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DETERMINATION OF THE HABITUAL RESIDENCE OF A CHILD IN CROSS-BORDER CASES ON PARENTAL RESPONSIBILITY AND CHILD PROTECTION MEASURES

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Abstract. The article examines the concept "habitual residence of a child" in cross-border cases regarding parental responsibility and child protection measures and its significance for Private International Law. The author highlights the problematic aspects of determining the "habitual residence of a child" of children displaced as a result of the war in Ukraine. The current state of legal regulation of the concept of habitual residence of a child following the legislation of Ukraine and international acts, specifically, the HCCH 1980 Child Abduction Convention and the HCCH 1996 Child Protection Convention, has been analyzed. The legal position of the Supreme Court (Ukraine) on the procedure for determining the habitual residence of a child is considered.

Key words: private international law, private relations, habitual residence of a child, best interests of the child, child abduction, HCCH 1980 Child Abduction Convention, HCCH 1996 Child Protection Convention.

Introduction. The international protection of children's rights is topical in today's world, where modern issues are rising in a cross-border dimension, notably international mobility, migration and cross-cultural marriages. Individuals, especially children, require international protection through modern socio-legal remedies. Private International Law, whose primary scope is to protect individuals, especially children, must provide modern responses in the fullest respect of the legal order (Bumbaca, 2018).

Hostilities in Ukraine have activated a mass migration of Ukrainian citizens abroad, mostly to EU countries in search of asylum (UNHCR, 2025). As a result of such migration processes, the number of family disputes of a cross-border nature involving children, regarding parental responsibility and child protection measures.

One of the topical issues in resolving such categories of disputes is the determination of the "habitual residence of a child", which is a fundamental criterion in cases of child protection in Private International Law.

The concept of "habitual residence" is quite controversial, flexible and complex in legal practice, since the procedure for its definition does not have templates and sufficient regulation. The child's habitual residence is determined in each individual case involving the child, considering the child's individual interests, needs and life circumstances, which ensures compliance with the principle of ensuring the best interests of the child (Sushch, 2025, p. 93–97).

Today, hundreds of thousands of children citizens of Ukraine are forced to stay abroad due to the existence of a real threat to their lives and health in Ukraine. The stay in the country that provided temporary protection was delayed indefinitely, due to which there are difficulties in determining the child's habitual place of residence, which is of key importance in determining jurisdiction in cases of protection of children's rights.

Ukrainian families in foreign countries faced such problems as: removal of children by foreign social services from families as a measure of parental responsibility; recognition of children as unaccompanied children and application of protection measures to them on the territory of a foreign state by foreign social services; taking a child abroad by one of the parents without the consent of the other

(child abduction); disputes between parents regarding the child's place of residence and custody (Sushch, 2024). These issues have become a challenge for the Private International Law of Ukraine in modern conditions, since jurisdiction in such categories of cases should be determined in compliance with the principle of ensuring the best interests of the child, following the legislation of the child's habitual residence.

In view of the above, in this article the author has identified the following tasks:

to characterize the concept of the habitual residence of a child in accordance with international acts and legislation of Ukraine;

to identify the problems of determining the "habitual residence of a child" of children displaced as a result of the war in Ukraine;

to illustrate the legal positions of the Supreme Court (in Ukraine) regarding the determination of the habitual residence of a child.

Thus, the above characterizes the relevance of the topic in today's conditions and the need to study the concept of "habitual residence of a child".

Analysis of recent research and publications. Studies of legal problems of determining the habitual place of residence aroused considerable interest in Ukrainian and foreign academic areas. Among Ukrainian scientists, this issue was studied in various aspects. Thus, O. Melnyk studied the issue of determining the child's place of residence after the parents' divorce during martial law (Melnyk, 2023). I. Kyrylchuk analyzed the principle of the best consideration of the interests of the child when determining the place of his/her residence in court (Kyrylchuk, 2023). N. Dobrianska focused on the establishment of the child's place of residence by the European Court of Human Rights (Dobrianska, 2024).

In particular, R. Schuz conducted a review of developments and proposed guidelines on habitual residence (Schuz, 2023). P. Beaumont and J. Holliday analyzed the concept of "habitual residence" in the context of child abduction cases (Beaumont & Holliday, 2021). M. Župan & M. Drventić Barišin explored Continuity of Parental Responsibility in Child Abduction Cases: Lesson Learned from the Case of Z. v. Croatia (Župan & Drventić Barišin, 2023). M. Stanivuković examined the concept of habitual residence in the jurisprudence of the Court of Justice of the European Union (Stanivuković, 2021), while J. Atkinson elucidated the contemporary interpretation of "habitual residence" within the Hague Convention on the Civil Aspects of International Child Abduction and the Hague Convention on the Protection of Children (Atkinson, 2011). A study by A. Fiorini expanded the concept of habitual residence to include newborns (Fiorini, 2012).

The purpose of this article is to examine the issues involved in determining the habitual residence of a child in cross-border cases concerning parental responsibility and measures for the protection of children.

Materials and methods. The basis of this research was established using a combination of general scientific and special legal scientific research methods.

The method of analysis and synthesis made it possible to define the meaning of the concept of "child's habitual residence".

The use of special legal methods – legal dogmatics and comparative legal method achieved the goals and objectives set in the study.

The legal dogmatics method made it possible to study modern theoretical and legal approaches of scientists on determining the habitual residence of a child in cross-border cases regarding parental responsibility and child protection measures. In addition, using the method of legal dogmatics, it became possible to characterize the problems of determining the "usual place of residence" of children displaced as a result of the war in Ukraine. This method was also used to analyze the content of legal norms and their use in judicial practice.

The comparative legal method made it possible to highlight the issue of how the procedure for determining the child's habitual place of residence is regulated in accordance with international acts

and the legislation of Ukraine. The author identifies current shortcomings in the regulation of the procedure for determining the habitual residence of a child in cross-border cases regarding parental responsibility and child protection measures. The comparative legal method was also used to analyze the legal position of the Supreme Court regarding the determination of the child's habitual place of residence in comparison with the practice of other court instances.

A comprehensive literature review makes it possible to discover the state of research on this issue in Private International Law. Legislative sources are selected in the official legislative databases of the European Union and Ukraine.

Results and discussion.

1. ***The concept of a "habitual residence of a child" in accordance with international acts and legislation of Ukraine***

The criterion of "habitual residence of a child" is widely used in international instruments such as the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in the Field of Parental Responsibility and Measures for the Protection of Children (HCCH 1996 Child Protection Convention) and in the Convention on the Civil Aspects of International Child Abduction (HCCH 1980 Child Abduction Convention), but existing international instruments do not contain a definition of the concept of "habitual residence" and are not interpreted in the same way in different jurisdictions (European Court of Human Rights, 2018; European Court of Human Rights, 2021). In some ways, the concept of habitual residence might be seen as the "Achilles' heel" of the HCCH 1980 Child Abduction Convention. Whilst the drafters seemed to have assumed that there would be no difficulty in determining habitual residence, which they saw as a pure question of fact, this expectation has proven to be unrealistic, and different approaches to the concept soon developed (Schuz, 2023).

The concept of "habitual residence of a child" is also absent in the legislation of Ukraine. Article 160 of the Family Code of Ukraine only defines the right of parents to determine the child's place of residence (Law of Ukraine №2947-III). According to this norm, "The place of residence of a child under ten years of age is determined with the consent of the parents. The place of residence of a child who has reached the age of ten is determined by the joint consent of the parents and the child themselves. If the parents live separately, the place of residence of the child who has reached the age of fourteen is determined by him/herself". If it is necessary to determine the habitual residence of a child in cross-border family matters, the national courts of Ukraine apply the rules established by international acts.

Jurisdictional issues in cases of parental responsibility and child protection measures are resolved in accordance with the rules of the HCCH 1996 Child Protection Convention. According to Article 5 of the HCCH 1996 Child Protection Convention, the judicial or administrative authorities of the Contracting State of the child's habitual residence shall have jurisdiction to take measures aimed at protecting the person or property of the child. In the event of a change of the child's habitual residence to another Contracting State, the authorities of the State of the new habitual residence shall have jurisdiction. It should be noted that for refugee children and children who have been displaced to other states as a result of social unrest in their country, the authorities of the Contracting State on the territory of which these children are located as a result of their displacement have jurisdiction (Article 6, HCCH 1996 Child Protection Convention). A similar rule applies to children whose habitual residence cannot be established.

The determination of habitual residence is therefore a matter of facts, rather than legal definitions. The concept refers to a person's abode in a particular place or country which he or she has adopted voluntarily and intentionally as part of the regular order of his or her life, whether for a short or a long time. In the specific context of children, the factor of the intent of the person to stay in a territory is determined in reference to the time period that a child resides in the territory. The duration of the residence is the factor that distinguishes presence from habitual residence. The longer the child resides in

a territory, the greater the significance of ties he or she creates with that state and with its legal system (§ 51, case of M.V. v. Poland, European Court of Human Rights, 2021).

The European Court of Human Rights, in its judgments in cases of parental responsibility and measures for the protection of children, refers to the interpretation of "habitual residence" provided by the Court of Justice of the European Union in the case of Barbara Mercredi (§56, C-497/10 PPU, ECLI:EU:C:2010:829, Court of Justice of the European Union, 22 December 2010). "The concept of 'habitual residence' must be interpreted as meaning that such residence corresponds to the place which reflects some degree of integration by the child in a social and family environment. To that end, where the situation concerned is that of an infant who has been staying with her mother only a few days in a Member State – other than that of her habitual residence – to which she has been removed, the factors which must be taken into consideration include, first, the duration, regularity, conditions and reasons for the stay in the territory of that Member State and for the mother's move to that State and, second, with particular reference to the child's age, the mother's geographic and family origins and the family and social connections which the mother and child have with that Member State. It is for the national court to establish the habitual residence of the child, taking account of all the circumstances of fact specific to each individual case"(Court of Justice of the European Union, 2010; European Court of Human Rights, 2020).

As noted, D. Damascelli, habitual residence is an international connecting criterion aiming at identifying a stable and actual link between a person and a given geographical area. In other words, the habitual residence criterion was introduced to overcome the conflicts of qualification that arose in the past with respect to the domicile criterion, due to its many different definitions in the various national systems. Residence has been qualified as habitual in order to stress the idea that this criterion should establish an actual and genuine geographical connection between the person under consideration and a given place (Damascelli, n.d.).

The Practical Guidelines of the Hague Conference on Private International Law state that with regard to the application of the 1996 Hague Convention on Parental Responsibility, the following circumstances should also be taken into account when determining habitual residence. First, where there is clear evidence of an intention to commence a new life in another State, then an existing habitual residence will usually be lost and a new one acquired. Secondly, where a move is open-ended, or potentially open-ended, the habitual residence at the time of the move may also be lost and a new one acquired relatively quickly. However, where a move is time-limited, even if it is for an extended period, it has been accepted in some jurisdictions that an existing habitual residence can be maintained throughout. This could especially be the case if the parents have made an agreement for the child to have a temporary stay in another country. Assessments of other situations tend to follow one of two approaches. The "parental intention" approach looks at the shared intention of the parents regarding the nature of the move. The "child-centred" approach instead emphasizes the factual reality of the child's life. This factual reality includes elements such as education, social interaction, family relationships and generally refers to the focus of the child's life. There have also been cases which mix both approaches, with reference to both the parental intentions and the child's life. In deciding which approach to follow, some courts take into consideration the age of the child involved; the older the child, the more likely the court will pay closer attention to the focus of his or her life (Hague Conference on Private International Law, 2014, p.174).

2. ***Some Problems of Determining the "Habitual Residence of a Child" Displaced as a Result of the War in Ukraine***

It is generally admitted that this criterion conveys the principle of the child's best interests in procedural matters, as it expresses the principle of proximity and efficiency, allowing for the "natural" court to hear the child, investigate efficiently the circumstances of the case and decide it promptly. It should also be recalled that in all cases affecting children, time is of the essence. However, regard-

ing displaced children, this ground of jurisdiction can no longer be applied concerning their home country, since they had to leave their country. On the other hand, migrant children require protection well before they acquire habitual residence in a new State, being especially vulnerable (European Parliament, 2017, p. 14).

As mentioned earlier, the peculiarity of the concept of "habitual residence of the child" is that it must be considered by the Contracting States in each individual case in accordance with the individual factual and vital circumstances of the child, which in practice causes problems. For example, in the context of the armed conflict in Ukraine, it is quite difficult to determine the usual place of residence of a child citizen of Ukraine who enjoys temporary protection in the EU countries for several reasons.

Firstly, the uncertainty of the boundaries of the terms of stay in a foreign country. Children-citizens of Ukraine are forced to stay on the territory of a foreign state for a long time (3 years) legally, enjoying the status of temporary protection in accordance with 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 (Council of the European Union, 2001). Under such circumstances, the child is simultaneously under the influence of two national laws – the legislation of the country of citizenship (Ukraine) and the legislation of a foreign state with which cross-border relations of a private nature are connected.

In addition, the connection of a child citizen of Ukraine with a foreign state has not been clarified in time – it is limited by the validity period of temporary protection. Ukraine cannot be considered the child's usual place of residence, since the child left the country as a result of war unrest, lives and enjoys temporary protection in a foreign state, but such residence cannot be characterized as permanent. At the same time, the recognition of the country of his/her actual residence (the country that granted temporary protection) as a habitual place of residence is a big issue, since there is uncertainty about the prospects for future stay and the terms of further stay in this country are unknown.

Secondly, there are uncertain intentions to stay in the host country. In the practice of the ECtHR (case of M.V. v. Poland) on the concept of "habitual residence of the child" it is reflected that "the concept refers to a person's abode in a particular place or country which he or she has adopted voluntarily and intentionally as part of the regular order of his or her life, whether for a short or a long time. In the specific context of children, the factor of the intent of the person to stay in a territory is determined in reference to the time period that a child resides in the territory" (§ 51, case of M.V. v. Poland, European Court of Human Rights, 2021). Commenting on this definition in relation to the determination of the usual place of residence of children displaced as a result of social troubles, we can talk about the so-called "coerced voluntariness". This vision is since the sign of voluntariness is characteristic only for the choice of a country that will provide temporary protection within the EU for the period of existence of a real threat to the life and health of the child in the country of origin, and not the intention to intentionally change the place of residence altogether.

Thirdly, there is an active integration of the child of a citizen of Ukraine in the host country – attendance at educational institutions, social ties, health care, and at the same time, in most cases, a close connection with the country of citizenship is maintained – distance learning in Ukrainian educational institutions and preservation of social ties. Under such circumstances, it is difficult to determine the child's habitual residence and jurisdiction in cases of parental responsibility and measures to protect children. We believe that children enjoying temporary protection in EU countries are equally related to both countries – citizenship and actual residence. In this regard, it is worth paying attention to the point of view of M. Semenova, who notes that "children who were taken to the EU countries after 24.02.2022, as a rule, were born and lived in Ukraine all their lives before the start of the full-scale invasion of the Russian Federation into Ukraine and have a permanent place of registration in Ukraine. They are temporarily located on the territory of the EU coun-

tries in accordance with the requirements of Council Directive 2001/55/EC. Such children do not have a permanent place of registration in the country of stay. Most of the children during their stay outside Ukraine were not able to fully adapt to the social environment, to the change in language and the differences in the educational process, climate and mentality. As a rule, all family and social ties of children (relatives and friends) remained in Ukraine. Therefore, taking into account all the circumstances, in particular the duration, regularity, conditions and reasons for stay, place and conditions of attending educational institutions, knowledge of the language, social and family relations of the child in such a state, the usual place of residence of such children is Ukraine" (Semenova, Bazhanova, 2024, p. 350–351). In general, this point of view is logically justified and interesting because children who are Ukrainian citizens were forced to leave Ukraine and ended up in different countries and socio-cultural environments. However, it is worth noting that M. Semenova's point of view that Ukraine is the usual place of residence of children enjoying temporary protection is contradictory for several reasons. Firstly, with regard to children enjoying temporary protection in different EU countries, so it seems impossible to apply all the criteria proposed by the scientist to determine the usual place of residence. It is also impossible to single out one or more factors that will be key to determining the usual place of residence. For example, children who are citizens of Ukraine from the moment of birth to February 24, 2022 lived on the territory of Ukraine for different periods of time. Thus, a one-month-old child and a 17-year-old child have varying degrees of connection with the state in which they were born. Secondly, the criterion of permanent registration in Ukraine has no impact on determining the child's habitual place of residence, since the predominant sign of connection with the state will be Ukrainian citizenship. Thirdly, most persons who benefit from temporary protection under Council Directive 2001/55/EC after one year of residence in the territory of the country that granted such protection have a permanent place of registration at their actual address on the basis of temporary protection. We do not agree with the author's opinion that children "have not fully adapted to the social environment"(Semenova, Bazhanova, 2024, p. 350) since the processes of integration and adaptation also depend on many factors, and each child has a different experience.

In our opinion, the generalization turns out to be incorrect because different EU countries granting temporary protection under Council Directive 2001/55/EC define different conditions for temporary protection, which we define as social factors. For example, some countries do not require studying in the host country if you have a certificate of study in Ukraine. Other countries define attending educational institutions as an obligation. Education is compulsory in most EU countries. For example, every child between the age of 7 and 18 living in Poland is subject to compulsory schooling or compulsory education. It means that any child is obliged to go to school under the threat of sanctions against the parents. This obligation is also applied to children who do not have Polish citizenship, regardless of the legal status of their parents in Poland (Migrant Info, 2024).

Thus, it seems to be an erroneous and contradictory statement to recognize the habitual residence of children enjoying temporary protection in EU countries for Ukraine.

Hague Conference on Private International Law in publication "The Application of the 1996 Child Protection Convention to Unaccompanied And Separated Children" identified, that habitual residence is a question of fact, this will depend on the particular circumstances of each case including on whether the conditions of the child in the country, notably their legal status there in accordance with the applicable law (e.g., being a refugee or not), provide for sufficient stability to allow for the establishment of a habitual residence (HCCH, 2024, p. 15).

3. ***Legal positions of the Supreme Court (Ukraine) regarding the determination of the habitual residence of a child***

In the judicial practice of Ukraine, the habitual place of residence of a child is established based on the circumstances of each specific case, taking into account the principle of the best interests

of the child. However, the lack of clear criteria for determining the habitual residence of a child in international and national instruments leads to an erroneous definition of jurisdiction in cases of child protection and parental responsibility, which may result in non-compliance with the principle of the best interests of the child. For example, the court of first instance erroneously determines the jurisdiction of the court of a foreign state, and the court of appeal determines the jurisdiction of the courts of Ukraine (Supreme Court, July 31, 2024). A vivid example is the proceedings in case No. 760/18630/22, the child has dual citizenship – Polish citizenship and Ukrainian citizenship (mother is a citizen of Ukraine, father is a citizen of Poland, parents are divorced). The child was born and lived in Ukraine before the outbreak of hostilities. Since 2022, the child has been living in Poland with his mother, where he attended kindergarten. The father was against the return of the child from Poland to Ukraine. The mother filed a lawsuit against her ex-husband, in which she asked to determine the place of residence of the minor child with her in Ukraine. The court of first instance closed the proceedings in the case, indicating that the plaintiff and her daughter had changed their place of permanent residence from Ukraine to Poland. The court considered the duration of the child's stay in this country, attendance at a preschool institution, took into account that the child has Polish citizenship, etc. Therefore, guided by the provisions of Articles 5 and 6 of the HCCH 1996 Child Protection Convention, the court stated that the court of Ukraine did not have jurisdiction to resolve the dispute in this case (Supreme Court, July 31, 2024; Supreme Court, August 13, 2024).

The Court of Appeal reversed the decision of the court of first instance and sent the case for further consideration. The court proceeded from the fact that at the time of filing the claim and initiating proceedings in the case, there was no circumstance specified in paragraph "b" of Part 1 of Article 7 of the Hague Convention on Parental Responsibility of 1996, since the child had not lived in Ukraine for less than one year. the court noted that the child's attendance at a kindergarten in Poland since September 2022, obtaining a PESEL number and citizenship of the Republic of Poland certainly did not indicate the child's adaptation to the new place of residence at the time of the initiation of proceedings in the case (Supreme Court, July 31, 2024). According to the justification of the appellate court, this dispute should be subject to the jurisdiction of the courts of Ukraine.

The Cassation Civil Court of the Supreme Court noted that the Provisions of Article 7 of the Hague Convention on Parental Responsibility of 1996, when determining the jurisdiction applied by the Court of Appeal, apply only in the case of unlawful removal or maintenance of a child. Instead, the case materials do not contain evidence that the child was unlawfully moved from the territory of Ukraine to the territory of Poland. Due to the fact that the child was born in Ukraine, lived in Ukraine until February 2022 and is a citizen of Ukraine, at the time of filing this lawsuit with the court and opening proceedings in the case, she did not live in Ukraine for a short period of time, her usual place of residence remained Ukraine (Supreme Court, August 13, 2024).

The example of this case shows an individual consideration and assessment of all the circumstances regarding the determination of the child's permanent residence, which indicate the child's closest connection with a particular state, namely Ukraine, despite the presence of Polish citizenship and the child's attendance at a preschool educational institution. The determining factor in the meaning of the child's permanent residence in this case was a temporary (short-term) stay in a foreign state.

The Supreme Court, as part of the panel of judges of the First Judicial Chamber of the Civil Court of Cassation, found that due to the fact that the child was born in Ukraine, lived in Ukraine until February 2022 and is a citizen of Ukraine, at the time of filing a lawsuit with the court and opening proceedings in the case, she did not live in Ukraine for a short time, her usual place of residence remained Ukraine. At the time of applying to the court, the child was 5 years and 4 months old, of which 4 years and 6 months she lived in Ukraine and 10 months in Poland. At the same time, on the territory of Ukraine, the child attended kindergarten for almost 3 years, and on the territory of Poland – about 2 months (Supreme Court, July 31, 2024; Supreme Court, August 13, 2024).

The legal position of the Cassation Civil Court of the Supreme Court regarding the determination of the child's habitual place of residence is based on the following criteria: firstly, attendance at an educational institution (preschool educational institution – kindergarten, school, various circles); secondly, based on the results of establishing the following circumstances: the child is receiving medical care, the child has his friends, hobbies, the child has stable family ties and other facts that testify, that the child considers his place of residence to be permanent, comfortable and the place of residence of his family, etc. That is, the child's habitual place of residence should be understood as such a place, the existence of which proves a certain degree of attachment of the child to his social and family environment. To this end, it is necessary to take into account, in particular, the duration, regularity, conditions and reasons for the stay of the child and family in a particular state, the place and conditions of attending educational institutions, knowledge of the language, social and family relations of the child in such a state (resolutions of the Supreme Court of November 1, 2022 in case No. 201/1577/21, proceedings No. 61-4217sv22, of January 31, 2024 in case No. 336/5265/22, proceedings No. 61-12940SV23) (Supreme Court, July 31, 2024).

The plaintiff must prove permanent residence (habitual place of residence) with evidence confirming, in particular, the education of the child, the receipt of medical care and the implementation of other social services in relation to him in this state (Supreme Court, November 1, 2022).

Another feature that is considered when determining the child's usual place of residence is safety issues. Thus, the judge of the Supreme Court in the Civil Court of Cassation, A. Oliynyk, noted that: the very fact of the introduction of martial law on the territory of Ukraine is not a sufficient basis for determining the place of residence of a child with one of the parents; circumstances related to the safety of the child and the consequences of hostilities are significant, subject to determination and assessment by the court. When resolving a dispute about the child's place of residence during martial law, the courts should assess all the circumstances of the case in their entirety, apply flexible approaches to making a decision in the case, taking into account the best interests of the child, the balance between the interests of the child and the rights of parents to raise him/her. The fact of the child's residence abroad (regardless of whether the child was taken abroad before or after filing a lawsuit to determine the child's place of residence) does not affect the resolution of the dispute by the courts of Ukraine on determining the place of his/her residence. The return of a child to Ukraine is not a prerequisite for resolving a dispute between parents to determine the place of residence of such a child (Oliynyk, 2024; Supreme Court, December 11, 2023).

There were cases when the father wanted to return the child to Ukraine, but the court decided that from the point of view of safety, it was better for the child to stay abroad. In such categories, war is a significant factor for decision-making (Krat, 2024).

Conclusions. The key criterion for determining jurisdiction in cases with a foreign element regarding parental responsibility and child protection measures is the criterion of "habitual residence of a child". The analysis of the current state of legal regulation of the procedure for determining the "habitual residence of a child" allows us to talk about a partial level of legal regulation in international acts and national legislation of Ukraine. This situation has both positive and negative consequences. On the positive side, due to the lack of clear and imperative requirements for determining the child's habitual place of residence, it is possible to observe the best interests of the child with greater precision, taking into account the peculiarities of the life circumstances of each individual child. On the negative side, there are difficulties in law enforcement to determine the child's habitual place of residence, since the national legislation of Ukraine does not contain relevant norms and the courts apply international acts that partially regulate this issue. Due to the flexibility of the concept of the child's habitual residence, there are different interpretations of this concept.

The article identifies some problems of determining the "usual place of residence" of children displaced as a result of the war in Ukraine. In particular, the astor pointed out that the reasons for such

problems are: firstly, the uncertainty of the boundaries of the terms of stay in a foreign country; secondly, there are uncertain intentions to stay in the host country; thirdly, there is an active integration of the child of a citizen of Ukraine into the host country.

In the judicial practice of Ukraine, the habitual place of residence of a child is established based on the circumstances of each specific case, taking into account the principle of the best interests of the child. However, the lack of clear criteria for determining the habitual residence of a child in international and national instruments leads to an erroneous definition of jurisdiction in cases of child protection and parental responsibility, which may result in non-compliance with the principle of the best interests of the child.

The topic of the role and significance of the criterion "habitual residence of the child" in private international law is a topical subject for further scientific research.

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References:

1. Atkinson, J. (2011). The meaning of "habitual residence" under the Hague Convention on the Civil Aspects of International Child Abduction and the Hague Convention on the Protection of Children. *Oklahoma Law Review, 63(4),* 647–661. https://digitalcommons.law.ou.edu/cgi/viewcontent.cgi?article=1118&context=olr
2. Bumbaca, V. (2018). Habitual residence: towards a child centered approach. In: 6th Children's Rights Research Symposium. Belfast: https://archive-ouverte.unige.ch/unige:109044
3. Council of the European Union (2001). *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*, OJ L 212, 7 August 2001
4. Court of Justice of the European Union (2010). *Barbara Mercredi v Richard Chaffe* (Case C-497/10 PPU, ECLI:EU:C:2010:829, Judgment of 22 December 2010). https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62010CJ0497
5. Damascelli, D. (n.d.). Habitual Residence in European Private International Law. Università del Salento. https://platform.europeanmoocs.eu/users/1000023735/Domenico-Damascelli.pdf
6. Dobrianska N. (2024). Vstanovlennia mistsia prozhyvannia dytyny Yevropeiskym sudom z prav liudyny [Establishment of the child's place of residence by the European Court of human rights]. Zovnishnia torhivlia: ekonomika, finansy, pravo No 1 . C. 51–59. DOI: 10.31617/3.2024(132)04. [In Ukrainian]
7. European Court of Human Rights (2018). CASE OF VILENCHIK v. UKRAINE https://hudoc.echr.coe.int/ukr#{%22fulltext%22:[%22Habitual%20residence%20Ukraine%22],%22documentcollectionid2%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-177228%22]}
8. European Court of Human Rights (2020). CASE OF MICHNEA v. ROMANIA, *Application no. 10395/19*. Available at: https://hudoc.echr.coe.int/ukr?i=001-203631
9. European Court of Human Rights (2021). CASE OF M.V. v. POLAND https://hudoc.echr.coe.int/ukr#{%22itemid%22: [%22001-208888%22]}
10. European Parliament (2017). Children On the Move: A Private International Law Perspective Legal Affairs: Study, Directorate General for Internal Policies of the Union Policy Department for Citizens' Rights and Constitutional Affairs. PE 583.158, June 2017. In: European Parliament [online]. Available at: https://www.europarl.europa.eu/RegData/etudes/STUD/2017/583158/IPOL_STU(2017)583158_EN.pdf
11. Hague Conference on Private International Law (2014). Practical Handbook on the operation of 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. https://assets.hcch.net/docs/eca03d40-29c6-4cc4-ae52-edad337b6b86.pdf
12. HCCH (1980). Convention on the Civil Aspects of International Child Abduction. Retrieved from https://www.hcch.net/en/instruments/conventions/full-text/?cid=24
13. HCCH (1996). Convention on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children. Retrieved from https://www.hcch.net/en/instruments/conventions/full-text/?cid=70
14. HCCH (2024). The Application of the 1996 Child Protection Convention to Unaccompanied And Separated Children, The Hague, 2024.
15. Krat, V. (2024). Gromadyany` chastishe zvertayut`sya do sudiv shhodo styagnennya kompensaciyi z agresora [Citizens often turn to the courts to recover compensation from the aggressor]. URL: https://bukvy.org/gromadyany-chastishe-zvertayutsya-do-sudiv-shhodo-styagnennya-kompensaczi-yi-z-agresora-vasyl-krat/ [in Ukrainian].
16. Kyrylchuk I.A. (2023). Pryntsyp naikrashchoho vrakhuvannia interesiv dytyny pry vyznachenni mistsia yii prozhyvannia u sudovomu poriadku [Principle of the best consideration of the interests of the child when determining the place of his/her residence in court]. *Vcheni zapysky TNU imeni V.I. Vernadskoho. Seriia: yurydychni nauky.* 34 (73) No. 1, 13–19. [In Ukrainian]
17. Law of Ukraine №2947-III. Family Code of Ukraine № 2947-III dated Jeunery 10, 2002. https://zakon.rada.gov.ua/laws/show/2947-14#Text [in Ukrainian].
18. Melnyk, O. (2023). Problematyka vyznachennia mistsia prozhyvannia dytyny pislia rozluchennia bat′kiv u period voiennoho stanu [Issues of determining the child's place of residence after parents' divorce during martial law]. *Naukovyi visnyk Uzhhorods'koho natsional'noho universytetu. Seriia: Pravo, 1(79),* 211–214. DOI https://doi.org/10.24144/2307-3322.2023.79.1.36**.** [In Ukrainian]
19. Migrant Info (2024). Should I send my child to school while in Poland? Retrieved from https://migrant.info.pl/ua/home-120/navcanna/vazliva-informacia-ta-prakticni-poradi
20. Oliynyk A. (2024). Pravozastosuvannya shhodo vy`znachennya miscya prozhy`vannya dy`ty`ny` pry` rozglyadi sprav v umovax voyennogo chasu [Law Enforcement on Determining the Place of Residence of a Child in Wartime Cases]. https://supreme.court.gov.ua/supreme/pokazniki-diyalnosti/navch_suddiv_praciv_aparativ_2021/1621755/ [in Ukrainian].
21. Schuz, R. (2023). Habitual Residence: Review of Developments and Proposed Guidelines. *Laws*, *12*(4), 62. https://doi.org/10.3390/laws12040062
22. Semenova, M., Bazhanova A. (2024). Deyaki aspekty`rozglyadu sporiv shhodo zaxy`stu prav i svobod ditej pid chas diyi v Ukrayini voyennogo stanu [Some aspects of consideration of disputes regarding the protection of children's freedoms during martial law in Ukraine]. “Human Rights in Armed Conflicts": International Scientific and Practical Conference dedicated to the 75th anniversary of the adoption of the Geneva Conventions for the Protection of Victims of War of 1949 and the International Human Rights Day. November 1, 2024, Odesa: Proceedings of the Conference. Odessa. 2024. P. 345–353. https://dspace.onua.edu.ua/server/api/core/bitstreams/2ff801a3-9447-4656-a67a-30fddb4016c1/content [in Ukrainian].
23. Stanivuković, M. (2021). Child’s habitual residence in the jurisprudence of the Court of Justice of the European Union. Vol. 55 (3). Zbornik radova Pravnog fakulteta u Novom Sadu. 709–735. https://doi.org/10.5937/zrpfns55-34676
24. Supreme Court (August 13, 2024). The Civil Court of Cassation of the Supreme Court recognized the jurisdiction of the court of Ukraine in the dispute over determining the child's place of residence in a case with a foreign element. https://supreme.court.gov.ua/supreme/pres-centr/news/1650727/ [in Ukrainian].
25. Supreme Court (December 11, 2023). Resolution of the Civil Court of Cassation of the Supreme Court dated December 11, 2023 in case No. 607/20787/19 (proceedings № 61-11625свo22). https://verdictum.ligazakon.net/document/116606725?utm_source=jurliga.ligazakon.ua&utm_medium=news&utm_content=jl03 [in Ukrainian].

26. Supreme Court (July 31, 2024). Resolution of the Civil Court of Cassation of the Supreme Court dated July 31, 2024, in case No. 760/18630/22 (proceedings No. 61-6796sv24). https://reyestr.court.gov.ua/Review/120785009 [in Ukrainian].
27. Supreme Court (November 1, 2022). Resolution of the Civil Court of Cassation of the Supreme Court dated November 1, 2022 in case No. № 201/1577/21 (proceedings № 61-4217св22). https://protocol.ua/ru/postanova_ktss_vp_vid_01_11_2022_roku_u_spravi_201_1577_21/ [in Ukrainian].
28. Sushch, O. (2024). Private International Law and Parental Responsibility: the Experience of Applying Parental Responsibility Measures to Ukrainians in EU Countries. Amazonia Investiga, 13(81), 24–38. https://doi.org/10.34069/AI/2024.81.09.2
29. Sushch, O. (2025). The Principle of the «Best Interests of the Child» in Private International Law. A*ktual'ni problemy simeinoho prava: Materialy II mizhnar. nauk.-prakt. konf., prysviach. pamiati d-ra yuryd. nauk, prof., chl.-kor. NAPrN Ukrainy Zhilinkovoi Iryny Volodymyrivny (m. Kharkiv, 11 kvit. 2025 r.) / Nats. yuryd. un-t im. Yaroslava Mudroho, Kaf. tsyv. prava; Hrom. orh. "Tsivilistychna platforma".* Kharkiv: Pravo, 93–97.
30. UNHCR. (2025). *Ukraine situation*. Retrieved June 8, 2025, from https://data.unhcr.org/en/situations/ukraine
31. Župan, M., & Drventić Barišin, M. (2023). Continuity of Parental Responsibility in Child Abduction Cases: Lesson Learned from the Case of *Z. v. Croatia*. *Laws*, *12*(5), 82. https://doi.org/10.3390/laws12050082