children and Individuals to Their Place of Permanent Residence, and in the case of leaving Ukraine, back to Ukraine," a Plan for the return of children and individuals temporarily displaced (evacuated) from institutions has been approved, along with a Report on the condition and safety of the institution's buildings, and the availability of conditions for the stay of children and individuals residing in or enrolled in institutions of various types, ownership forms, and subordination for round-the-clock residence.

However, despite the measures taken by the state, there remains a whole range of legal and organizational issues that also require resolution.

A separate large-scale problem, which is also drawing the attention of public figures and scholars, including Zaborovskiy V.V. and Zaborovska S.V. (Zaborovskiy & Zaborovska, 2023), is the issue of the forced deportation of Ukrainian children, a significant portion of whom are orphans, to the territory of the Russian Federation and their subsequent adoption by its citizens. The deportation of Ukrainian children is yet another cynical military crime committed by the Russian Federation against humanity, violating all possible international acts related to the protection of children's rights (in particular, Article 11 of the Convention on the Rights of the Child imposes an obligation to take measures to combat the illegal transfer and non-return of children from abroad).

Conclusions. After analyzing various aspects of the implementation of state policy regarding the care and upbringing of orphans and children deprived of parental care under martial law, we can conclude that further steps are necessary in this direction, particularly concerning the improvement of the procedures for organizing the evacuation of children both within Ukraine and abroad, combating their illegal transfer, and ensuring their return. Among the priority tasks is the establishment of a clear and balanced interaction at all levels of entities involved in the implementation of state policy (in accordance with Article 33 of the Civil Protection Code of Ukraine) and those involved in the state policy for the protection of children deprived of parental care, with the aim of ensuring reliable protection of the rights of every child.

References:

1. Cherneta, S. (2012). Social Orphanhood as a Socio-Legal Problem. *Bulletin of Chernivtsi National University. Pedagogical Sciences*. 96., 245–247. <https://evnuir.vnu.edu.ua/handle/123456789/4343> [in Ukrainian].
2. Komar, I., & Petryshyn, R. (2022). Development of Family Forms of Upbringing as a Direction of Social Policy in Ukraine at the Present Stage. *Perspectives and Innovations in Science. Pedagogy. Psychology. Medicine*. No. 6(11), 183–191. [https://doi.org/10.52058/2786-4952-2022-6\(11\)-183-191](https://doi.org/10.52058/2786-4952-2022-6(11)-183-191) [in Ukrainian].
3. Maksymova, M. (2022). Child Safety as a Component of the National Security of the Country and an Object of Administrative-Legal Support. *Current Issues of Domestic Jurisprudence*. 4, 89–94. [in Ukrainian].
4. Kyruchenko, T., & Tverdokhlib, E. (2022). Protection of Children Deprived of Parental Care During Martial Law. *Historical-Legal Journal*, 1(18), 55–61. <http://chasopys.hl.vnu.volyn.ua/index.php/chasopys/article/view/103/97> [in Ukrainian].
5. Hrabovska H., & Lysiuk A. Protection of the Rights of Orphaned Children and Children Deprived of Parental Care During Military Actions. *Electronic Scientific Publication "Analytical and Comparative Jurisprudence"* DOI <https://doi.org/10.24144/2788-6018.2023.02.13>

6. Zaborovskiy V., & Zaborovska S. (2023). Guardianship of Children Deprived of Parental Care in Wartime: A Socio-Legal Aspect. *Scientific Bulletin of Uzhhorod National University*, 79: Law DOI <https://doi.org/10.24144/2307-3322.2023.79.2.64> [in Ukrainian].
7. The Parliament of Ukraine (2012). Civil Protection Code of Ukraine: Code of Ukraine No. 5403-VI of 02.10.2012. <https://zakon.rada.gov.ua/laws/show/5403-17#Text> [in Ukrainian].
8. Cabinet of Ministers of Ukraine (2022). On the Establishment of a Coordination Headquarters for the Protection of Children's Rights Under Martial Law: Resolution of the Cabinet of Ministers of Ukraine No. 302 of 01.03.2022. <https://zakon.rada.gov.ua/laws/show/302-2022-%D0%BF#Text> [in Ukrainian].
9. Cabinet of Ministers of Ukraine (2008). Issues of the Activities of Guardianship and Custody Authorities Related to the Protection of Children's Rights: Resolution of the Cabinet of Ministers of Ukraine No. 866 of 24.09.2008. <https://zakon.rada.gov.ua/laws/show/866-2008-%D0%BF#Text> [in Ukrainian].
10. Cabinet of Ministers of Ukraine (2022). On Amendments to the Procedure for the Creation and Operation of the Family of a Foster Care Provider, Placement, and Stay of a Child in the Family of a Foster Care Provider: Resolution of the Cabinet of Ministers of Ukraine No. 581 of 10.05.2022. <https://zakon.rada.gov.ua/laws/show/581-2022-%D0%BF#Text> [in Ukrainian].
11. Cabinet of Ministers of Ukraine (2023). On Amendments to the Resolutions of the Cabinet of Ministers of Ukraine of October 30, 2013, No. 841 and July 29, 2022, No. 854: Resolution of the Cabinet of Ministers of Ukraine No. 209 of 07.03.2023 <https://zakon.rada.gov.ua/laws/show/209-2023-%D0%B-F#Text> [in Ukrainian].
12. Cabinet of Ministers of Ukraine (2022). On Amendments to Certain Resolutions of the Cabinet of Ministers of Ukraine Regarding the Improvement of the Evacuation Mechanism: Resolution of the Cabinet of Ministers of Ukraine No. 940 of 23.08.2022. <https://zakon.rada.gov.ua/laws/show/940-2022-%D0%BF#n2> [in Ukrainian].
13. Cabinet of Ministers of Ukraine (2023). On Temporary Relocation (Evacuation) of Children and Persons Residing or Enrolled in Institutions of Various Types, Ownership, and Subordination for Round-the-Clock Stay, and Their Return: Resolution of the Cabinet of Ministers of Ukraine No. 546 of 01.06.2023. <https://zakon.rada.gov.ua/laws/show/546-2023-%D0%BF#n2> [in Ukrainian].
14. Cabinet of Ministers of Ukraine (2022). Some Issues of the Return of Children Who Were Temporarily Relocated (Evacuated) Outside Ukraine for Temporary Protection During Martial Law in Ukraine: Resolution of the Cabinet of Ministers of Ukraine No. 794 of 07.07.2022. <https://zakon.rada.gov.ua/laws/show/794-2022-%D0%BF#Text> [in Ukrainian].
15. Ministry of Social Policy of Ukraine, Ministry for Reintegration of Temporarily Occupied Territories of Ukraine, Ministry of Internal Affairs of Ukraine (2023). On Some Issues of the Return of Temporarily Relocated (Evacuated) Children and Persons to Their Permanent Place of Residence (Living), and in Case of Departure Outside Ukraine – to Ukraine: Order of the Ministry of Social Policy of Ukraine, Ministry for Reintegration of Temporarily Occupied Territories of Ukraine, Ministry of Internal Affairs of Ukraine No. 274-H/215/651 of 09.08.2023. <https://zakon.rada.gov.ua/laws/show/z1488-23#n17> [in Ukrainian].
16. Report 1 Children and War in Ukraine. Report on the Situation of Children from Family-Based Forms of Care and Institutional Institutions Based on Monitoring Results from February to June 2022. <https://www.unicef.org/ukraine/documents/02-06-2022-CiAC-monitoring-report> [in Ukrainian].
17. The Government Introduced Mandatory Evacuation of Children Along with Their Parents Who Are in Combat Zones (Analysis). <https://r2p.org.ua/page/uryad-zaprovadyv-obovyazkovu-evakuacziyu-ditej-razom-z-yih-batkamy-yaki-perebuvayut-u-zoni-voyennyh-dij-analiz> [in Ukrainian].
18. Supreme Court of Ukraine: Decision of 27.09.2023 in Case No. 461/2098/22 Case No. 61-11754 sv 23. <https://reyestr.court.gov.ua/Review/113867220> [in Ukrainian].