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ANALYTICAL STUDY:

# **Return of Deported Ukrainian Children by Their Parents:**

## **Are There Any Risks of Being Accused of Wartime Collaboration?**



Kyiv 2023

## Analytical Study: Return of Deported Ukrainian Children by Their Parents: Are There Any Risks of Being Accused of Wartime Collaboration?

**Aksana Filipishyna,** deputy head of the analytical department of the Ukrainian Helsinki Union for Human Rights, honored public figure

**Natalia Mezentsova,** lawyer, graduate of the training course "Protection of human rights in the conditions of armed conflict in Ukraine"

**Myroslav Lavrynok,** basic editor.

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## INTRODUCTION

The ongoing full-scale armed aggression of the Russian Federation against Ukraine shocks the civilized world with its cynicism and cruelty, the number of war crimes committed. The behavior of the aggressor state is accompanied by numerous violations of international humanitarian law and international human rights law. Deportation and forced displacement of the civilian population became a way of destroying the Ukrainian identity, which can be classified as the genocide of the Ukrainian people.

March 17, 2023 The International Criminal Court issued a warrant for the arrest of the President of the Russian Federation V. Putin and the Russian President's Commissioner for Children's Rights M. Lvova-Bielova due to the deportation and forced displacement of Ukrainian children as a crime containing features of a war crime and a crime against humanity.

Forced displacement of Ukrainian children takes place to the occupied territories of Ukraine or to the territory of the Russian Federation and is systematic and pre-planned. Deportation and forced displacement is a gross violation of international norms, which is absolutely prohibited.

According to the Ukrainian authorities, the number of deported children as of mid-June 2023 is more than 19,500 people. The exact number of deported children cannot be established in view of the ongoing full-scale aggression, difficult access to the temporarily occupied territories, and the failure of the Russian side to provide reliable information on this matter.

The deportation of Ukrainian children is an arbitrary interference in the sphere of family life, a gross violation of the right to identity, the right to family and the right to reunification with the family, etc.

The return of deported and forcibly displaced children is a long and difficult process, given the obstacles created by the Russian side, requiring the parents to come in person and provide a huge number of documents. It is not uncommon for parents to be afraid to apply to Ukrainian law enforcement agencies for the return of their children because they are afraid of being accused of wartime collaboration activities due to their stay in the occupied territory or contacts with the Russian side. In some situations, parents are forced to find ways to return their children on their own, in particular through their friends or acquaintances from Russia. Parents who have personally gone to pick up their children or have had contact with Russian Federation citizens, or have had relations with Russian authorities, fear upon return that they may come under the scrutiny of law enforcement agencies and be recognized as wartime collaborators due to their prolonged stay in the Russian Federation or occupied territory.

It should be understood that deported, forcibly displaced children and their parents are victims of the Russian regime, which, disregarding international norms, commits war crimes and crimes against humanity. At the same time, a simplified everyday understanding of wartime collaboration leads to the spread of all kinds of myths, the consequences of which can include both groundless accusations of crime victims and victims' fear of becoming the objects of such accusations.

# 1. DEPORTATION AND FORCED DISPLACEMENT OF UKRAINIAN CHILDREN: QUALIFICATION FROM THE POSITION OF INTERNATIONAL LAW

## 1.1. Protection of children from the consequences of armed conflicts under the national legislation of Ukraine

### Availability of the concept in the national legislation.

Ukrainian legislation does not define the concepts of «deportation» or «forced displacement».

At the same time, Article 1 of the Law of Ukraine «On the Protection of Childhood» defines the concept of a child who suffered as a result of hostilities and armed conflict: «a child who, as a result of hostilities or an armed conflict, sustained an injury, post-concussion syndrome, mutilation, experienced physical, sexual, psychological violence, was abducted or illegally taken out of Ukraine, involved in military formations or illegally detained, including in captivity».

**Under Article 30<sup>1</sup> of the Law**, the state has undertaken to protect children in the zone of hostilities and armed conflicts and children affected by hostilities and armed conflicts. First and foremost, it is a question of providing care for children and reuniting them with their family members, including the search for, release from captivity and return to Ukraine of children illegally taken abroad.

All actions of the state to protect children who are in the zone of hostilities and armed conflicts, children who have suffered as a result of hostilities and armed conflicts, are carried out in accordance with the norms of international humanitarian law<sup>1</sup>.

However, the displacement of Ukrainian children that takes place within the occupied territories of Ukraine or to the territory of the Russian Federation due to the full-scale aggression of the Russian Federation against Ukraine is obviously of a systematic and large-scale nature and occurs in violation of the norms of international humanitarian law, which does not allow the State of Ukraine to properly protect them.

## 1.2. Prohibition of deportation and forced displacement of civilians under the international humanitarian law

### Classification of the concept under international law

According to Article 49 of the Fourth Geneva Convention relative to the Protection of the Civilian Persons in Time of War of 1949, individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the occupying power or to that of any other country, occupied or not, are prohibited, regardless of their motive.

<sup>1</sup> <https://zakon.rada.gov.ua/laws/show/2402-14#Text>

According to the Convention, the occupying power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.<sup>2</sup>

Instead, the Russian Federation is essentially carrying out a forced mass displacement and deportation of Ukrainian children who, under various circumstances, have been separated from their parents, other relatives or legal representatives, without the possibility of returning to the territory of permanent residence or reuniting with their family members.

The Russian Federation's obstruction of the return of Ukrainian children is confirmed by the rather low number of children who have been returned. Thus, according to the state information portal for the search for children «Children of War», as of June 01, 2023, a mere 371 children out of 1,505 deported children have been returned<sup>3</sup>.

Information about the forced nature of the displacement of children within the occupied Ukrainian territories and deportation to the territory of the Russian Federation comes from various sources – primarily testimonies of those children who have been returned.<sup>4</sup>

It should be noted that forced or involuntary displacement does not necessarily involve the use of physical or other force. The point is that there is no real choice for the child to be displaced. In such a case, it does not matter whether the displacement is permanent (e.g., under the guise of evacuation) or temporary in nature (e.g., under the guise of rehabilitation), or whether the child's formal consent to the displacement has been obtained.

In turn, a systematic or gross violation of the Geneva Convention relative to the Protection of Civilian Persons in Time of War in terms of acts against persons, including illegal deportation or displacement, falls under the elements of a war crime as per Article 8 of the Rome Statute of the International Criminal Court (hereinafter referred to as the Rome Statute)<sup>5</sup>.

Moreover, deportation or forcible displacement of a population, if carried out as part of a large-scale or systematic attack directed against any civilian population, and if such an attack is carried out knowingly, also falls under the elements of a crime against humanity under Article 7 of the Rome Statute.

The definition of the term «deportation» is given in subclause (d) of clause 2 of Article 7 of the Rome Statute and means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law.

<sup>2</sup> [https://zakon.rada.gov.ua/laws/show/995\\_154#Text](https://zakon.rada.gov.ua/laws/show/995_154#Text)

<sup>3</sup> <https://childrenofwar.gov.ua/>

<sup>4</sup> <https://www.youtube.com/watch?v=NMAwYQUscFg>, <https://childrenofwar.gov.ua/stories-of-children/>

<sup>5</sup> [https://zakon.rada.gov.ua/laws/show/995\\_588#Text](https://zakon.rada.gov.ua/laws/show/995_588#Text)

International experts involved in the implementation of the OSCE Moscow Mechanism (hereinafter referred to as the Mission) have also concluded that the practice of forced transfer and/or deportation of Ukrainian children to the temporarily occupied territories and the territory of the Russian Federation may constitute a crime against humanity and a war crime under the Rome Statute.

In particular, the Mission found that the most common grounds for the displacement of children from the territory of Ukraine to the temporarily occupied territory or the territory of the Russian Federation are as follows: evacuation for safety reasons; transfer for the purpose of adoption or guardianship; temporary stay in so-called vacation camps.

Most cases of sending children from the temporarily occupied territories to Russian health camps were not initially forced displacement or deportation, but further extension of children's stay by the Russian occupying powers amounts to involuntary displacement and family separation, which puts children in a situation similar to that of forcibly displaced or deported children.

In situations where occupying powers separate children from their parents for the purpose of filtration, they violate obligations under international humanitarian law to intern children with their families. Moreover, the separation of parents and children at filtration sites and the further transfer of interned children to other occupied areas or to the territory of the occupying state constitute serious cases of involuntary family separation. The further displacement of such children to other occupied areas or to the territory of the occupying state constitutes a clear forcible transfer or deportation in violation of Article 49 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War.<sup>6</sup>

<sup>6</sup> <https://www.osce.org/files/f/documents/7/7/542751.pdf>

## 2. RIGHT TO FAMILY LIFE AND PROTECTION FROM ARBITRARY INTERFERENCE IN SITUATIONS OF ONGOING FULL-SCALE ARMED AGGRESSION

### 2.1. Deportation and forced displacement as arbitrary interference in family life

Protection of children's rights and guarantees of non-interference in family life are provided for at the level of national legislation, international human rights law and international humanitarian law.

Relations between parents and children belong to the sphere of family life, the right to respect for which is guaranteed by the state. This means that state intervention in the sphere of family life is allowed only in situations where the best interests of the child so require, the grounds for the intervention must be clearly provided for by law, and such intervention will be proportionate to the goal.

The state must not only prevent arbitrary interference in the sphere of family life, but must also protect it from illegal encroachments by third parties. In peacetime, guarantees of non-interference in the sphere of family life rest with the state under whose jurisdiction the person is. In the course of the armed conflict, part of the territory of Ukraine has been occupied, which imposes on the occupying state the obligation to prevent arbitrary interference in the family life of the Ukrainian civilian population of the occupied territories.

The scope of rights that can be guaranteed by the state in wartime may be significantly reduced depending on the situation. However, the basic guarantees provided for by international humanitarian law must be observed unconditionally. Furthermore, in times of international armed conflict, each state party to the conflict is responsible for ensuring that the basic rights in the sphere of family life under international human rights law are not violated.

#### **The deportation of Ukrainian children is an arbitrary interference in the sphere of family life**

As a result of the occupation, Ukraine has lost effective control over parts of its territories. The Russian Federation, as an occupying state, exercises effective control over the occupied territories, which imposes an obligation on it to comply with the guarantees of international human rights law, in addition to fulfilling its obligations under international humanitarian law as a party to the conflict.

One of the main tasks of the states parties to the armed conflict is to protect children, as one of the categories of the civilian population most vulnerable to the consequences of these conflicts. Importantly, the conditions of armed conflict cannot justify the arbitrary separation of children from their parents. At the same time, the right of the family not to be separated should be respected to the extent possible.

In situations of armed conflict, there may be instances where parents and children are separated. Legitimate grounds for the separation of parents and children may include the



need to evacuate them from the war zone. At the same time, an obligation is established to facilitate the earliest possible reunification of families and not to hinder it, as well as to facilitate contacts between family members.

The deportation and forcible transfer of Ukrainian children from the temporarily occupied territories of Ukraine, carried out by the Russian Federation under various pretexts, some of which may be justified by safety factors, leads to situations in which families are separated. The conditions in which the deported children are living are aimed at their forced Russification with the displacement of anything Ukrainian. There are known cases of forced change of citizenship of Ukrainian children, placing them in foster families, preventing them from reuniting with their families, etc.

Some of the Ukrainian children were displaced as part of organized groups under the pretext of «rehabilitation». The largest group of children who were deported at the same time are children from the Kharkiv Region at the end of August last year. Parents were misled: collaborator teacher went door-to-door offering rehabilitation to distract the child from the war. Parents were forced to agree due to unemployment and loss of livelihood, food, normal living conditions, etc. After Ukraine deoccupied the captured territories in September 2022, Russia flatly refused to return these children<sup>7</sup>.

This example illustrating the arbitrary separation of parents and children is not an exception unfortunately. Similar situations occur in other temporarily occupied territories of Ukraine.

## 2.2. The right to respect for family life under the national legislation of Ukraine

### National legislation

The sphere of family life is protected at the level of national legislation, which provides for protection against arbitrary interference by the state and against the encroachments by other persons. Parents are given the freedom to raise their children, to make important decisions about their lives, while remaining responsible for their well-being.

Children, as a particularly vulnerable group due to their age and mental immaturity, need increased protection from the state. In wartime, the protection of children is of particular importance and is a direct responsibility of the states parties to the armed conflict.

According to the norms of international humanitarian law, the occupation of a part of the state's territory should not lead to a dramatic change in the system of legislation and authorities. The civilian population under occupation should not undergo significant changes in their usual way of life. Russia is completely ignoring international norms and is attempting to illegally annex the occupied territories and impose its own orders.

<sup>7</sup> <https://www.helsinki.org.ua/articles/potrapyly-vzhe-do-57-rehioniv-rosii-filipishyna-pro-deportatsiiu-ukrainskykh-ditey/>

Ukraine does not recognize any changes in legislation introduced by the occupiers, the establishment of illegal authorities, etc. The temporarily occupied territories of Ukraine are part of Ukraine and are subject to Ukrainian legislation, which requires their observance by Ukrainian citizens in the occupied territories and provides guarantees for citizens under occupation<sup>8</sup>.

The Family Code of Ukraine defines a child as a person until he or she reaches the age of majority<sup>9</sup>. A child has the right to reside with his or her family and it is considered to be in the best interests of the child.

Deportation and forcible transfer of children constitutes arbitrary intervention in the sphere of family life, which leads to family separation and is accompanied by gross violations of a number of family rights.

Art. 154 of the Family Code of Ukraine gives parents the right to self-defense of their child, which can be interpreted as using any available methods to return their deported children within the legal framework. Accordingly, the actions of parents aimed at the return of their deported children from Russia, including staying on its territory, entering into relations with the Russian side, are considered as the protection of children's rights and cannot be an independent basis for potential accusations of wartime collaboration.

### 2.3. The right of the family not to be separated during armed conflict under the international law

#### International law

International human rights law enshrines the right to family life. In order to provide for a uniform interpretation of the content of this right and to provide for a minimum level of guarantees, which is binding on each state, international treaties are signed, according to which states confirm their obligations.

Human rights belong to the sphere of international human rights law, the obligations to guarantee which are confirmed by the member states of the relevant international treaties. The state at the national level must guarantee a certain scope of rights to everyone who is under its jurisdiction, which cannot be narrower than that established at the international level.

In situations of armed conflict, international human rights law continues to apply, but subject to circumstances arising from hostilities that may make it impossible to ensure the full scope of human rights.

International humanitarian law is designed to minimize the impact of armed conflict on the civilian population and places obligations on states to guarantee a minimum level of human rights. In the context of the armed conflict on the territory of Ukraine, in addition to the norms of international human rights law, the Russian Federation is obliged to respect the norms of international humanitarian law relating to children, to respect the right to a family, to prevent its arbitrary separation and to facilitate family reunion.

<sup>8</sup> <https://zakon.rada.gov.ua/laws/show/1207-18#Text>

<sup>9</sup> <https://zakon.rada.gov.ua/laws/show/2947-14#n713>

## UN Convention on the Rights of the Child

The UN Convention on the Rights of the Child (hereinafter referred to as the Convention) defines a child as a person under the age of 18 years old unless he or she reaches the age of majority earlier<sup>10</sup>.

Art. 8 of the Convention provides that the States Parties **undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations** as recognized by law without unlawful interference.

The content of this right is multifaceted and includes a number of components. It can be characterized as the right of the child to preserve his or her real and genuine personality, legal and family identity. The state must refrain from actions that may lead to the loss of the child's identity and contribute to the protection of identity. The content of this right suggests the obligation of the state to return the child to his or her family, in which his or her identity is formed and preserved. A child's identity is directly linked to the family in which the child is raised. The child has the right to a family environment, which includes not only the right to be with his or her parents, but also to be in a wider circle of family ties, including various relatives (siblings, grandparents, etc.) who are involved in the child's upbringing and relevant to the child's well-being.

Deportation and forced relocation of Ukrainian children is characterized by arbitrary interference with guaranteed rights, as it is aimed at destroying the identity of Ukrainian children and severing family ties.

Part 1 of Art. 9 of the Convention provides that the States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.

Ukrainian children who were taken to «rehabilitation» camps and those who did not return due to Russian obstruction were separated from their parents against their wishes, which constitutes arbitrary interference.

Part 1 of Art. 16 of the Convention provides that no **child shall be subjected to arbitrary or unlawful interference with his or her privacy, family**, home or correspondence, nor to unlawful attacks on his or her honor and reputation.

Ukrainian children who were displaced from the temporarily occupied territories of Ukraine and their parents became victims of arbitrary interference in their family life by Russia.

## Convention relative to the Protection of Civilian Persons in Time of War

The Convention relative to the Protection of Civilian Persons in Time of War (hereinafter GC IV) imposes on the states parties to an armed conflict, including during occupation, the obligation to respect the guarantees it provides for the humane treatment of the population of occupied territories, including respect for the right to family<sup>11</sup>.

<sup>10</sup> [https://zakon.rada.gov.ua/laws/show/995\\_021#Text](https://zakon.rada.gov.ua/laws/show/995_021#Text)

<sup>11</sup> [https://zakon.rada.gov.ua/laws/show/995\\_154#Text](https://zakon.rada.gov.ua/laws/show/995_154#Text)

Art. 24 of GC IV specifies that the Parties to the conflict shall take the necessary measures to ensure that children under fifteen, who are orphaned or are separated from their families as a result of the war, are not left to their own resources, and that their maintenance, the exercise of their religion and their education are facilitated in all circumstances. Their education shall, as far as possible, be entrusted to persons of a similar cultural tradition.

In the situation with the displacement of Ukrainian children, the Russian side separates children from their families on purpose, subjects them to forced Russification, militarized upbringing, etc., making their reunification and obtaining information about the children's whereabouts significantly more difficult. Therefore, placing children in foster families, changing their name and place of residence should not be perceived as compliance by Russia with the requirements of Art. 24 of GC IV, and instead it should be regarded as a gross violation of international humanitarian law.

Provisions of Art. 25 of GC IV provide guarantees for obtaining information of a family nature and information about members of one's family, which the Russian side in many cases does not fulfill.

Provisions of Art. 26 of GC IV provide that each party to the conflict should facilitate the search by members of families separated by war with a view to establishing contact and, as far as possible, reunification.

The Russian side in a number of cases makes communication between parents and their children impossible or significantly impeded, which cannot be justified by the conditions of the conflict. In the process of searching for their children, parents often face obstacles, which are sometimes caused by the Russian side hiding information. Such factors compel parents to seek alternative means of returning their children, due to the Russian side's exceptionally flagrant disregard for international law.

Deportation or forcible individual or mass transfer from the occupied territories is prohibited under Art. 49 of GC IV. The only exception permitted under international humanitarian law is total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. The evacuation shall be carried out within the occupied territory to the extent possible on security grounds. After the cessation of hostilities, evacuees must be returned home. Art. 49 of GC IV emphasizes that the evacuation or relocation of persons should be carried out in such a way that members of the same family are not separated.

Art. 74 of Additional Protocol I to GC IV provides for the obligation of the states to facilitate the reunification of families separated as a result of armed conflict<sup>12</sup>.

Rights under international law must be ensured and respected by the state, especially the one under whose jurisdiction the child is, and by all states parties to the armed conflict. Ukrainian children who were deported from the temporarily occupied territories of Ukraine are under the jurisdiction of the Russian Federation, which is responsible for all violations of their rights.

<sup>12</sup> [https://zakon.rada.gov.ua/laws/show/995\\_199#o562](https://zakon.rada.gov.ua/laws/show/995_199#o562)

## 3. RETURN OF DEPORTED CHILDREN BY THEIR PARENTS: ARE THERE ANY RISKS OF BEING ACCUSED OF WARTIME COLLABORATION?

### 3.1. What constitutes wartime collaboration

Temporarily occupied territories are recognized as part of Ukraine, regardless of the duration of their occupation and the actions of the Russian Federation on such territories. According to the Law of Ukraine «On ensuring the rights and freedoms of citizens and the legal regime in the temporarily occupied territory of Ukraine», the territory of Ukraine temporarily occupied by the Russian Federation is an integral part of the territory of Ukraine, which is subject to the Constitution and laws of Ukraine, as well as international treaties, the consent to be bound by which is granted by the Verkhovna Rada of Ukraine<sup>13</sup>.

This means that citizens of Ukraine, while in the occupied territories of Ukraine, must comply with the legislation of Ukraine and not commit actions that can be classified as criminal offenses, as they may be held criminally liable for such acts. It is important to understand that criminal liability arises exclusively for actions defined by the Criminal Code of Ukraine as criminal offenses, while the list of such offenses is exhaustive. **Living under occupation is not considered a crime under any circumstances.**

The norms of international humanitarian law define a number of mandatory requirements that must be observed by the occupying power, including minimizing the consequences of the occupation for the civilian population and ensuring humane treatment. Instead, the behavior of the Russian side in the occupied territories is accompanied by gross violations of international humanitarian law, which significantly worsens the already difficult conditions of occupation for the citizens of Ukraine.

Staying in occupation is impossible without regular contacts with the occupying power, and sometimes citizens of Ukraine are forced to contact the occupying power directly to protect their rights or the rights of their children, as there are no other options.

The return of children from «rehabilitation» camps became a real ordeal for parents due to the obstacles artificially created by the Russian side for family reunification – parents have to come to the territory of Russia in person and bring a lot of documents. At the same time, the accompanying difficulties include the need to go through filtration procedures, a long stay on the territory of the occupying state, and entering into relations with the Russian authorities.

After the full-scale invasion, the contacts of Ukrainian citizens with the Russian authorities, Russian citizens and entry into the territory of the Russian Federation are exposed to public condemnation. And even if such contacts are forced and driven by a humanitarian purpose, Ukrainian citizens may fear being labeled as collaborators. Such myths and fears stem from a lack of understanding of what constitutes wartime collaboration as a criminal offense. Common notions and rumors lead to the spread of myths that do not correspond to reality.

<sup>13</sup> <https://zakon.rada.gov.ua/laws/show/1207-18#Text>

Wartime collaboration were classified as criminal offenses as a result of amendments to the Criminal Code of Ukraine on March 15, 2022. It is from this date that the actions that fall under the signs of wartime collaboration serve as the basis for bringing a person to criminal responsibility.

Wartime collaboration activity is defined in Art. 111-1 of the Criminal Code of Ukraine<sup>14</sup> and provides for criminal liability for the following acts, the list of which is exhaustive:

- **Part 1 of Art. 111-1 of the Criminal Code of Ukraine:** Public denial by a citizen of Ukraine of the armed aggression against Ukraine, establishment and approval of temporary occupation of a part of the territory of Ukraine, or public calls by a citizen of Ukraine to support decisions and/or actions of the aggressor state, armed formations and/or occupation administration of the aggressor state, to cooperate with the aggressor state, armed formations and/or occupation administration of the aggressor state, to non-recognition of the extension of the state sovereignty of Ukraine to the temporarily occupied territories of Ukraine;
- **Part 2 of Art. 111-1 of the Criminal Code of Ukraine:** Voluntary holding of an office by a citizen of Ukraine not related to the performance of organizational-administrative or administrative-economic functions in illegal authorities created in the temporarily occupied territory, including in the occupation administration of the aggressor state;
- **Part 3 of Art. 111-1 of the Criminal Code of Ukraine:** Spread of propaganda by a citizen of Ukraine in educational institutions, regardless of the types and forms of ownership, with the aim of facilitating the armed aggression against Ukraine, establishing and confirming the temporary occupation of part of the territory of Ukraine, avoiding responsibility for the armed aggression against Ukraine by the aggressor state, as well as actions of citizens of Ukraine aimed at introducing the educational standards of the aggressor state in educational institutions;
- **Part 4 of Art. 111-1 of the Criminal Code of Ukraine:** Transfer of physical resources to illegal armed or paramilitary formations created in the temporarily occupied territory and/or armed or paramilitary formations of the aggressor state, and/or carrying out economic activities in cooperation with the aggressor state, illegal authorities created in the temporarily occupied territory, including the occupation administration of the aggressor state;
- **Part 5 of Art. 111-1 of the Criminal Code of Ukraine:** Voluntary holding of an office by a citizen of Ukraine related to the performance of organizational-administrative or administrative-economic functions in illegal authorities created on the temporarily occupied territory, including in the occupying administration of the aggressor state, or voluntary election to such authorities, as well as participation in the organization and holding of illegal elections and/or referendums in the temporarily occupied territory or public calls for the holding of such illegal elections and/or referendums in the temporarily occupied territory;

<sup>14</sup> <https://zakon.rada.gov.ua/laws/show/2341-14#Text>

- **Part 6 of Art. 111-1 of the Criminal Code of Ukraine:** Organizing and holding events of a political nature, carrying out awareness raising activities in cooperation with the aggressor state and/or its occupation administration, aimed at supporting the aggressor state, its occupation administration or armed formations and/or at avoiding their responsibility for armed aggression against Ukraine, in the absence of signs of treason, active participation in such events;
- **Part 7 of Art. 111-1 of the Criminal Code of Ukraine:** Voluntary holding of an office by a citizen of Ukraine in illegal judicial or law enforcement bodies created in the temporarily occupied territory, as well as voluntary participation of a citizen of Ukraine in illegal armed or paramilitary formations created in the temporarily occupied territory and/or in the armed formations of the aggressor state, or providing such formations assistance in hostilities against the Armed Forces of Ukraine and other military formations formed in accordance with the laws of Ukraine, voluntary formations that were formed or self-organized to protect the independence, sovereignty and territorial integrity of Ukraine.

Only a court can find a person guilty of wartime collaboration activity on the basis of a guilty verdict. The presumption of innocence applies until the verdict enters into legal force.

Wartime collaboration activity as a criminal offense is characterized by such a form of cooperation with the occupying power that contains signs of treason and gives the occupying state advantages in various areas. Wartime collaboration activities are characterized by a special goal, which in the vast majority of cases is characterized by ideological and/or selfish motives.

### 3.2. Wartime collaboration: myths and facts

#### **Living under occupation or staying on the territory of the Russian Federation is not considered a wartime collaboration activity**

The occupation of part of the territories of Ukraine is a consequence of the act of aggression of the Russian Federation against Ukraine. The inability to leave the occupied territory can be explained by various reasons – security factors, the presence of non-transportable relatives, lack of financial opportunity, etc. Even the free choice to stay and continue living in the occupation does not violate Ukrainian legislation. The issue arises only if a Ukrainian citizen who has remained in the occupation decides to consciously and voluntarily help the occupiers and cooperate with them to the detriment of Ukraine.

The national legislation does not contain a direct prohibition to enter into relations with the occupying power, with the exception of forms of cooperation expressly prohibited by Article 111-1 of the Criminal Code of Ukraine. Wartime collaboration activities cover actions of Ukrainian citizens that are detrimental to the national interests of Ukraine and are expressly defined by the relevant part of Art. 111-1 of the Criminal Code of Ukraine, and such actions must be committed with guilt.

## Only a citizen of Ukraine can be a collaborator

The legislator defines as a subject of criminal liability for wartime collaboration only the citizens of Ukraine who have reached the age of 16 years old. At the same time, the illegal acquisition of Russian citizenship during the occupation is not an obstacle to criminal prosecution, given Ukraine's non-recognition of such a procedure and its consequences. However, obtaining a Russian passport does not form a separate corpus delicti of wartime collaboration. In a number of cases, people are forced to obtain Russian passports because they are subjected to constant pressure from the occupying power.

## Physical and/or mental coercion rule out criminal liability

The presence of physical and/or mental coercion is a circumstance that rules out criminal liability. In the occupation, the Ukrainian population is subjected to harassment and intimidation, and sometimes to direct physical threats from the occupying power, coercion to perform actions that are favorable to the occupiers. In the occupied territories, pro-Ukrainian citizens are subjected to persecution, Russian propaganda works non-stop, intimidating the Ukrainian population that each of them will be recognized by the Ukrainian authorities as a collaborator.

Ukrainian citizens are sometimes forced to cooperate with the occupiers under threat of their death or death of their friends or relatives. If actions that fall under the signs of wartime collaboration activity were committed under such circumstances, this should rule out criminal liability.

Wartime collaboration entails responsibility if a person, without coercion, voluntarily, for ideological reasons or for selfish motives, cooperated with the occupiers and committed the acts provided for by Art. 111-1 of the Criminal Code of Ukraine.

Common in the occupied territories or even in Russia itself are the systems of filtration camps, where Ukrainian citizens are forced to undergo checks and sometimes publicly declare support for the aggressor state, as this is required by the Russian side. According to testimonies of persons who have undergone such filtering, Ukrainian citizens are asked about their attitude to the «special military operation», sometimes by recording the answers the Russian side needs on video. It is quite obvious that in the conditions of the filtration camp, the presence of a real threat to their lives and the lives of their loved ones, psychological pressure and lack of real protection, the citizens of Ukraine can give the answers the aggressor state wants. At the same time, forced support of armed aggression does not make such persons collaborators for the reasons of physical and psychological coercion applied to them.

Formally, such statements can be classified under Part 1 of Art. 111-1 of the Criminal Code of Ukraine. However, the circumstances in which such actions were committed testify to the presence of physical and mental coercion. Parents of deported children report the facts that at the filtration points they are forced to speak out in support of the Russian regime, otherwise they will simply be detained and it will be extremely difficult to have their child back.

## Liability only if there are grounds

The basis for criminal liability is the commission of a socially dangerous act that contains the corpus delicti of a criminal offense under the Criminal Code of Ukraine. The corpus delicti of a criminal offense must include the presence of the object of encroachment, the objective part as external signs of the offense committed, the subject – a sane person who has reached the appropriate age, the subjective part, including guilt and motive. The absence of at least one element makes criminal prosecution impossible.



Travel to the territory of the Russian Federation with the purpose of returning a child, staying there for a certain period of time and communicating with the Russian side do not constitute a wartime collaboration activity.

Accusations of wartime collaboration can be brought only if there are objective grounds to believe that a person has committed the actions provided for in Art. 111-1 of the Criminal Code of Ukraine and contain all four elements of a criminal offense.

The story of a man from the occupied Kherson Region illustrates what potential accusations of collaboration can be based on. According to press reports, the man was in the occupied territory of the Kherson Region and got a job in the occupation administration, where he was given a trip voucher to Anapa for his son. On the eve of the liberation of the territory by the Ukrainian side, he received a call and was told to come and pick up his son. The man left for Russia, but is afraid to return because of the fear of being accused of wartime collaboration<sup>15</sup>. Having analyzed this situation, it becomes clear that the man's worries have nothing to do with the fact that he left for Russia to pick up his son. His objective fears are caused solely by the fact that he worked in the occupation administration, which may constitute a criminal offense.

Conclusion: trip to the territory of the Russian Federation and stay there for the necessary amount of time, is conditioned by the need to return the child, which is a humanitarian goal. Entering into relations with the Russian side to protect and reunite with the child cannot be classified as a wartime collaboration activity.

## **Permission for a child to go to a «rehabilitation» camp does not make a person a collaborator**

The children were taken to «rehabilitation» camps mainly with the consent of the parents, but this does not mean that the presence of initial consent exempts the Russian side from responsibility and gives grounds to consider the parents as collaborators.

Initially, such transfer of children did not have any signs of forced displacement or deportation, but the conditions of stay in such camps, accompanied by the destruction of the Ukrainian identity of children, and the fact of keeping children on the Russian territory with the creation of obstacles to their return by their parents, allowed us to classify this removal as deportation and forced displacement.

For example, the OSCE report cites information that about 200 children who went to Krasnodar Krai stayed there after the end of the summer vacation and were enrolled in local schools<sup>16</sup>

Parental consent was given in circumstances where they could not have foreseen the consequences. Families have already lived in the conditions of war for some time and suffered psychological trauma, so the ability to analyze the situation, objectively assess the circumstances and express their valid consent was questionable. Parents may have feared that refusing to send their children on vacation might be perceived negatively by the occupying power and cause unwanted consequences for their family.

<sup>15</sup> <https://www.dw.com/uk/ak-rosia-vivozit-ditej-iz-okupovanih-teritorij-ukraini/a-64221983>

<sup>16</sup> <https://www.osce.org/files/f/documents/7/7/542751.pdf>

There is evidence of the occupying power responding to parents' refusals by suggesting that such actions constituted neglect of the child and might necessitate a detailed review of their attitude to parenting. The parents were afraid that they could be deprived of parental rights and have their child taken away<sup>17</sup>.

In addition, the initial consent can always be withdrawn, because the right to family reunification cannot be arbitrarily limited.

It is assumed that cases of forced displacement or deportation do not cover situations where the civilian population consents to the displacement. However, this does not mean that such consent cannot be withdrawn. The transfer cannot be said to be voluntary if the consent is given because of fear, persecution or discrimination. Deportation is always enforced. Coercion also occurs when a person, having previously given consent, has withdrawn it. Coercion does not mean only the aspect of using physical force, but can involve psychological pressure on a person. In a number of cases, parents gave their consent to have their children taken to the territory of the Russian Federation, guided by the motives of their rest or health improvement, and in other cases – due to fear of the negative consequences of such a refusal. The existence of initial consent does not mean that Russia has legal rights not to return such children.

## **Impact of Russian re-education (brainwashing) on Ukrainian children**

Deported children who have been in Russia or within the occupied territories of Ukraine have long been subjected to the destructive influence of Russian propaganda. The children were intimidated by the fact that they would never see their parents, that their parents had either died or abandoned them, and the Ukrainian side was to blame for this. This could be reflected in changes in the worldview and perception of the current situation, given the age of the children and their emotional immaturity, as well as forced assimilation into Russian society, especially when children are placed in foster families.

Some of the children who managed to return claim forced re-education and even military training. Such actions by the Russian side are a violation of children's rights enshrined at the international level.

If, after their return, children begin to express Russian narratives and speak out in support of Russia, this does not always indicate a conscious and deliberate decision, given the conditions in which they were kept, the instilling of Russian ideas in them and the use of psychological coercion against them. Children who have been in Russia for a long time are exposed to the influence aimed at their maximum naturalization and assimilation, and the impossibility of contact with their parents intensifies this influence.

The risk group includes children who have already reached the age of 16 years old and who are already the subject of a crime. At the stage of returning such children, the Ukrainian side must be aware that Ukrainian children have been subjected to a destructive psychological influence for a long time. Even with certain manifestations of the consequences of re-education, conditions must be created for the children's psychological recovery and rehabilitation.

<sup>17</sup> <https://www.osce.org/files/f/documents/7/7/542751.pdf>

## Consequences of militarized upbringing of deported children

International humanitarian law prohibits an occupying power from forcing protected persons to serve in its armed or auxiliary forces. The only exception is the involvement in forced labor of persons who have reached the age of 18 years old, and only for such work as is necessary to meet the needs of the occupying army or to adequately provide the population of the occupied country with utilities, food, housing, clothing, transport and medical services.

In fact, the Russian Federation pursues the goal of completely eradicating Ukrainian identity and raising mindless Russian patriots by using patriotic education and forming a false opinion about the need to defend Russia. There are cases when Ukrainian teenagers are recruited into the Russian «Young Army», where they are given military training, or sent to patriotic re-education camps. It is possible that Ukrainian teenagers may be involved in paramilitary formations to participate in hostilities against Ukraine, although such information is currently not recorded.

Part 7 of Art. 111-1 of the Criminal Code of Ukraine provides for criminal liability for the voluntary participation of citizens of Ukraine in such formations. The subject of the crime is a person who has reached the age of 16 years old, which creates potential risks for Ukrainian children who have reached the age of 16 years old to be accused of wartime collaboration.

The key factor for bringing to responsibility under Part 7 of Art. 111-1 of the Criminal Code of Ukraine is voluntariness and the absence of physical and mental coercion. Ukrainian teenagers in «patriotic camps» are victims of circumstances and are subjected to systematic psychological and physical pressure, so they need assistance and rehabilitation when they return to Ukraine.

## Increased interest of law enforcement agencies and bodies of the Security Service of Ukraine

Since the beginning of the full-scale invasion, the state border with Russia has been effectively closed. However, the trips of Ukrainian citizens to and from Russia continue for various reasons. In a number of cases, transit through Russian territory is the only available route for evacuation from a war zone or occupied territories, and in situations of child deportation, it is often the only possible way to bring a child home. It is necessary to distinguish between situations where people go to the territory of Russia for humanitarian purposes and due to objective necessity, and situations where citizens of Ukraine who were on the territory of Russia support the aggressor state with the concomitant commission of actions that fall within the scope of wartime collaboration.

Citizens of Ukraine returning from Russia automatically come under the scrutiny of Ukrainian law enforcement agencies. According to the reports of Ukrainian citizens, they are questioned not only by employees of the State Border Guard Service of Ukraine, but also by employees of the Security Service of Ukraine and the National Police. The purpose of such questioning is to establish the facts of involvement of Ukrainian citizens in wartime collaboration activities<sup>18</sup>.

<sup>18</sup> <https://www.dw.com/uk/slah-z-okupacii-ak-ukrainci-peretinaut-kordon-miz-rf-i-ukrainou/a-64947221>

Given the prevalence of sabotage groups and potential wartime threats, such activities of law enforcement agencies and bodies of the Security Service of Ukraine can be explained by the need to ensure security against risks to Ukraine's national interests. Moreover, in order to counter potential risks to Ukraine, the scope of powers of law enforcement agencies has expanded since the introduction of martial law. Such questionings should not be perceived as a direct accusation of wartime collaboration, but understood that in the conditions of ongoing armed aggression, these are objectively necessary actions.

Separately, we can highlight situations when Ukrainian citizens are invited to visit law enforcement agencies and bodies of the Security Service of Ukraine after returning from Russia with their liberated children. It is important to remember that the Russian Federation commits war crimes and crimes against humanity, so bringing all perpetrators to justice requires the collection of evidence from the victims of its crimes and proper documentation of all the circumstances. It is important to remember that the Russian Federation commits war crimes and crimes against humanity, so bringing all perpetrators to justice requires the collection of evidence from the victims of its crimes and proper documentation of all the circumstances.

In order to obtain the necessary information, record the crimes, collect evidence, and conduct an effective investigation together with international bodies, the testimony of the parents of deported children and, in some cases, the direct testimony of the children who were successfully returned to Ukraine are important. Accordingly, the reason why representatives of the Security Service of Ukraine or the National Police are contacting such parents is not to identify signs of wartime collaboration activity in their actions, but to record the crimes of the Russian side.

The Parliamentary Assembly of the Council of Europe noted in its resolution that «the Ukrainian authorities should guarantee to the citizens of Ukraine who have been forcibly displaced to the territory of the Russian Federation, including men between the ages of 18 and 60 years old, that they will not experience any legal consequences of such displacement upon return to Ukraine»<sup>19</sup>.

Ukrainians who returned from Russia and were there on forced grounds or who were forced to go there to get their children are victims of the Russian regime, not collaborators.

There is no need to be afraid of the Ukrainian law enforcement system, as its goal is not to accuse the population of the occupied territories of wartime collaboration activities. The Ukrainian side is making maximum efforts to help and protect the occupied population as much as possible in the conditions of armed conflict.

<sup>19</sup> <https://pace.coe.int/en/files/31727>

## 4. SEEING THE SITUATION THROUGH THE EYES OF PARENTS/LEGAL REPRESENTATIVES OF CHILDREN

### 4.1. Study methodology

The issue of deportation and displacement of children due to the aggression of the Russian Federation against Ukraine has a wide public resonance, is often covered in mass media, is the subject of research by human rights organizations and criminal investigation by national and international law enforcement agencies.

In order to objectively cover the situation related to the transfer of children to «rehabilitation» camps, as part of the preparation of this report, a survey was conducted of 10 parents and other legal representatives of children who were returned from the territory of the Russian Federation or the temporarily occupied territories of Ukraine, as well as representatives of non-governmental organizations assisting in the return of children.

The purpose of the survey was to obtain truthful information from primary sources about the situation related to forced displacement and/or deportation and to confirm or refute the hypothesis that there is a link between the deportation of children and wartime collaboration of the child's parents/legal representatives.

During the survey, questions were asked about:

- **The circumstances** of the child's transfer for «rehabilitation»;
- **Provision/non-provision** of consent for the child's relocation;
- **Awareness** of the child's location;
- **Predictability** of the circumstances of the child's non-return;
- **The possibility** to communicate with the child during the «rehabilitation»;
- **The authorities** contacted for the purpose of returning the child, and about the persons providing assistance;
- **The conditions** imposed by the occupying power or representatives of the Russian Federation authorities for the child to be handed over to his or her parents;
- **Problems** with travel documents and financing;
- **Threats** from the representatives of the Ukrainian authorities and persecution by law enforcement agencies because of the child's stay in «rehabilitation»;
- **Fear** of persecution and accusations of wartime collaboration because of the child's stay in «rehabilitation» and others.

The survey was conducted in compliance with the principle of non-disclosure of personal data.

## 4.2. Stories of deportation, forced displacement and return of children

Of the interviewees, 2 persons are guardians of children (the head of the institution and grandmother), 1 person was appointed by the guardianship and custody authority as a trusted person to accompany the child (major sister of a child deprived of parental care), others are parents of children from Kharkiv and Kherson Regions. In total, information was obtained on the circumstances of the displacement of 12 children.

It was found out that the displacement took place both to the territory of the Russian Federation ( Kropotkin, Helendzyk of the Krasnodar Krai; Anapa, Yeisk, Voronizh, Bielhorod), as well as to the temporarily occupied territory of the Republic of Crimea ( Yevpatoria).

### Regarding consent to transfer

In the vast majority of cases (8 out of 10), parents gave their consent to the «rehabilitation» trip for their children. However, the circumstances of giving consent were quite different: Some of the parents consciously took this step to save their child (Kharkiv Region), while others were forced to have their child taken away (Kherson Region).

**For example, the mother of the boy Bohdan, 11 years old, from Balakleia of the Kharkiv Region** reported that in June 2022, the occupying authorities started placing announcements about the possibility of improving children's health in public places throughout the city. Starting from August, the city was heavily shelled, and attacks became more frequent. To ensure the safety of her child, she herself went to the local administration to find out how she could send her son for rehabilitation and submitted an application. On August 27, 2022, her child and a group of other children left for the city of Anapa. Subsequently, the boy was moved to Yeisk and then to Voronizh of the Russian Federation.

The woman reported that during the deoccupation of the Kharkiv Region, she hoped that the children would be taken to the border with Ukraine in an organized manner and handed over to their parents. However, she managed to have Bohdan back only in March 2023 thanks to volunteers and a non-governmental organization. All this time, the mother kept in touch with her child via Viber.

The woman could not pick up the child on her own. After spending \$600 on the trip, she was stopped at the Russian border due to the entry ban based on the earlier decision to deport her from the Russian Federation.

Appeals to the authorities of the Russian Federation (State Emergency Service, representative of the Commissioner for Human Rights of the Russian Federation, etc.) did not yield any positive results regarding the personal return of the child. Only thanks to the volunteers, the child was returned on the basis of a notarized power of attorney.

The woman did not turn to the Ukrainian authorities for assistance in returning the child, because immediately after the deoccupation of the city, she began to receive direct threats to deprive her of her parental rights from representatives of the local authorities.

The woman also reported her fear of being accused of collaborating because of rumors that parents will be prosecuted for sending their children to the Russian Federation for rehabilitation.

On the other hand, parents of children from Kherson Region reported that sending their children for rehabilitation in occupied Crimea was rather forced than voluntary.

The transfer of children took place on October 6-7, 2022. All parents emphasized that they had essentially no choice in making the decision.

A few days before the departure, parents were called or sent a text messages from the school by class teachers or directors of institutions and informed about the suspension of the educational process in the occupied part of the Kherson Region from October 6, 2022 and the need to send the children for rehabilitation.

Parents were asked to bring their child to school with their belongings and the **original birth certificate** at the specified time. Right before the children's departure, the parents were given a pre-prepared and printed consent for the child's transfer to be signed.

For parents, the situation was presented in such a way that two-week rehabilitation of children was mandatory, and their consent was formal.

## Regarding the fear of non-return of the child

In general, none of the interviewed parents (except for one mother from the city of Beryslav, Kherson Region) foresaw the situation of possible non-return of the children.

The mother of 15-year-old Vitalii noted that she was alarmed by the persistent demand to send children with original documents. She refused to do so and handed over only a photocopy of the document. Of all the interviewees, this boy suffered the most harassment, psychological and physical violence because of his pro-Ukrainian position during his stay at the recreation camp in Yevpatoriia, which is in occupied Crimea.

The parents explained their consent to the transfer of the children by the relatively short period of «rehabilitation» – two weeks, as well as by the fact that the children were accompanied mainly by class teachers and other teachers who they and the children knew.

## Regarding the possibility to keep in touch with the child

In the vast majority of cases (8 out of 10), parents reported that they were able to maintain contact with their child.

Two children did not communicate with their relatives. One of them Artem, 17 years old, a pupil of the Oleshkiv Residential School, who was transferred on October 20, 2022 to the Autonomous Republic of Crimea, and later to the Krasnodar Krai of the Russian Federation and then to the Kherson Region. For health reasons, the child did not have a phone. The grandmother received information about Artem's displacement via text message from an unknown person. Also Serhii, 11 years old, a child deprived of parental care from the city of Kharkiv, was not provided with a telephone by his adoptive mother.

Some parents reported instability of communication with their children and its dependence on children's behavior. For bad behavior, including refusal to sing the anthem of the aggressor country, the children's phones were taken away from them and they were deprived of communication for 2-3 days.

This practice was reported by parents of children from Kherson, who were taken to Luchystyi Camp, which is located in Yevpatoriia, AR Crimea.

## Regarding the authorities to which the parents applied for the return of their child, and those who helped in the return of their child

After the term «rehabilitation» ended, parents mostly contacted the managers of health camps. They also called the heads of schools that sent the children. Only 4 parents reported that they contacted the Ukrainian law enforcement agencies. Some parents learned about non-governmental organizations or volunteers who help in returning children from the Russian Federation through social media or from people they know. In three cases, the children themselves found organizations that facilitate the return of children to Ukraine and provided their contacts to their parents.

**For example,** a mother of three children aged 14, 11 and 10 years old from the Kherson Region reported that she had not filed a police report because she heard at the police station that she had allegedly sold her children and would never see them again. Social services also threatened to take the children away. Due to the fear of being punished, the woman decided not to contact the Ukrainian authorities at the highest level. Her eldest son, while in the AR Crimea, heard about an organization that helps in the return of children and provided the parents with the contacts.

Instead, the parents stated that they received almost no help from Ukraine in returning their children, with the exception of some cases of assistance in preparing documents for going abroad. According to the majority, every case of contact with the authorities (both local and central levels) was accompanied by reproaches from the latter that the parents themselves were to blame for the situation around the children, and the children should be taken away from them. However, the parents needed help in developing the logistics of the trip, financial support, processing documents in accordance with the requirements of the Russian side, etc.

Representatives of non-governmental organizations mostly emphasized the lack of coordination of efforts at the state level in solving the issues of returning children and the lack of a single mechanism for solving the problem of deportation of children to the Russian Federation or forced relocation within the occupied territories.

## Regarding actual persecution by law enforcement agencies and suspicion of wartime collaboration

After the children's return, none of the interviewed parents or other legal representatives of the child were subjected to persecution due to the situation with the child's displacement.

Despite previous fears and rumors, none of the interviewees were approached by the law enforcement agencies with questions related to wartime collaboration.

## Regarding the impact of the situation on the child's condition

The main consequence of leaving for the so-called «rehabilitation» for each child was stress due to the fear of not returning and separation from their relatives.

However, when asked directly: «Did your child experience stress?», parents mostly answered negatively, and then acknowledged the problem, talking about changes in the child's behavior, depressed state and so on.



**For example, Kseniia from** Kharkov, who single-handedly returned her 11-year-old brother from the Russian Federation, reported that her brother was very open, cheerful, and friendly before the displacement. He used to have close emotional contact with his sister. He liked to socialize with people and had many friends. After the return, he became very withdrawn, avoided socializing, stopped trusting people. He stayed in Russia for 9 months in the cities of Helendzhyk, Yeisk, Abinsk.

**Nataliia from Kherson** reported that her son had been recovering in the city of Anapa, RF, since October 19. Regarding the consequences for the child, at first she denied psychological trauma, as she considers her son to be balanced and calm, and then she said that her son was very homesick and experienced fear due to a possible non-return.

**The grandmother of 17-year-old Artem**, a pupil of the Oleshkiv Residential School, who was transferred first to the Autonomous Republic of Crimea, and later to the Krasnodar Krai of the Russian Federation, reported a significant deterioration in the child's health. In the first months after his return, the child refused to eat and often screamed.

Also, representatives of non-governmental organizations (SOS Children's Villages Ukraine and CF Save Ukraine), which provide support to families in the return of children, accommodation and further adaptation, emphasized that all children need psychological screening and rehabilitation.

According to them, the situation is complicated by the fact that the parents are not fully aware of the child's real condition and refuse to receive help. Subsequently, after 2-3 months, the parents turn to the organizations again with a request to get a psychologist to help the child.

It should be emphasized that the children themselves were also looking for ways to return home because they were afraid to stay in the Russian Federation or in the occupied Crimea forever and be placed under the care of Russian families.

Together with the children, all interviewed adults without exception emphasized their personal stress due to the situation with the children. They were afraid that the child would not be returned or that they would be arrested while traveling through the territory of the Russian Federation.

Some of them complained about cases of bullying by neighbors or children and in connection with this forced displacement to other settlements of Ukraine.

**The journey home for all the children turned out to be long – more than 6 months** instead of the two weeks promised by the occupation authorities.

Thus, it can be generalized that, even in the absence of actual persecution of parents due to their consent to the transfer of children for rehabilitation to the Russian Federation or occupied Crimea, both children and parents experienced a serious stressful situation due to the fear of possible non-return of the child or punishment of adults for their decision to send the child for rehabilitation.

## CONCLUSIONS

According to the Ukrainian authorities, the number of deported children as of mid-June 2023 is more than 19,500 people. The actual number of children deported by the Russian Federation may be many times higher than official data.

The displacement of Ukrainian children takes place in many cases under the pretext of taking them on vacation or for rehabilitation within the occupied territories of Ukraine or to the territory of the Russian Federation, is systematic and large-scale in nature, and occurs in violation of the norms of international humanitarian law, which can be classified as the crime against humanity and the crime of genocide. Deportation and forced displacement is characterized as arbitrary interference in the sphere of family life, as it is aimed at destroying the identity of Ukrainian children and severing family ties.

Violation of international law by the aggressor state and the creation of artificial barriers to the return of deported children does not allow the state of Ukraine to ensure their proper protection and reunification of separated families.

Parents and other legal representatives are forced to look for alternative ways of returning deported children to Ukraine, which involve personal contacts with the authorities of the aggressor state and trips to the territory of the Russian Federation to collect their children. Against the background of propaganda and intimidation by the aggressor state, the spread of rumors in Ukrainian society, the parents fear that after returning to Ukraine they may be accused of wartime collaboration.

Some stories of parents and other legal representatives of deported and forcibly displaced children who managed to return to Ukraine suggest that they have a fear of being accused of wartime collaboration activities only because of the very fact of giving consent to sending their children for rehabilitation in the Russian Federation. In fact, it is impossible to argue about the voluntariness of consent to have their children taken away, given the conditions of the armed conflict, the unpredictability of the consequences and, in some cases, threats from the occupation authorities of deprivation of parental rights if the child does not go on vacation.

Despite the lack of documented facts of criminal prosecution of parents (other legal representatives) of deported children by law enforcement agencies of Ukraine, the fear of being called a collaborator keeps them from contacting the authorities of Ukraine with help and publicity.

Common notions of wartime collaboration have nothing to do with the grounds for criminal liability under the Criminal Code of Ukraine. Wartime collaboration activity has been classified as a criminal offense since March 15, 2022. An exhaustive list of actions that have the signs of wartime collaboration activity is given in Art. 111-1 of the Criminal Code of Ukraine and is characterized by such a form of cooperation with the occupying power that contains signs of treason and gives the occupying state advantages in various areas.

Living in the occupation, giving consent to have the child sent to the Russian Federation for rehabilitation, entering into relations with the occupation authorities on family matters, traveling to the territory of the Russian Federation for the humanitarian purpose of returning the

child, staying there for a certain time and communicating with the Russian side do not constitute wartime collaboration.

Criminal liability for collaboration activities shall be imposed on the basis of a guilty verdict only in cases where it is established that the acts were committed in the absence of psychological and/or physical coercion, which fall under the qualification of Article 111-1 of the Criminal Code of Ukraine.

Deported children and their parents (other legal representatives) are victims of the criminal Russian regime who need state assistance and rehabilitation. The children who were in the territory of the Russian Federation were subjected to the destructive influence of Russian propaganda aimed at the destruction of Ukrainian identity, and were afraid that they would never see their relatives. At the state level, psychological support programs for families should be introduced to overcome the consequences of psychological trauma. Families facing the tragedy of deportation should not be bullied and stigmatized in society. Society should be aware that deportation is a crime committed by the Russian Federation, and there is no fault of parents (other legal representatives) in the forced relocation of children.

Awareness raising activities and conveying to the citizens of Ukraine, especially in the temporarily occupied territories, information related to wartime collaboration, the lack of guilt of parents (other legal representatives) in the fact that their children were deported, will minimize the spread of groundless fears and rumors that do not correspond to reality.

Coordination of state efforts and the development of an effective mechanism for the return of deported children together with the involvement of international organizations and the assistance of third countries will contribute to the return of children to Ukraine.

## RECOMMENDATIONS:

1. **Verkhovna Rada of Ukraine**, the Cabinet of Ministers of Ukraine shall take measures to:
  - **Amend** Ukrainian legislation to define the concepts of «deportation», «forced displacement», «forcible transfer» and «illegal displacement»;
  - **Develop** an effective mechanism for the return of deported/forcibly displaced children to the territory of the Russian Federation or temporarily occupied territories, with the involvement of international organizations and the assistance of third states, in accordance with the Geneva Convention relative to the Protection of Civilian Persons in Time of War.
2. With a view to exercising the right of the child to be reunited with his or her family, as provided for in Articles 9 and 10 of the United Nations Convention on the Rights of the Child, the **Cabinet of Ministers of Ukraine shall**:
  - **Strengthen** efforts to trace children who have been deported to the territory of the Russian Federation or forcibly transferred to temporarily occupied territories;
  - **Contact** the official bodies of third states for assistance in ending the practice of deportation to the territory of the Russian Federation or forced displacement of Ukrainian children to the temporarily occupied territories.
3. **The Cabinet of Ministers of Ukraine**, local bodies of state executive power and local self-government bodies shall:
  - **Intensify activities** to assist parents in the return of children who find themselves in the territory of the Russian Federation or the temporarily occupied territories;
  - **Introduce psychological** support programs for children and their families to overcome the consequences of the psychological trauma suffered by the child and parents as a result of the circumstances of the child's deportation or forced displacement;
  - **Ensure awareness** raising activity among the population on issues related to wartime collaboration activities in order to minimize fears and rumors among the population;
  - **Intensify** explanatory work among parents regarding algorithms of actions and solution of procedural issues in case of deportation of a child or his/her displacement to the territory of the Russian Federation or within the temporarily occupied territories.

**4. Law enforcement** agencies, local state executive authorities and local self-governance bodies should contribute to preventing stigmatization and bullying in society towards children who have faced the tragedy of deportation/forced displacement and their families. 5. International organizations and states (all those that may be concerned) shall:

- **Strengthen efforts** in assisting Ukraine and the Russian Federation to establish information exchange on all children who have been deported to the territory of the Russian Federation or forcibly displaced to temporarily occupied territories, with a view to urgently facilitating family reunification in accordance with Articles 9 and 10 of the UN Convention on the Rights of the Child;
- **Provide** any necessary assistance to Ukraine to find a patron state or international organization in accordance with the Geneva Convention relative to the Protection of Civilian Persons in Time of War to search for, identify and return all Ukrainian children who have been deported to the territory of the Russian Federation or forcibly transferred to temporarily occupied territories.



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