



Supreme
Court

Child Abduction and Cross-Border Child Protection in Times of russian War in Ukraine: Challenges and Comments on the Ukrainian Case-Law

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CHILD ABDUCTION CASES IN THE UKRAINIAN CASE-LAW AFTER FEBRUARY 24, 2022

Cases concerning the return of a child who was wrongfully removed or retained in Ukraine. These cases are initiated by one of the parents who is a foreign citizen. The specific feature of these cases is that war in Ukraine is not mentioned in the arguments of either party to the cases.

Cases involving Ukrainian citizens as case parties. One of the parents (usually the father) applies with the request for returning the child to Ukraine.

Cases involving Ukrainian citizens as case parties. One of the parents (usually the mother) applies with the request to return the child from Ukraine to another country, that, in the opinion of the plaintiff, has become the child's new habitual residence during the war.

Application of Article 13(1)(b) of the 1980 Hague Convention in cases involving the return of Ukrainian children

The main legal issue: Can military operations on the territory of Ukraine be sufficient ground for the application of Article 13 (1)(b) of the 1980 Hague Convention, which makes it impossible to return the child to Ukraine?

Case on the return of two Ukrainian children from Canada to Ukraine on the claim of Ukrainian father to Ukrainian mother. Resolution of the Supreme Court of Ukraine, September 25, 2023, case No. 522/10087/23:

Grounds for refusing to return a child must be assessed in conjunction with the best interests of the child, both now and in the future → a) an assessment of the child's opinion, if he or she has reached the appropriate age and level of maturity, b) an assessment of the family situation as a whole, and a balanced and reasonable weighing of the interests of the parties to the case.

Application of Article 13(1)(b) of the 1980 Hague Convention in cases involving the return of Ukrainian children

The main legal issue: How does the security situation in Ukraine (city of Rivne) influence on the resolution of the case?

Case on the claim of Ukrainian mother to Ukrainian father on the return of a minor Ukrainian child from Ukraine to the Kingdom of Denmark. Resolution of the Supreme Court of Ukraine, June 24, 2025, case No. 759/24278/23:

At the child's place of permanent residence in Ukraine: city of Rivne, there is no fighting, and therefore the conclusion of the court of the first instance about a threatening security situation is critically assessed by the Court of Appeal and the Supreme Court. – The claim is dismissed.

Grounds for refusal to return abducted children. The objection of a child to being return: Article 13(2) of the 1980 Hague Convention

The way in which the court determined the opinion of children:

Case on the return of two Ukrainian children from Canada to Ukraine on the claim of Ukrainian father to Ukrainian mother - the report of psychologist specializing in the study of children's opinions and the characteristics of their family and social environment;

Case on the claim of Ukrainian mother to Ukrainian father on the return of a minor Ukrainian child from Ukraine to the Kingdom of Denmark - the child was questioned in the court of the first instance, at the court hearing, with the participation of a representative of the guardianship and custody authority.

Case of Satanovska and Rodgers v. Ukraine. (*Application no. [12354/19](#)*). Judgment ECHR, January 28, 2021:

The Supreme Court did not address at all the question of whether the psychological reports and the oral evidence given by the psychologist were relevant and reliable, or give any reasons for not taking them into account

Is it possible to take protective measures (to secure the claim) in child abduction cases?

I. Case on the claim of the father to the mother on the return of the child to his place of habitual residence (Canada). Resolution of the Supreme Court of Ukraine, February 14, 2022, case No. 754/7569/21:

Plaintiffs in cases on the return of a child to a foreign country may submit to the court a motion to take measures to secure the claim. In particular, such security measures may include banning a child from crossing the state border of Ukraine in any form of accompaniment.

II. The father (a US citizen) filed a motion for provisional measures prior to filing a lawsuit. Resolution of the Supreme Court of Ukraine, January 31, 2024, case No. 711/4569/23:

Given that military operations are still going on in Ukraine, the panel of judges doesn't rule out the possibility of certain situations that could put the kid's life and health at risk, making it necessary to take the kid out of Ukraine. Therefore, during the period of martial law in Ukraine, it is advisable to restrict the right of a minor child to leave Ukraine without the proper consent of the father, which leaves open the possibility of taking the child out of Ukraine to a safe place in the event of a situation that threatens the child's life and health.

MAINSTREAMS OF THE SUPREME COURT CASE-LAW ON THE ISSUES OF JURISDICTION IN CASES CONCERNING UKRAINIAN CHILDREN UNDER TEMPORARY PROTECTION IN EUROPE

The main legal issue: Ukrainian child has left Ukraine and got a temporary protection as a result of russian war in Ukraine – how does this fact affect the determination of jurisdiction of Ukrainian courts under the 1996 Hague Convention?

- ✓ **General rule:** *National courts of Ukraine keep its jurisdiction on disputes concerning the child's place of residence or any other family law disputes related to the rights of the child who has left Ukraine and moved abroad because of the russian war against Ukraine*
- ✓ **Acquisition of new habitual residence:** *If Ukrainian court has established that Ukrainian child has already acquired a new habitual residence abroad, the court has to close the proceedings by its ruling*

The main legal issue: Ukrainian child has left Ukraine and got a temporary protection as a result of russian war in Ukraine – how does this fact affect the determination of jurisdiction of Ukrainian courts under the 1996 Hague Convention?

- ✓ **The rule of perpetuatio fori:** *given that the child's permanent place of residence at the time of the opening of the proceedings is Ukraine, the relevant Ukrainian court has jurisdiction to resolve the dispute over the child's place of residence.*
- ✓ **1980 HC + 1996 HC:** *If there is a court decision on the return of a child in accordance with the 1980 Hague Convention, which has entered into legal force but remains unenforced, determination of the child's place of residence does not fall within the jurisdiction of the national courts of Ukraine; and if the above circumstances are established during the consideration of a civil case, the proceedings in the case shall be closed on the basis of paragraph 1 of part one of Article 255 of the Code of Civil Procedure of Ukraine.*

BRIEF CONCLUSIONS:

- Article 13(1)(b) of the 1980 Hague Convention: in some cases it does indeed serve as a safeguard against the return of children to Ukraine as a country at war, in other cases it does not stop the court from deciding to return the child there
- The mere fact that Ukrainian child has left Ukraine to get a temporary protection in the EU states as a result of the russian war in Ukraine cannot be qualified as an automatically change of his/her habitual place of residence in Ukraine
- The problem of lis (alibi) pendens → The role of IHNJ



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Thank you for your attention and supporting Ukraine!