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# Child Abduction and Child Protection In Times of Russian-Ukrainian War: Challenges and Comments On the Case-law

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22-nd Annual Meeting of the Members  
of the European Judicial Network in  
civil and commercial matters 2024  
January 29-30, 2024

Ukrainian human rights defender [Oleksandra Matviychuk](#), head of the Center for Civil Liberties, which became one of the [2022 Nobel Peace Prize laureates](#):

«For millions of people, such words as shelling, torture, deportations, and filtration camps have become familiar. But there are no words to convey the pain of the mother who has lost her son newborn after the shelling of the hospital's maternity ward»

(From the speech at the official Nobel award ceremony, 10 October 2022)



# Issues for Discussion

- ✓ Influence of the security situation in Ukraine on the application of Art. 13 (1)(b) of the 1980 HC
- ✓ Reduction of the number of cases on the return of a child; more frequent application of other, alternative ways of (judicial) protection of the rights of parents-citizens of Ukraine who remained in Ukraine and lost contact with their children (Art. 21 of the 1980 HC; Art. 5, 11 of the 1996 HC)
- ✓ Specific issues of jurisdiction of cases on determining the place of residence of a child
- ✓ Peculiarities of the proceedings on establishing the fact of birth on the temporally occupied territory of Ukraine («[Namibian Principles](#)»)
- ✓ Some issues of adoption under martial law

# Child Abduction Cases: Issues of the Security Situation

- ✓ Foreign courts non-return decisions: «returning the child to Ukraine would be associated with a grave risk of physical or psychological harm for the child» (Art. 13 (1)(b) of the 1980 HC)
- ✓ Case-law of the SC of Ukraine: «... the very fact of the introduction of martial law on the territory of Ukraine is not a sufficient basis for the satisfaction of the claim on returning the child from Ukraine to the state of his/her previous habitual residence. Each case requires the court to examine the entire history of the child's family relationship with each of his/her parents, to clarify and to compare a number of factors that characterize the child's life in the state of his/her previous habitual residence and in the state to which he/she was removed or kept against the will of one of the parents». -

Resolution of the SC from 5.04.2023 in the case No. 308/1403/20: the refusal to return the Ukrainian child to Hungary; Resolution of the SC from 23.04.2023 in the case No 344/6604/21: return the child to the Kingdom of Spain.

- ✓ Requests through the IHNJ - The List of territories, in which warfare are (were) conducted or which are temporarily occupied by Russia

# Alternative Ways of (Judicial) Protection of Rights of Access of the Left-behind Parent in Ukraine

- ✓ Article 21 of Chapter IV "Rights of Access" of the 1980 HC: application for effective exercise of rights of access
- ✓ Articles 5, 11 of the 1996 HC: application of temporary protective measures
- ✓ Securing a claim in child abduction cases: [Resolution of the SC from 14.02.2022 in the case No. 754/7569/21](#) («...banning a child from crossing the state border of Ukraine in any form of accompaniment...»); [Resolution of the SC from 31.08.2022 in the case No. 545/3933/21](#) («... establishing by the court the defendant's obligation to ensure the systematic visits and communication of the child with the father, as well as to provide information about the child ...»).

# Specific issues of jurisdiction of cases under the 1996 HC (1)

National Social Service of Ukraine (Central Authority of Ukraine under the 1996 HC): «... the Ukrainian children are not refugee children and not the children who, due to disturbances occurring in their country, are internationally displaced ...

Current situation demonstrates that Ukrainian children have left and are still leaving Ukraine for a reason of disturbances caused by russia's aggression, a so-called outside threat ...

Ukraine is not the country creating for the children dangerous life conditions but the aggressor state is Russia. The Ukrainian children were fleeing from military aggression of the neighboring country but not from disturbances caused by the Ukrainian power ...»



Exactly in view of this fact, [Article 6](#) of the Convention shall not be applied to the Ukrainian children. [Article 5](#) of the Convention is to be applied

# Specific issues of jurisdiction of cases under the 1996 HC (2)

«Habitual residence of the child», as jurisdictional criterion: [Resolution of the SC from 08.03.2023 in the case No. 607/23708/21](#); [Resolution of the SC from 01.11.2022 in the case No. 201/1577/21](#)

Sit. 1: a child acquired a new habitual residence outside of Ukraine → Ukrainian court closes the proceedings (Article 255 (1)(1) of the Code of Civil Procedure of Ukraine): [Resolution of the SC from 28.06.2023 in the case No. 372/2558/21](#)

Sit. 2: the child's permanent place of residence [at the time of the opening of the proceedings was Ukraine](#) → Ukrainian court has jurisdiction (Art. 5 (1) of the 1996 HC, Art. 75 (part 1) of the Law of Ukraine On Private International Law from 23.06.2005: [Resolution of the SC from 12.06.2023 in the case No. 359/2356/21](#)

# Peculiarities of the Proceedings on Establishing the Fact of Birth under Martial Law

The Law of Ukraine from 1.07.2022 On Amendments to Certain legislative acts of Ukraine regarding the peculiarities of proceedings in cases of establishing the fact of birth or death of a person in martial law or a state of emergency and in the Temporarily Occupied Territories:

- jurisdiction, - circle of applicants, - time limits for consideration of the case and - execution of the issued judicial decision.



# Peculiarities of the Proceedings on Establishing the Fact of Birth under Martial Law

Resolution of the SC from 16.11.2022 in the case No. 759/1443/22: «... bearing in mind **Namibia exceptions** as indicated by the ICJ and the ECHR, determined that the obligation to ignore, not to take into account the actions of the existing *de facto* bodies and institutions (occupation authorities) is far from absolute, the recognition of acts of the occupation authorities in the limited context of protecting the rights of residents of the occupied territories does not legitimize such authorities in any way ... Documents submitted by the applicant to confirm the fact of birth in the temporarily occupied territory of Ukraine, in particular, documents issued by the bodies and institutions of self-proclaimed entities located in the occupied territory of Ukraine, are evaluated by a court in conjunction with other evidence...»

# Some issues of Adoption

- ✓ «Accelerated» adoption does not exist
- ✓ Is based on the judicial decision
- ✓ Is effected in the best interests of the child to ensure him/her a stable and harmonious home.
- ✓ Can be carried out only in those regions where military operations are not conducted, where service for children's affairs and courts work, and only in relation to children whose life circumstances of parents or other relatives have been established.

Reikyavik Declaration of the Council of Europe Commissioner for Human Rights 2023:  
Together, let us keep doing our utmost to bring all Ukrainian children back home



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Thank You for Attention!