

DOI: <https://doi.org/10.34069/AI/2022.60.12.3>

How to Cite:

Melnychuk, O., Yaremenko, O., Kronivets, T., Opolska, N., & Overkovska, T. (2022). Protecting the rights of children in the armed conflict: the tasks before the state government. *Amazonia Investiga*, 11(60), 32-38. <https://doi.org/10.34069/AI/2022.60.12.3>

Protecting the rights of children in the armed conflict: the tasks before the state government

Захист прав дітей в Україні в умовах збройного конфлікту: завдання державної влади

Received: December 8, 2022

Accepted: December 30, 2022

Written by:

Olha Melnychuk¹⁰<https://orcid.org/0000-0003-4229-621X>**Oleksandr Yaremenko**¹¹<https://orcid.org/0000-0002-3053-2257>**Tetiana Kronivets**¹²<https://orcid.org/0000-0002-5506-3418>**Natalia Opolska**¹³<https://orcid.org/0000-0003-1507-0178>**Tetiana Overkovska**¹⁴<https://orcid.org/0000-0002-1686-5688>

Abstract

The critical condition of the rights of children during the full-scale invasion of Ukraine by Russian military forces demonstrates the urgent need for better ways of their protection. It is a State's duty to design a set of measures aimed at effective protection of the rights of children in critical situations. The paper aims to review ongoing as well as long term tasks of the state authorities regarding the protection of children's rights in an armed conflict. The article uses the general scientific method as well as the legal method of scientific investigation. It is based on the authors' observations as witnesses of Russian military aggression, as well as on surveying internally displaced persons and refugees. The authors conclude that the authorities of Ukraine have to resolve a number of current and long-term tasks. The current tasks include nearest means and remedies for protection of children who became victims of the military conflict. This includes performing highly organized safe evacuation of children from the areas of military

Анотація

Критичний стан прав дітей в умовах повномасштабного вторгнення російських військ в Україну вимагає нагального пошуку шляхів для удосконалення їх захисту. Держава зобов'язана розробити комплекс заходів для забезпечення ефективного захисту прав дітей в надзвичайних ситуаціях, зокрема в умовах збройного конфлікту. Метою дослідження є розкриття поточних і довгострокових завдань державної влади для забезпечення захисту прав дітей в Україні в умовах збройного конфлікту. Дослідження ґрунтується на загальнонаукових та юридичних методах наукового пізнання. В його основу покладено спостереження авторів статті як очевидців російської військової агресії, а також опитування внутрішньо переміщених осіб і біженців. В результаті дослідження автори дійшли висновку, що поточними завданнями української влади є сукупність найближчих засобів і способів для захисту дітей, що постраждали від збройного конфлікту. До них відносяться: проведення

¹⁰ Doctor of Law, Professor, Head of the Department of Public Legal Disciplines of the Faculty of Law, Public Management and Administration of Vinnytsia Mykhailo Kotsiubynskyi State Pedagogical University, Ukraine.

¹¹ Candidate of Science of governance, Associate Professor, Dean of the Faculty of Law, Public Management and Administration of Vinnytsia Mykhailo Kotsiubynskyi State Pedagogical University, Ukraine.

¹² Candidate of Legal Sciences, Associate Professor, Head of the Department of Fundamental and Private Law Disciplines of the Faculty of Law, Public Management and Administration of Vinnytsia Mykhailo Kotsiubynskyi State Pedagogical University, Ukraine.

¹³ Doctor of Law, Professor of the Department of Public and Legal Disciplines of the Faculty of Law, Public Management and Administration of Vinnytsia Mykhailo Kotsiubynskyi State Pedagogical University, Ukraine.

¹⁴ Candidate of Legal Sciences, Associate Professor of the Department of Public and Legal Disciplines of the Faculty of Law, Public Management and Administration of Vinnytsia Mykhailo Kotsiubynskyi State Pedagogical University, Ukraine.



action, repatriation of children from abroad and returning internally displaced persons to the de-occupied territory of Ukraine, repatriating deported children back to Ukraine, and administering measures to address the basic needs of children in times of war. The long-term tasks concerning the protection of rights of children include, among others, the development of a comprehensive policy for protecting the rights of children, creating a governmental body that would perform a consolidating function in relation to the protection of children's rights, reforming the justice system in relation to children, and deinstitutionalizing the area of children's rights.

Keywords: rights, children, protection, armed conflict, state power.

Introduction

A full-scale invasion of Ukraine by Russian military forces has brought new challenges for the government, society, international order, and demonstrated the fragility of human rights as a legal construct and a critical value. All civilians, and especially children as the most vulnerable category, became victims of Russian military aggression. The Russian military commit all the serious offenses against children possible during a military conflict, as postulated by the United Nations Security Council resolution 1261 (1999): killing and mutilation of children, rape and other forms of sexual violence, kidnapping and forceful displacement, recruitment and use of children in military conflicts, attacking the objects protected by international law, such as places that frequently host a big number of children (schools and hospitals), and refusing children's access to humanitarian aid.

According to official sources, as of December 2022, 450 children in Ukraine were killed, 867 were injured, 328 are considered missing, and 13613 were deported (Children of War, 2022). Unfortunately, these statistics may not be final and appear to increase daily.

Torture of children by the Russian military is evidenced by the exhumation of bodies on the liberated territories in Kyiv, Chernihiv, Sumy and Kharkiv regions, and by discovery of the "child cell" in Kherson region used to detain minors who joined anti-Russian protests and those children whose parents are in opposition to Russian authorities (Lubinet, 2022).

організованої безпечної евакуації дітей з територій бойових дій; повернення дітей із-за кордону та внутрішньо переміщених осіб на деокуповані території України; повернення депортованих дітей в Україну; вжиття заходів для забезпечення базових потреб дітей в умовах війни. Довгострокові завдання державної влади щодо захисту прав дітей розраховані на тривалу перспективу, зокрема: розробка комплексної політики у сфері захисту прав дітей; прийняття комплексного закону про права дітей; створення органу, який би виконував консолідуючу функцію щодо захисту прав дітей; реформування системи юстиції щодо дітей; деінституціоналізація у сфері прав дітей тощо.

Ключові слова: права, діти, захист, збройний конфлікт, державна влада.

The violation of children's basic right to education is eloquently evidenced by the intentional damage and destruction of educational institutions by the Russian Federation, forced Russification, and the imposition of Russian education standards.

The scale of systematic gross violation of rights of children in Ukraine in times of war indicate the critical condition of this issue. Although the need to enhance the protection of children's rights had existed before the start of the war, the Russian military invasion has brought unprecedented casualties and new challenges. The Temporary Investigation Commission of the Verkhovna Rada of Ukraine concluded that the system of protection of children's rights is unbalanced (Resolution No. 2266-IX, 2022).

The problem of protection of children's rights under the conditions of military aggression is paramount not only for Ukraine but for all democratic countries without exception. The need for efficient policy concerning children is "acknowledged by all countries and supported internationally" (Perezhniak, Melnychuk, & Matiiko, 2021, p. 145). Therefore, the issue of protection of children's rights by public authorities remains on the agenda, requiring scientific understanding and a practical solution.

Literature Review

The way the armed conflict, which has been going on for over eight years on the territory of Ukraine, affects the rights of children, has

attracted the attention of the scientific community. The literature in this area can be conditionally divided into two groups, developed either before or after the full-scale invasion of Ukrainian territory by the Russian Federation the territory of Ukraine. The first group includes a thorough dissertation study by Stepanenko (2021), devoted to theoretical and legal issues of protection and ensuring the rights of children in the context of military operations in Donbas. We share the researcher's statement that the rights of children who are located on the territory of a military conflict "are extremely vulnerable, and exist alongside imperfections and inadequacies of the legal mechanisms for their protection" (Stepanenko, 2021, p. 5).

Skrypnyuk and Tokarchuk (2020) recognized that there is a systematic violation of the fundamental rights of children (such as right to life, to dignity, to free access to education, to free national development, health, etc).

Other scientists also contributed to the development of the problem of protecting the rights of children during military operations in the east of Ukraine; see Kryvyoviyaz (2017), Opolska (2015), Frantzuz and Balykin (2018), and others.

The large-scale armed attack of the Russian Federation on the territory of Ukraine on February 24, 2022 led to massive, hitherto unseen violations of children's rights, resulting in a wave of new scientific research. In this regard, the report on the human rights situation in Ukraine for the period from February 1 to July 31, 2022, prepared by the Office of the United Nations High Commissioner (United Nations, 2022), is of value. Worthy of attention is the report of public organizations, which briefly describes the key events of the war from August 24 to September 24, 2022, in particular, related to the situation, problems and needs of children in Ukraine and abroad (Shcherban, Rozvadovska, Chernousov, Levkina, & Sheiko, 2022).

Zavorotko, Korynevych, and Korotky (2022) elucidated the classification of war crimes committed by Russian servicemen against children of Ukraine, as well as the mechanisms for bringing them to justice.

Peculiarities of protection of children's rights in the conditions of hostilities and armed conflicts were revealed by Melnychuk (2022).

Despite a certain contribution of scientists to solving the problem, we believe that the relevance of the topic indicates the need for further research. Therefore, the authors of the article aim to reveal the current and long-term tasks of the state authorities in ensuring the protection of children's rights in the armed conflict.

Methodology

The study is based on the general scientific and legal methods of scientific inquiry. Thus, the use of analysis, synthesis, induction, and deduction made it possible to establish relationships between the large-scale armed attack of the Russian Federation on the territory of Ukraine and the worsening of the situation of children's rights and mass violations in this area.

The systemic method contributed to the integrity of understanding the problem and finding ways to solve it by outlining short-term and strategic tasks of public authorities related to ensuring full protection of children's rights.

The formal legal method was used to study the content of national and international legal acts that regulate children's rights.

Having objectivity of the research results in mind, the authors of the article gathered information from diverse sources and drew conclusions based on their own observations as witnesses of the Russian military aggression.

The work is based on the results of in-person surveys of internally displaced persons, as well as conversations with relatives and acquaintances who left Ukraine and became refugees due to safety considerations. In order to avoid secondary traumatization and minimize stress in children, the authors of the article refrained from interviewing this category of population.

Results and Discussion

In the conditions of an international armed conflict, the effectiveness of the protection of children's rights depends on both sides, that is, Ukraine on the one hand, and on the conscientious fulfillment of international legal obligations by the Russian Federation on the other hand. The protection of children's rights is complicated by the fact that certain measures rely on an agreement with the adversary state regarding the safe evacuation of the wounded, the diseased, children, as well as free passage of parcels with medicines and sanitary materials,

baby food, clothes, exchange of family correspondence, etc. It is especially difficult to ensure the rights of children who are in the zone of hostilities, as well as in the temporarily occupied territory, where Ukraine cannot actually control Russian Federation's compliance (Melnchuk, 2022).

According to the conclusions of public organizations, in the first days of the war, the evacuation process involved a number of challenges. There was not enough transport and it was not well adapted for delivering children to the evacuation trains, in particular children with disabilities and those who are raised in institutional care facilities (SOS Children's Villages in Ukraine, 2022). The work on safe evacuation of children continues as hostilities on the territory of Ukraine go on. The parties should draw conclusions regarding the proper organization of the safe evacuation of children from the territories of hostilities.

Simultaneously with the de-occupation of the territory of Ukraine, the state authorities need to carry out work on the return of 6415 children, of which 1953 are within the borders of Ukraine, and 4462 are abroad. Special attention should be paid to orphaned children and children deprived of parental care (The Government Courier, 2022).

Large-scale hostilities caused mass displacement of the civilian population, resulting in serious consequences for the exercise of human rights, including economic and social rights (United Nations, 2022, p. 7). In these conditions, Ukraine faced the task of normalizing the legal status of internally displaced persons. According to the Ministry of Social Policy of Ukraine, as of August 31, 2022, as many as 4572600 internally displaced persons were registered in Ukraine, of which 3210300 left their place of residence after February 24, 2022 (The Government Courier, 2022). Children who are included in the Unified Information Database on Internally Displaced Persons receive monthly assistance, but the amount is small and cannot cover the expenses they need. Therefore, in this difficult time, the assistance from UNICEF gives significant support for Ukrainian families.

It is necessary to further improve the mechanism of providing social services to those children who find themselves in difficult living conditions due to social risks. In Ukraine, there is an extensive network of institutions that carry out social work, but in the conditions of the socio-economic crisis caused by the war, not every community is able

to provide adequate social security. Therefore, it is necessary to provide a subvention from the State budget for the development of such key social services as day care for children with disabilities, supported accommodation, support during inclusive education, inpatient care, etc. The updating or development of new state standards of social services, their development in communities, could become the basis for carrying out the reform of deinstitutionalization in the sphere of protection of children's rights. As an example, it is advisable to take the experience of European countries in which it is not customary to send children to institutions; rather, adoption or family forms of alternative care become a priority for placement of children who have lost parental care.

In the conditions of a large-scale armed attack, Ukrainian children were forcibly taken to the territory of the Russian Federation. Therefore, currently the state authorities of Ukraine are taking measures to return the deported children in cooperation with international organizations, although this work is progressing with difficulty. A number of state bodies deal with the search and return of deported children, such as the Ministry of Internal Affairs of Ukraine, the Office of the Prosecutor General, the National Police of Ukraine, the Authorized Advisor to the President of Ukraine on Children's Rights and Child Rehabilitation, the Human Rights Commissioner of the Verkhovna Rada of Ukraine, and other entities. We believe that in the difficult conditions of wartime, the International Committee of the Red Cross should maximize effort; indeed, the organization has the mandate to search for children and return them to Ukraine.

As systematic gross violations of the rights of children by Russian servicemen in Ukraine go on, the Council conclusions on the European Union (EU) Strategy on the Rights of the Child (Council of the European Union, 2022) serve as the guideline for all European states including Ukraine. This is in line with Ukraine's strategic agenda to join the (EU) and its newly obtained status of a candidate for becoming an EU state. In this document, the Council of the EU recognized the need to strengthen the protection of children's rights in crisis or emergency situations, in particular during armed conflicts, because in such conditions children are the least protected category of the population. In order to effectively protect the rights of children, the Council of the EU recommends that the member states should: 1. Develop a comprehensive and adequate policy, as well as measures for its implementation in order to ensure children's

rights. 2. Increase the efforts of member states to prevent all forms of violence and to counter it. 3. Develop and support the proper implementation of EU legal guarantees to protect the basic rights of children in crisis or emergency situations without discrimination, listen to the opinion of children and take it into account, considering age and maturity, while having the best interests of the child in mind. 4. Strengthen the justice system of member states so that it meets the rights of all children. 5. Increase children's opportunities to be responsible and sustainable members of digital society. 6. Actively contribute to the work of the EU Network, which was created by the European Commission to promote dialogue and mutual learning between member states.

Therefore, the authorities of Ukraine faced a strategic task of the development of a comprehensive policy in the field of children's rights. The issue is really urgent, since the country still lacks a National Strategy for Ensuring Children's Rights and an Action Plan for its implementation. Back in the fall of 2021, the Ministry of Social Policy of Ukraine began work on its development, but, obviously, the full-scale invasion of the Russian Federation slowed down this process. Despite the war, the protection of children's rights cannot be put on hold, therefore, this issue must be solved systematically, by adopting a comprehensive negotiated document, because fragmented changes do not provide results. It is necessary not only to adopt a document of strategic importance, but also to develop a plan for its implementation, supported by the necessary human, financial, and technical resources. Due to the importance of the law in the Ukrainian legal system, we believe that in the future it is necessary to develop and adopt a comprehensive Law of Ukraine "On the Rights of the Child", which would fully include the provisions of the Convention and its Optional Protocols (Postup Human Rights Center, 2011).

The implementation of a comprehensive policy on the protection of children's rights is possible with the strengthening of cooperation and coordination of actions between all relevant bodies and interested parties. In Ukraine, there is a lack of a central executive body that would perform a consolidating function in ensuring and protecting children's rights. Despite the adoption by the Cabinet of Ministers of Ukraine of a resolution on the establishment of the State Service for Children (Resolution No. 23, 2022), this body is not yet operational. Currently, Ukraine has an extensive system of state authorities that take care of the protection of

children's rights, but such a structure does not necessarily encourage efficacy. We believe that the activities of the State Service for Children's Affairs will provide an opportunity to create an effective system of executive authorities whose competence will include the issue of protecting children's rights.

Public authorities should continue to reform the justice system for children. We share the opinion that the juvenile justice system in the aspect of human rights best serves the goals of juvenile rehabilitation and the interests of society (Safran, 2012). A condition for creating a favorable environment for the protection of children's rights is the involvement of not only public authorities, but also non-governmental organizations, mediators, and volunteers in implementing the reform. It is through joint efforts through the implementation of a set of legal, social, medical, educational, and other measures that an effective mechanism for the protection of children's rights can be provided.

In Ukraine, it is necessary to implement a culture of children's rights, to teach the younger generation to exercise and protect their rights. In order to do this, the state policy in the field of children's rights should include measures to increase their awareness and education. Above all, knowledge about children's rights should be possessed by the children themselves, as well as professionals who work with them, politicians, civil servants, judges, prosecutors, other legal practitioners, national human rights institutions and civil society organizations, etc. Therefore, institutional education should include educational programs on human rights in general and children's rights in particular. The war showed that it is necessary to teach children, parents, and teachers the skills to combat stress and build resilience in crises. We believe that it is expedient to create a research institution in Ukraine focusing on the protection of children's rights and to ensure the training of specialists for work in this field.

Conclusions

The large-scale armed attack by Russian troops on the territory of Ukraine unveiled the vulnerability of children's rights and the need to strengthen their protection both at the state level and internationally. In these difficult life circumstances, with which children cannot cope on their own, the duty to ensure their rights is primarily entrusted to the State. However, the effectiveness of the protection of children's rights during an armed conflict also depends on the

fulfillment of international obligations by the adversary state that grossly and systematically violates them.

To protect the rights of children, Ukraine must solve a complex of current and long-term tasks. The current tasks are a set of immediate means and ways to protect children affected by the armed conflict. These include conducting an organized safe evacuation of children from the territories of hostilities, returning children from abroad and internally displaced persons to the de-occupied territories of Ukraine, returning deported children to Ukraine, and taking measures to ensure the basic needs of children in the times of war. Long-term tasks regarding the protection of children's rights are designed for a long-term perspective, in particular development of a comprehensive policy in the field of protection of children's rights, adoption of a comprehensive law on children's rights, creation of a body that would perform a consolidating function regarding the protection of children's rights, reforming the justice system for children, deinstitutionalization in the field of children's rights, and others.

Bibliographic references

- Children of War. (2022). Unified state information portal. Recovered from <https://childrenofwar.gov.ua/>
- Council of the European Union (2022). Council conclusions on the EU Strategy on the Rights of the Child Recovered from <https://data.consilium.europa.eu/doc/document/ST-10024-2022-INIT/en/pdf>
- Frantuz, A.Y., & Balykin, I.I. (2018). Problems of protection of children's rights in the conditions of the anti-terrorist operation. *Legal Bulletin of "KROK" University*, 30, 19-28. (In Ukrainian)
- Kryvyoviyaz, O. V. (2017). Protection of children's rights in conditions of armed conflict. *Legal Bulletin of "KROK" University*, 27, 80-85.
- Lubinet, D. V. (2022). A "children's chamber" was discovered in a torture chamber in Kherson. *Radio Liberty*. Recovered from <https://www.radiosvoboda.org/a/news-herson-dytyacha-kamera-v-kativni-ombudsmen/32176417.html>
- Melnichuk, O. F. (2022). Peculiarities of protection of children's rights in the conditions of hostilities and armed conflicts. *Almanac of Law*, 13, 130-136 Recovered from http://almanahprava.org.ua/files/almanac-of-law.-volume-13-_2022_.pdf
- Opolska, N. M. (2015). The rights of children affected by the armed conflict in Ukraine. *Scientific Journal of the National Pedagogical University of M. P. Drahomanov. Series 18: Economy and law*, 27, 278-283. (In Ukrainian)
- Perezhniak, B., Melnychuk, O., Matiiko, M., Kotyk, H., & Mokhd, N. (2021). Human rights in the context of gender and juvenile policy in different legal systems. *Amazonia Investiga*, 10(38), 138-147. <https://doi.org/10.34069/AI/2021.38.02.13>
- Postup Human Rights Center (2011). Final recommendations of the UN Committee on the Rights of the Child Recovered from <https://postup.lg.ua/zaklyuchni-rekomendaciyi-komitetu-z-prav-ditini-oon>
- Resolution 1261. Adopted by the Security Council at its 4037th meeting, August 25, 1999. Recovered from https://zakon.rada.gov.ua/laws/show/995_53_0#Text
- Resolution No. 2266-IX. On the report of the Temporary Investigative Commission of the Verkhovna Rada of Ukraine on the investigation of cases and causes of violations of children's rights during the implementation of the decentralization of powers in matters of childhood protection, reforming the system of institutional care and education, implementation of the child's right to family upbringing and adoption, development (modernization) of social services. Verkhovna Rada of Ukraine dated May 22, 2022. Recovered from <https://zakon.rada.gov.ua/laws/show/2266-20#Text>
- Resolution No. 23. On the formation of the State Service of Ukraine for Children's Affairs of the Cabinet of Ministers of Ukraine dated January 19, 2022 Recovered from <https://zakon.rada.gov.ua/laws/show/23-2022-%D0%BF#Text>
- Safran, B.J. (2012). Juvenile justice policy from the perspective of international human rights. *Cardozo L. Rev. de novo*, 304. Recovered from https://www.researchgate.net/publication/308778916_Juvenile_Justice_Policy_from_the_Perspective_of_International_Human_Rights
- Shcherban, S., Rozvadovska, O., Chernousov, A., Levkina, A., & Sheyko, R. (2022). Children and war in Ukraine August 24-September 24, 2022. Recovered from https://khisr.kharkov.ua/wp-content/uploads/2022/11/Ukr-ost-versiia_RED_merged.pdf

- Skrypnyuk, O. V., & Tokarchuk, L. M. (2020). Protection of the rights and interests of children in the conditions of war in the east of Ukraine and in the annexed Autonomous Republic of Crimea: new challenges for Ukraine. *Journal "Science Rise: Juridical Science"*, 2(12), 4-11, (In Ukrainian)
- SOS Children's Villages in Ukraine (2022). Participation in the report in the UN Committee on the Rights of the Child on the implementation of the Convention on the Rights of the Child. Recovered from <https://sos-ukraine.org/novyny/uchast-v-zviti-v-komiteti-oon-pro-realizatsiyu-konventsiyi-pro-prava-dytyny/>
- Stepanenko, N.V. (2021). Protection and provision of children's rights in the conditions of military operations in Donbas: theoretical and legal analysis. (Dissertation to obtain the scientific degree of Doctor of Philosophy). Kyiv. 264 p. (In Ukrainian)
- The Government Courier (2022). Information on ensuring children's rights in wartime. Recovered from <https://ukurier.gov.ua/uk/articles/informaciy-a-shodo-zabezpechennya-prav-ditej-v-umov/>
- United Nations (2022). Report on the human rights situation in Ukraine. Recovered from <https://www.ohchr.org/en/documents/country-reports/report-human-rights-situation-ukraine-1-february-31-july-2022>
- Zavorotko, I., Korynych, A., & Korotky, A. (2022). Children under the Russian crosshairs. *Mirror of the week*. Recovered from <https://zn.ua/ukr/LAW/diti-pid-rosijskim-pritsilom.html>