

ABDUCTION OF UKRAINIAN CHILDREN DURING FULL-SCALE INVASION

Anatolii Frantsuz

Doctor of Law, Professor, Vice-Rector for Scientific and Pedagogical Work,
KROK University,
30-32 Tabirna Str., Kyiv, Ukraine, 03113
<https://orcid.org/0000-0003-2861-1252>
Anatoliyfj@krok.edu.ua

Nataliia Stepanenko

PhD in Law, Associate Professor of the Department of Theory and History of State and Law,
KROK University,
30-32 Tabirna Str., Kyiv, Ukraine, 03113
<https://orcid.org/0000-0001-6216-2206>
NataliaSV@krok.edu.ua

Dmytro Shevchenko

Doctor of Law, Associate Professor of the Department of Criminal Justice,
State Tax University,
31 Universytetska Str., Irpin, Ukraine, 08205
<https://orcid.org/0000-0002-7891-3331>
dshevcnenko2305@ukr.net

Abstract. Protecting and ensuring the rights of children is one of the crucial and fundamental tasks of the state, as children represent the future of any nation in the world. In the present circumstances, the attention and measures from Ukrainian authorities and society, demand clear and effective adherence to international standards regarding the rights of children, who have been illegally displaced and taken out of Ukraine. According to the UN Convention on the Rights of the Child, every child has the right to protection from any form of violence, including protection against illegal removal from their country. The actions taken by the aggressor state against Ukrainian children pose a direct threat to the lives and health of the civilian population, contravene international and domestic laws, and violate the constitutional rights and freedoms of Ukrainian citizens. Our country must ensure the restoration of children's connections with their parents or other family members who are within the territory of Ukraine. The state authorities should exercise effective control over the exportation of children beyond the country's borders, establish the reasons and circumstances of illegal removal, and participate in international cooperation with other countries to facilitate the return of illegally removed children to Ukrainian territory. However, in the conditions of war, fully controlling and unquestionably implementing this issue is difficult and problematic. The return of illegally removed children to Ukrainian territory and the protection of those who are in temporarily occupied territories constitutes a lengthy and challenging process that requires adequate efforts and significant legal support and resources. One of the top priorities for our state is the necessity to establish an effective

system for safeguarding children's rights, which would assist in their return to Ukrainian territory and their subsequent effective integration into society. Therefore, the practical implementation of comprehensive measures worldwide necessitates the development of new legal mechanisms for protecting children's rights that would operate in conditions of war and allow international legal institutions to promptly respond to any violations of children's rights.

Keywords: deportation, child abduction, protection of children's rights, war with Russia, military actions, forced displacement.

INTRODUCTION

Particular attention should be paid to the issue of returning children in the current realities of Ukraine, whom Russia forcibly deported from the temporarily occupied territories of our country. Therefore, timely and effective assistance to such children is important, including creating conditions for their socialization, inclusion in the educational system, medical services, and social protection. This is a complex problem that requires coordination of efforts between various governmental agencies, international organizations, civil society organizations, and the democratic community.

MATERIALS AND METHODS

Due to the deportation of children from Ukraine to the Russian Federation because of the war, the legal system should consider and address a great number of issues, related to the protection of children's rights, particularly those unlawfully taken out of Ukraine, as children are the most vulnerable social group.

Researchers N. Opolska, A. Lazorenko, L. Volinets, I. Vasilykivska, K. Ihnatenko, I. Nychytaylo, O. Zadniprovska, N. Filipka, O. Kochemyrovska, G. Mazur, M. Chekhovska, and others have devoted their works to the study of the protection of children's rights in armed conflicts.

The protection and ensuring of children's rights is one of the most important aspects of the modern legal system, especially in times of war. Therefore, from the perspective of substantive legal content, our task is to characterize and disclose the most effective mechanisms for addressing problematic issues related to children's exercise of their rights, to examine the normative legal framework in the field of child protection concerning abduction, unlawful deportation, considering international treaties. Taking into account the practice of returning this category of children, as well as to propose ways to address the problems of ensuring children's rights in the context of war in Ukraine.

RESULTS AND DISCUSSIONS

Ukraine is practically in a state of war with the Russian Federation, although it is not legally defined as such. Martial law is currently the official designation. During these bloody actions, thousands of people, including children, were deported from Ukraine to Russia. This

has created complex problems for the legal system of Ukraine in ensuring the protection of children's rights. One of the most important international documents concerning the protection of children's rights is the United Nations Convention on the Rights of the Child of 1989 (The UN Convention on the Rights of the Child, 1989). This document guarantees children the right to life, proper treatment, education, and healthcare. It also defines the obligations of the state in protecting children's rights. Ukraine is a party to the Convention on the Rights of the Child and is obliged to comply with its provisions, including ensuring the rights of children who were deported from the territory of Ukraine to Russia during the war. The Russian Federation is also a party to the Convention and therefore must fulfil its obligations according to it. The deportation of children from Ukraine to Russia is a violation of human rights and international humanitarian law.

Kidnapping, deportation, forced displacement, deprivation of liberty amounting to forms of slavery in all its manifestations, the use of children in armed conflict, sexual violence - these are actions those Russian militaries committed against Ukrainian children, which are violations of international law norms. It is worth noting, that Ukraine and Russia are signatories and parties to the implementation of the Convention on the Prevention and Punishment of the Crime of Genocide of 1948. This Convention grants the International Court of Justice jurisdiction over its violations. In addition to bringing a case against Russia, there is also the possibility of individual criminal responsibility under the Statute of the International Criminal Court. It is worth recalling, that Russia is not a party to the Statute of the International Criminal Court and does not recognize its jurisdiction, but the crime of genocide falling under the Court's jurisdiction is part of customary international law applicable to all states. Our state has recognized that the Court has jurisdiction over possible crimes committed on the territory of Ukraine since November 2013, thereby acknowledging the Court's jurisdiction to prosecute Russians who continue committing acts of genocide. In March 2022, the Prosecutor of the International Criminal Court opened an investigation according to the situation in Ukraine.

Once again, the whole world is witnessing that the Russian side ignores and treats international law as mere pieces of paper with no significance. Perhaps this process should expedite the establishment of an international special tribunal to prosecute the actions of the highest military and political leadership of Russia and all those involved in the practically unpunished genocide.

To escape death and mutilation during the full-scale Russian aggression, over 900,000 Ukrainian children have fled to the EU: nearly 500,000 children to Poland, almost 150,000 children to Moldova, over 100,000 children to Hungary, and more than 90,000 children have been evacuated to Romania and Slovakia (More than 900,000 Ukrainian children have left for the EU. 2003). This is a horrifying statistic that requires not only national understanding but also real support, action, determination, and not just limited sympathy, which often demonstrates double standards and approaches.

Daria Herasymchuk, the Commissioner of the President of Ukraine for the Rights of the Child, and Child Rehabilitation, stated in January that her department had "managed to identify and verify data on 16,221 children who were abducted and deported by the Russian army," and these are only documented cases. Ukrainian officials acknowledge that

the number of deported children is not precise, as Ukraine does not have proper access to the occupied territories, and the actual figure may be significantly higher. Fortunately, as of February 24, 2023, Ukraine has managed to repatriate 307 children. Among the repatriated, over 50 children, together with their parents or guardians, are currently located on the territory of the EU (Herasymchuk, 2023).

First and foremost, children living in orphanages and those whose parents died because of Russian aggression, are at risk of deportation. We have sad and frightening statistics that 4,177 children from institutionalized establishments were evacuated outside Ukraine, and among them, 2,382 are orphans or children deprived of parental care. For such children, especially orphans, there is a real threat of further illegal adoption on Russian territory, bypassing the legislatively approved procedure of international adoption in Ukraine. Therefore, this issue is currently in focus of our country (More than 4,000 children, 2022).

In such cases, children should be provided with humanitarian corridors to a safe zone in their native or neutral country. Until the age of 18, they cannot make decisions on their own, and their displacement can be characterized as forcible. If the evacuation of children is considered a rescue from bombings, then the aggressor country should return them to Ukraine, to regions where active hostilities are not taking place. It is important to note, that Russia is currently doing everything for granting Russian citizenship to Ukrainians and assimilating them into Russian society, it appears that they have no intention of returning our citizens back.

According to criminal data, the Russian Federation has relocated more than 600,000 children from Ukraine to its territory (Adamova, 2022). This figure is dubious and deceitful, just like the entire Russian reality, which is based on a policy of hatred towards humanity and Russian hypocrisy that breathes death. Some children, together with their parents, managed to find a way to cross borders and escape to Europe or return to Ukraine, thus saving themselves from death. However, there is a group of children, including orphans, children deprived of parental care, and children left unattended and illegally deported to Russia, who are now in the hands of executioners, in horrific and inhumane conditions. It is important to emphasize, that children separated from their parents during an extraordinary humanitarian situation cannot be legally considered orphans and are not subject to adoption. Therefore, the aggressor state is currently making changes to its legislation to simplify the procedure for adopting deported Ukrainian children. This is practically 21st-century global barbarism. Currently, there is evidence of forced, systematic, and organized methods of separating children from their parents and guardians, as well as a significant number of forcibly displaced children, along with a change in the normative legal framework for their accelerated "adoption." This poses a challenge to global democracy and all progressive humanity. All these facts directly indicate the commission of crimes against humanity and war crimes, which entail individual criminal responsibility before the International Criminal Court.

Russia intentionally kidnaps children, disguising this process as the rescue of the underprivileged, charity work, or humanitarian initiatives. In most cases, Russia supposedly temporarily evacuates children from Ukrainian territory under the guise of free camps, but later obstructs their return to their parents and legal representatives. For example, after

the deoccupation of the right-bank part of the Kherson region, the Ukrainian authorities discovered that not a single child remained in the region's orphanages (More than 13 thousand Ukrainian children, 2022). Another fact: thanks to photographs of letters addressed to Ded Moroz (Russian equivalent of Santa Claus), it became known about 14 orphaned children aged 2 to 5 years who were taken from Kherson to the Simferopol children's home "Yalinka" (The orphans taken by the occupiers, 2023). These were published on the Adoption website in the Moscow region. These letters mentioned that these children came from Kherson, and the title of the children's orphan house was indicated. Unfortunately, it's not an only case like this. Under the pretext of "recovery, treatment, or recreation," the Russians took 1,620 children from the occupied territory of the Zaporizhia region on the eve of the New Year holidays. However, no one knew how long this would continue and when the children would return home. The enemy has shown multiple times that they need these children for propaganda purposes and as human shields. In particular, there was a similar incident in autumn, when children were taken from Energodar supposedly for two weeks but were returned after two months (Andreeva, 2022). Russia violates many provisions of the international agreements. According to Article 24 of the Fourth Geneva Convention and Article 78 of Additional Protocol I, only temporary evacuation of children (with the consent of parents or guardians) to a neutral state is allowed, and a system for registering the whereabouts of all evacuated children must be established. Changing the family or personal status of children, including nationality or citizenship, is prohibited according to Article 50. However, Russia blatantly violates these provisions (Ministry of Social Policy, 2023). However, statements from Russian officials have begun to emerge, stating that children labeled as "problematic" will be sent to special camps for "reeducation." For example, Ramzan Kadyrov, the head of the Chechen Republic, announced that he is working with the authorized representative of the Russian Federation for children's rights, Maria Lvov-Belova, to bring "difficult teenagers" from various Russian regions and the occupied Donetsk and Luhansk regions to Chechnya for "preventive work" and "military-patriotic education" (Occupants claim, 2022).

Russia has established 43 camps for "ideological re-education" of Ukrainian children on its territory and in the occupied Crimea, grossly violating all international agreements. Approximately 6,000 Ukrainian children have passed through them within a year after the full-scale invasion, according to a report by the US Department of State representative Ned Price, citing the official report of the Conflict Observatory (Verkhovna Rada appeals, 2022). There are seven known official points of temporary stay for the evacuated children in Russian territory: the "Raketa" camp in the Voronezh region, the "Polyana" sanatorium in the Moscow region, the "Orlovchanka" camp in the Oryol region, the "Morskaya Zvezda" children's health center in the Krasnodar Krai, the "Gornyy Klyuch" camp in the Chechen Republic, the "Litvinovo" camp in the Moscow region, Dr. Roshal's clinic, and the Russian Children's Clinical Hospital in Moscow (Tereshchenko, 2023).

It should also be noted that 76 orphaned children were taken to social rehabilitation centres for minors in the Moscow region of Russia. Four more regions of Russia are expected to accept them as part of family groups. Furthermore, 104 children under the care of social institutions in the so-called "LNR" are being prepared for "transfer to Russian families under guardianship" (Kucheriavets, 2022). This allows the occupiers to bridge the generational

gap, particularly among the male population, which increases daily alongside the number of military casualties. Forced adoption programs, deportation of children under the guise of vacation and rehabilitation programs, form the basis of the mass Russian depopulation campaign, which is equivalent to a violation of the Convention on the Prevention and Punishment of the Crime of Genocide. The deportation of civilian populations or forced displacement of children is prohibited by Article 49(1) of the Fourth Geneva Convention. According to Article 147 of the Fourth Geneva Convention and Article 85(4)(a) of Additional Protocol I, the deportation or displacement of civilian populations from occupied territories is a serious violation of these conventions and protocols and should be prosecuted judicially, except in cases where the civilian population is moved for security reasons or military necessity (Geneva Convention IV, 1949).

The imposition of accountability on individuals responsible for involving children in armed conflicts also hinders the ratification of the Rome Statute of the International Criminal Court by Ukraine, which includes provisions on recognizing the crime of unlawful acts against children during armed conflicts (Frenchman & Stepanenko, 2017).

It is necessary to emphasize the changes that have occurred in Russian legislation, which prove the deliberate perpetration of genocide against the Ukrainian people. On April 24, 2019, Russian President V. Putin signed a decree granting Russian citizenship in a simplified manner to certain categories of individuals from the so-called “DPR” and “LPR.” The Ministry of Foreign Affairs of Ukraine stated that this decree, “like all previous and possible future regulatory legal acts of the Russian Federation aimed at providing Ukrainian citizens with Russian citizenship unlawfully, are, have been, and will be legally void, without any legal consequences, and will not be recognized by the Ukrainian side” (Adamova, 2022).

It is worth noting that until 2022, Russians did not dare to adopt Ukrainian children without the consent of the Ukrainian side. However, since the start of the full-scale invasion, they have actively changed their legislation to facilitate the procedure of effectively kidnapping children. For example, on February 18, 2022, the leaders of the so-called “LPR” and “DPR” signed an “evacuation order” for the local population to Russia and started evacuating people. Specifically, on February 20, 74 infants from the Luhansk Baby House were brought to Rostov-on-Don (Adamova, 2022). Orphanages located in the occupied territories were among the first to be deported under the guise of “evacuation.” Initially, this was referred to as a temporary custody process, as even under Russian Federation legislation, the adoption of Ukrainian children by Russians was not provided for in the Family Code (Article 165). To carry out the process, it would have been necessary to involve the Minsk Convention and obtain adoption permission from Ukraine, which Ukraine would never have allowed. On March 5, 2022, a decree was signed in Russia allowing entry with any documents from the “LPR” and “DPR” (Adamova, 2022). Russian militaries and collaborators remove children from families considered “unreliable” during the “filtration” process. Regardless of whether the children have parents or guardians, forced deportation of orphans and children from institutions takes place, and they are taken to the territory of occupied Crimea and Russian territory. According to a report by the American Institute for Strategy and Policy New Lines and the Canadian Raoul Wallenberg Centre for Human Rights, cases of orphan exports can be used as evidence of genocide, which Ukraine has already accused Russia (There is already enough evidence, 2022).

The Verkhovna Rada of Ukraine has sent a Statement “On the Commission of Genocide by the Russian Federation in Ukraine” to the United Nations, the European Parliament, the Parliamentary Assembly of the Council of Europe, the OSCE Parliamentary Assembly, the NATO Parliamentary Assembly, governments, and parliaments of foreign states. The forcible transfer of children from one ethnic group to another, considering the provisions of the UN Convention “On the Prevention and Punishment of the Crime of Genocide”, as indicated in this Statement, is recognized as an element of genocide (Statement of the Verkhovna Rada of Ukraine, 2022).

The European Union calls for stopping the illegal deportation of Ukrainian citizens, especially children, and immediate provision of a safe return to Ukraine for all of them. On practice, these are only words or an imitation of action, as legal mechanisms are not functioning and not engaged.

The Geneva Convention and Additional Protocol I do not provide for any jurisdictional mechanisms that would allow for lawsuits against Russia in international courts and tribunals. However, forced displacement and deportation are crimes under the Statute of the International Criminal Court (ICC) for which individuals must be criminally responsible.

According to Article 7(1)(d) of the Statute, such acts may also be interpreted as crimes against humanity if they are part of a widespread or systematic attack directed against the civilian population (Protocol Additional to the Geneva Conventions, 1977).

The OSCE Office for Democratic Institutions and Human Rights has been documenting and preserving evidence of war crimes and other crimes or violations of international human rights law since the beginning of the war and continues to do so. This evidence is being preserved and submitted to the International Criminal Court (ICC), the Prosecutor’s Office of Ukraine, and other relevant bodies that will subsequently investigate these crimes (The OSCE has documented, 2022).

In the process of shaping international law, human rights, and standards for the protection of children’s rights within the United Nations, international and regional legislation in the field of child protection is being developed. The most significant results in this field have been achieved in Europe, where the legal context is ensured under the auspices of the Council of Europe, and the political context is supported by the Organization for Security and Cooperation in Europe (OSCE) (Frenchman & Salamakhina, 2018).

Programs of forced adoption and deportation of children under the guise of vacation and rehabilitation schemes likely form the basis of a massive Russian depopulation campaign, which may constitute a violation of the Convention on the Prevention and Punishment of the Crime of Genocide and lead to broader efforts of ethnic cleansing.

The reprogramming of children,” as well as forced passportization and forced change of a child’s name, patronymic, and surname to Russian names, violate Articles 8 and 12 of the UN Convention on the Rights of the Child, which establish obligations for states to respect the child’s right to preserve their individuality, including citizenship, name, and family ties, and to prevent unlawful interference (The UN Convention on the Rights of the Child, 1989).

According to the Convention on the Prevention and Punishment of the Crime of Genocide, Article 2 states that “forcibly transferring children of one group to another with the intent to destroy one of the protected groups (in this case, national) constitutes genocide” (Lebedieva, 2022).

Confirmed cases exist where a child is placed for adoption in a religious family, and then within a few months, a passport is simply issued for the child, disregarding the fact that the child does not wish to receive such a document. The child is being manipulated against own nation, instead of being offered access to the native language and culture. All similar cases have been documented by human rights defenders. Later they will be submitted to the International Criminal Court.

According to the provisions of the European Convention on the Adoption of Children, to which Ukraine acceded in 2009, adoption is recognized as valid only if it is carried out by a court decision or an administrative authority (The OSCE has documented, 2022). At the same time, Article 283 of the Family Code of Ukraine defines that the adoption of a Ukrainian child by a foreigner is carried out based on a court decision with the consent of the central authority responsible for adoption and child protection - the Ministry of Social Policy of Ukraine. Adoption of children by foreigners without official approval is considered illegal (Family Code of Ukraine, 2002).

Maria Lvova-Belova, the Commissioner of the president of the Russian federation for the rights of the child, illegally adopted a 16-year-old Ukrainian boy from Mariupol, is leading the illegal adoption, which is an international crime committed by Russia. Lvova-Belova's pride of this illegal adoption is not coincidental. First and foremost, they aim to reassure those Russians who have already unlawfully adopted Ukrainian children, demonstrating to them that despite being added to the sanctions lists of the EU, the US, Canada, and Australia, and the information about her actions being reported to the International Criminal Court, the children's ombudsman has not yet faced any consequences, and therefore, they will be safe too. (Rashevskaya, 2022).

Considering the volume of evidence, facts, reports, and other sources of information, it is reasonable to make several assumptions about possible motives for the abduction of Ukrainian children:

- To increase their influence on Ukraine through Russian education and culture spheres, which support Russian national ideology;
- To gather various data and information about Ukraine, such as political figures or military activity;
- With the aim of demanding ransom from parents or the Ukrainian state;
- To recruit children into Russian intelligence services or the armed forces of Russia.

It should be noted that any actions related to the abduction of children are a violation of human rights and international law. Various protection mechanisms can be employed to safeguard the rights of illegally taken children outside Ukraine, such as legal procedures, interaction with international organizations for children's rights, and the development and implementation of special programs and projects. However, it is worth noting that each case of repatriation requires an individual approach.

CONCLUSIONS

Therefore, everything that Russia does with Ukrainian people poses a direct threat to the lives and health of the civilian population. The aggressor state contradicts Article 49 of the Geneva Conventions on the protection of war victims of 1949 and Article 85 of

Additional Protocol I to the Geneva Conventions, the Hague Convention on the Laws and Customs of War on Land, the Convention on Human Rights and Fundamental Freedoms, the Universal Declaration of Human Rights, the Convention on the Rights of the Child, the European Convention on the Exercise of Children's Rights, and the Law of Ukraine "On Child Protection," leading to violations of constitutional rights and freedoms of Ukrainian citizens.

Ukraine is doing everything possible, but unfortunately, it is not enough. Traditional diplomatic tools do not work, the requirements of international humanitarian law on the aggressor do not work, so there is no single mechanism, and standard rules do not apply.

Our task is:

- To be constantly in search of such ways and engage in dialogue with those who support us.
- Ensuring the rights of children illegally taken out of Ukraine is an important problem that requires coordination of efforts from various state and international organizations.
- Signing and ratifying international documents on child protection, including the Hague Convention on Civil Aspects of International Child Abduction and the Convention on the Rights of the Child.
- Establishing an effective system for protecting the rights of children that would help in their repatriation to the territory of Ukraine and their subsequent integration into society.
- Involving the public and civil society organizations in the process, signing, and ratifying international documents on child protection, and conducting explanatory work among the public.
- Creating mechanisms for cooperation with other countries to monitor the situation with children who may be illegally taken abroad.
- Ensuring the possibility of exchanging information between law enforcement agencies dealing with these issues and establishing mechanisms for cooperation with civil society organizations that can help in identifying and protecting the rights of children.
- Conducting regular information campaigns, training, and seminars for different population groups to promote the issues of child protection and prevent such cases.
- Involving both state and non-state structures in the process, promoting cooperation between different countries, and raising public awareness about child protection issues. Only under such conditions we can speak about effective protection of children's rights illegally taken out of Ukraine.

So, daily, sometimes dangerous, and arduous struggle continues until all Ukrainian children return home and the guilty ones face fair punishment. This should never happen again to anyone.

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