

## Case Note

# ADOPTION DURING THE WAR IN UKRAINE: HOW NOT TO LOSE A CHILD

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**Summary:** 1. Introduction: children amid war in Ukraine. – 2. Information on children who suffered as a result of full-scale military operations. – 3. Legal mechanisms for ensuring the rights of children who were left without parental care during the war in Ukraine – 3.1. *Reunification of adoptive parents with an adopted child.* – 3.2. *Transferring processes from placement of children to a digital format.* – 3.3. *Conditions for adoption and registration of children during martial law.* – 3.4. *Registration of candidates for adopters.* – 3.5. *Entities that can be adopters.* – 3.6. *Institute of Temporary Placement of Children in Ukraine.* – 3.7. *Institute of guardianship and care during martial law.* – 3.8. *Procedure for trial of adoption cases.* – 3.9. *National control mechanisms for displaced children.* – 3.10. *Foreign experience regarding the problem of “children of war”.* – 4. Conclusions.

**Keywords:** martial law in Ukraine; adoption; temporary placement; family forms of upbringing; children left without parental care; orphans; children who are deprived of parental care.

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## ABSTRACT

**Background:** During martial law, the protection of children's rights is of the utmost importance. One key aspect is the realisation of the right to raise a child in the family, and one of the ways this can be exercised is through adoption. However, martial law adoption has many nuances and pitfalls that require careful research.

**Methods:** In this article, the author carried out a comprehensive study of both the changes in the legislation of Ukraine in terms of adoption in the context of martial law and the alternatives that can be applied to adoption during wartime. In particular, the following issues were considered: reunification of adoptive parents with an adopted child evacuated outside of Ukraine; transfer of child placement processes to a digital format; adoption conditions and registration of children during martial law; peculiarities of registration of candidates for adoptive parents; circle of subjects who can be adoptive parents during martial law; the functioning of the institute of temporary placement of children in Ukraine and the institute of guardianship and care during martial law; peculiarities of the procedure for trial of adoption cases; and existing national control mechanisms for displaced children. The advantages of temporary placement over adoption during martial law and current practice in this regard are also analysed. In addition, the article provides statistical information about children who suffered as a result of a full-scale war, information about family forms of upbringing, information about the number of court proceedings in the category of adoption cases, as well as foreign experience in overcoming the problem of "children of war".

**Results and Conclusions:** The result of this study is the determination of ways to solve the fate of children who were left without parents as a result of the armed aggression of the Russian Federation, as well as clarification of the mechanisms of their functioning in practice.

*The best way to make children good  
is to make them happy.*  
Oscar Wilde

## 1 INTRODUCTION: CHILDREN AMID WAR IN UKRAINE

During the first month after the beginning of the full-scale military invasion of the Russian Federation in Ukraine, adoptions in some regions of Ukraine were suspended and impossible to carry out. This applied both to processes started before the war and to new applications for adoption. Such a pause was not related to changes in legislation, but rather, it was caused by objective realities.

In April 2022, the Verkhovna Rada of Ukraine published a notice<sup>1</sup> that during the period of martial law, the adoption procedure did not change and adoption takes place on general grounds, taking into account the norms of national legislation. That is, there was no question of suspending the adoption procedure. However, the legislation regulating adoption activities needed to be adapted to the new realities caused by the state of war in (a) procedural aspects related to the territorial stay of children who can be adopted, (b) procedures related to candidates for adopters and persons who wish to become them, (c) the functioning of services in affairs of children, and (d) the decision of the fate of children left without parental

1 *Usynovlennya v Ukraini vidbuvayetsya na zagalnyh pidstavah, z urahuvannyam norm nacionalnogo zakonodavstva* 'Adoption in Ukraine takes place on general grounds, taking into account the norms of national legislation' (2022) <<https://www.rada.gov.ua/news/razom/221242.html>> accessed 15 October 2022.

care. Corresponding changes were gradually introduced into national legislation throughout the period of full-scale war, which is currently ongoing.

During the full-scale war, according to the National Information Bureau, more than 11,000 children were illegally deported to the Russian Federation or its occupied territories. An even larger figure of more than 550,000 illegally displaced children was announced by the occupying country itself. Such terrible numbers once again sharpen our attention to the urgency of the problem of protecting children's rights during military aggression, in particular, on such aspects as adoption, temporary placement of children, guardianship and care, and control of children's movements. As of today, the adoption procedure is carried out taking into account the introduced changes, which increases the relevance of scientific research on the problems of adoption in the conditions of military aggression of the Russian Federation.

The topic of the research is relevant and has scientific value in view of the lack of other comprehensive analyses of the outlined problem and the extreme importance of this issue within the framework of modern realities.

The goal is a thorough analysis of changes in legislation related to adoption activities under martial law in Ukraine, the functioning of institutions for temporary placement and guardianship during martial law, control mechanisms for displaced children, and research of current statistical data on children affected by full-scale armed aggression of the Russian Federation.

To achieve this goal, the following methodology was used: the current legislation was analysed in the areas that regulate the adoption procedure, temporary placement, establishment of family forms of upbringing, and guardianship and care. Further analysis was carried out of official statistical information provided by state authorities. The judicial practice of the national courts of Ukraine is summarised, in particular, in such categories as cases of adoption by citizens of Ukraine living in the territory of Ukraine, adoption by citizens of Ukraine living outside the territory of Ukraine, and adoption by foreigners.

## 2 INFORMATION ON CHILDREN WHO SUFFERED AS A RESULT OF FULL-SCALE MILITARY OPERATIONS

Since the beginning of Russia's war against Ukraine on February 24, 2022, one of the population groups most affected by Russian aggression is children. Thousands of children were forced to leave their homes, to be evacuated, thousands were illegally separated from their parents, hundreds of children were orphaned, died or went missing.

According to the Ministry of Social Policy, at the beginning of hostilities, 105,459 children studied and/or stayed in 727 institutions with round-the-clock care. During February - July 2022, 6,582 children were evacuated, of which 2,077 were relocated (evacuated) within Ukraine and 4,505 outside Ukraine.

During this period, some of the children who were evacuated were returned to Ukraine either individually or as part of an institution. Some of the children were returned to their parents or placed in the families of Ukrainian citizens through institutions of adoption, guardianship and care, foster families, and family-type children's homes.

Currently, 6,415 children are being evacuated, of which 1,953 children are within Ukraine, and 4,462 abroad. Among the children currently being evacuated, 3,521 children have the status of orphans - children deprived of parental care. Of them, 952 children were evacuated within Ukraine, 2,569 children outside Ukraine.

From August 1, 2022, the state child tracing portal “Children of War” (<https://childrenofwar.gov.ua>) became operational in Ukraine - an information platform on which information about children who suffered as a result of military operations during the full-scale aggression of the Russian Federation against Ukraine is updated daily (disappeared, wounded, deported)<sup>2</sup>. On this portal, you can also view the list and photos of children who have disappeared.

As of October 15, 2022, according to the “Children of War” state portal:

- ◆ 430 children died and 823 children were injured (according to the Office of the General Prosecutor)
- ◆ 249 children went missing (according to the National Police of Ukraine);
- ◆ found - 7460 children
- ◆ illegally deported to the Russian Federation or to the temporarily occupied territories of Ukraine:
  - 9,755 (according to the National Information Bureau). According to the Children’s Commissioner, published in RFE/RL’s sources, “these are children who, according to the statements of their parents, acquaintances and relatives, were recognized as forcibly deported or displaced.”
  - more than 550,000 children according to data from open sources published by the Russian Federation;
- ◆ 96 children were returned to the territory of Ukraine from the territory of the Russian Federation and occupied territories (according to the National Information Bureau of Ukraine)<sup>3</sup>.

It should be noted that these data are not final, as work is ongoing to establish them in places of active hostilities and temporarily occupied and liberated territories.

As of August 12, 2022, 3,182 children have remained without parental care since February 24, 2022. For 541 children, the loss of parental care is directly related to the war. This was announced by the Deputy Director of the Department for Protection of Children’s Rights and Ensuring Equality Standards of the National Social Service, Volodymyr Vovk, on the broadcast of the Yedyni Novyni telethon<sup>4</sup>. Of these, there are 106 orphans whose parents have died; 206 orphans whose parents have died but for whom there is no documentary evidence; and 109 children who have the status of children deprived of parental care, who can be placed in family forms, and if parents are found, will be reunited with them.

According to the Deputy Minister of Social Policy Ulyana Tokareva, since the beginning of this year, as of September 30, 2022, Ukrainians have adopted 458 orphans (350 of them - during the full-scale war), and foreigners 94 orphans<sup>5</sup>.

2 *Informatsiya shchodo zabezpechennya prav ditey v umovah viyny* ‘Information on ensuring the rights of children in wartime’ (2022) Uryadovyy Kuryer. <<https://ukurier.gov.ua/uk/articles/informatsiya-shodo-zabezpechennya-prav-ditey-v-umov/#:~:text=Станом%20на%2001.09.2022%20вже,виховуються%20в%20сімейних%20формах%20виховання>> accessed 15 October 2022.

3 *Dity viyny* ‘Children of War’ <<https://childrenofwar.gov.ua/>> accessed 15 October 2022.

4 *Vid pochatku vtorgnennya rf ponad 3000 zalyshylycy bez batkivskogo pikluvannta* ‘Since the beginning of the invasion of the Russian Federation, more than 3,000 children have been left without parental care’ (2022) Zaxid.Media <<https://news.sebastopol.ua/post2927630>> accessed 15 October 2022.

5 Sokolova, A., *Yak viyna vplyvaye na pryhystok ditey-syrit v Ukrayini*. ‘How the war affects the orphanage in Ukraine’ Deutsche Welle (2022) <<https://www.dw.com/uk/sistema-bula-paralizovana-ak-vijna-vplivae-na-prihystok-ditejsyrit-v-ukraini/a-63553401>> accessed 28 October 2022.

Last year, as of September 30, 709 children were adopted by Ukrainians, 203 by foreigners<sup>6</sup>. Statistics regarding prospective adopters are also known — as of August 31, 2022, there are 1,252 persons on the register of prospective adopters, of which 214 people were sidelined already during martial law.

### 3 LEGAL MECHANISMS FOR ENSURING THE RIGHTS OF CHILDREN WHO WERE LEFT WITHOUT PARENTAL CARE DURING THE WAR IN UKRAINE

The realities caused by Russia's full-scale invasion of Ukraine led to the need for legislative adaptation of certain points related to the implementation of adoption activities. It should be noted right away that during martial law, it is impossible to make changes to the adoption procedure that either simplify or complicate it.

This is due to the need to prevent abuse, and restrictions and violations of children's rights and interests that may be caused by such changes, in conditions where it is often difficult to find documents and establish the real situation with the child's parents. In particular, it is about the risks of fraud, criminal motives for adoption, hidden trafficking of children, additional traumatising of the child, etc.

However, some changes are still permissible. They relate to the settlement of issues of registration of candidates for adoptive parents, children who can be adopted, activities of guardianship and guardianship bodies, etc., which arose in connection with the territorial movements of such subjects. The first procedural changes since the introduction of martial law were put into effect at the end of May 2022 and were gradually implemented until the beginning of September.

#### 3.1 Reunification of adoptive parents with an adopted child

Amendments to the adoption procedure were initiated by the amendments to the Procedure for conducting adoption activities (hereinafter referred to as the Procedure), introduced by Resolution No. 618 of the Cabinet of Ministers of Ukraine dated May 24, 2022<sup>7</sup>.

The resolution established a list of documents and the procedure for taking away an adopted child during the introduction of a state of emergency or martial law on the territory of Ukraine if the child is temporarily moved (evacuated) outside of Ukraine. These changes were designed to address the problem of reunification of adoptive parents and a child who had already been adopted before the start of a full-scale war but had not yet been transferred to the adopters, having been evacuated abroad before such transfer.

In accordance with the changes made, in the event that an adopted child is temporarily moved (evacuated) outside of Ukraine during the introduction of a state of emergency or martial law on the territory of Ukraine, the adopters are obliged to pick up the child in the presence of an official of the consular institution of Ukraine after presenting the package of documents specified by the Resolution. Upon the fact of the transfer of an adopted child to the adopters by an official of the consular institution of Ukraine in the presence of the

6 Sokolova, A., *Yak viyna vplyvaye na pryhystok ditey-syrit v Ukrayini*. 'How the war affects the orphanage in Ukraine' Deutsche Welle (2022) <<https://www.dw.com/uk/sistema-bula-paralizovana-ak-vijna-vplyvae-na-prihistok-ditejsyrit-v-ukraini/a-63553401>> accessed 28 October 2022.

7 Postanova Kabinetu Ministriv Ukrainy pro vnesennya zmin do porjadku provadzhennya diyalnosti z usynovlennya ta zdiysnennya naglyadu za dotrymannyam prav usynovlenyh ditey Resolution of the Cabinet of Ministers of Ukraine No. 618 of 24.05.2022 'On Amendments to the Procedure for Implementation of Adoption Activities and Supervision of Observance of the Rights of Adopted Children' <<https://zakon.rada.gov.ua/laws/show/618-2022-п#Text>> accessed 15 October 2022.

adopters, an act of transfer of the adopted child is drawn up, which includes the fact of acceptance of the child by the adopters, the person who took care of the child before its transfer to the adopters, an official of the consular institution of Ukraine in whose presence the transfer of the child was carried out, the identity of the adopters, their signatures, details of the court decision on the adoption of the child, and the date and place of the transfer of the child to the adopters.

### 3.2 Transferring processes from placement of children to a digital format

Further procedural changes were made on May 31, 2022 by Cabinet Resolution No. 636 "On Amendments to Certain Resolutions of the Cabinet of Ministers of Ukraine Regarding Digitalization of the Processes of Placement of Children in Family Forms of Education"<sup>8</sup>.

This Resolution refers to the finalisation of a single electronic data bank on orphans and children deprived of parental care, and the families of potential adopters, guardians, custodians, adoptive parents, and foster parents, which is maintained in the Unified Information and Analytical System "Children", as well as the Unified State Web Portal of Electronic Services and the processes of its information interaction with relevant databases and state registers.

The relevant innovations were aimed at facilitating the process of submitting and receiving the necessary documents by future adopters, speeding up the verification of submitted documents by competent authorities and significantly simplifying the entire procedure.

In particular, the Resolution refers to:

- the introduction and systematic updating of information about the child in the Unified data bank: state of his/her health, changes in appearance, etc., so that future adopters can track information about the child
- the opportunity for citizens of Ukraine to receive online consultation regarding the adoption procedure from the children's service
- the opportunity for citizens of Ukraine to submit an application for registration of candidates for adoptive parents with other mandatory documents not only by place of residence in paper form, but also in electronic form

It follows from the explanations of the Ministry of Social Policy<sup>9</sup> that documents will be submitted in electronic form through a personal account on the Unified State Web Portal of Electronic Services. At the same time, some of the documents will be generated by the system itself from various databases, state registers, and information systems. Also, documents that future adopters will receive during the adoption procedure (for example, a certificate of completion of a training course on raising orphans and children deprived of parental care) will be automatically displayed in their personal account. As such, it is not necessary to receive and submit such documents separately. This will allow the bypassing of some of the bureaucratic processes associated with obtaining and submitting paper documents, which

8 Postanova Kabinetu Ministriv Ukrainy pro vnesennya zmin do deyakyh postanov Kabinetu Ministriv Ukrainy shchodo cyfrovizatsiyi procesiv vlashtuvannya ditey u simeyni formy vyhovannya Resolution of the Cabinet of Ministers of Ukraine No. 636 of 31.05.2022 'On Amendments to Certain Resolutions of the Cabinet of Ministers of Ukraine Regarding Digitalization of the Processes of Placement of Children in Family Forms of Education' <<https://zakon.rada.gov.ua/laws/show/636-2022-п#Text>> accessed 15 October 2022.

9 *Usynovlennya v Ukraini: shcho zminylosya za voyennogo stanu* 'Adoption in Ukraine: what changed during martial law' (2022) <<https://legalaid.gov.ua/publikatsiyi/usynovlennya-v-ukrayini-shho-zminylosya-za-voyennogo-stanu/>> accessed 15 October 2022.

will speed up and facilitate the adoption process without changes in the adoption procedure itself.

Currently, citizens of Ukraine already have the opportunity to apply for consultation on the adoption of a child on the Diya portal in the “Family” section<sup>10</sup>. From September 9, 2022, Diya also provided the opportunity to apply for the status of a candidate for adoption, as reported by the Ministry of Digital Transformation.

### 3.3 Conditions for adoption and registration of children during martial law

The latest changes to the Procedure were approved by Resolution No. 907 of the Cabinet of Ministers of Ukraine dated August 16, 2022<sup>11</sup>. In particular, the Procedure has been supplemented with the section “Peculiarities of conducting adoption activities during martial law”.

In accordance with the latest innovations of this Section, the registration of children who can be adopted, the registration of citizens of Ukraine who permanently reside in the territory of Ukraine and wish to adopt a child, and the implementation of adoption activities are carried out according to the standard procedure, and also subject to compliance *with two important conditions*:

- 1) if, during martial law, the children’s service of the district, district in the city of Kyiv state (military) administration, the executive body of the city, district in the city (if formed) council exercises its powers, and
- 2) if the life circumstances of the parents of the children who can be adopted or their other relatives have been established.

As we can see, the Cabinet of Ministers emphasised at the regulatory level that there is no question of changing the procedure for conducting adoption activities during martial law. Only additional procedures for *registration of children and potential adopters related to the territory of their stay* have been established. In particular, one can see the distinction in the features of such accounting for children and candidates for adoption depending on their stay within or outside of Ukraine.

Thus, children who live (stay) in the territory temporarily occupied by the Russian Federation, are registered for adoption *after the resumption of activities* of local executive authorities and local self-government in the respective territories, if there are grounds for their registration.

In the event that such children are already registered for adoption, their adoption activities are carried out after the resumption of work of local executive bodies and local self-government in the respective territories.

A child who is on local registration can be placed on centralised registration without being on regional registration, if the service for children’s affairs of the regional or Kyiv city state (military) administration cannot exercise its powers in connection with the conduct of military (combat) operations or being under temporary occupation or encirclement (blockade).

10 *Usynovlennya v Ukrayini: shcho zminylosya za voyennogo stanu* ‘Adoption in Ukraine: what changed during martial law’ (2022) <<https://legalaid.gov.ua/publikatsiyi/usynovlennya-v-ukrayini-shho-zminylosya-za-voyennogo-stanu/>> accessed 15 October 2022.

11 *Postanova Kabinetu Ministriv Ukrainy pro vnesennya zmin do porjadku provadzhenya diyalnosti z usynovlennya ta zdiysnennya naglyadu za dotrymannyam prav usynovlenyh ditey* Resolution of the Cabinet of Ministers of Ukraine No. 907 of 16.08.2022 ‘On Amendments to the Procedure for Implementation of Adoption Activities and Supervision of Observance of the Rights of Adopted Children’ <<https://zakon.rada.gov.ua/laws/show/907-2022-n#Text>> accessed 15 October 2022.

During martial law, children who temporarily moved (evacuated) to another administrative-territorial unit of Ukraine and were not registered locally, but acquired the right to be adopted, are registered locally by the children's affairs service at the place of their temporary relocation (evacuation). We can see, with these innovations, the government emphasised the impossibility of carrying out adoption activities in occupied territories and territories where hostilities are taking place.

Children who were temporarily relocated (evacuated) outside of Ukraine and acquired the right to be adopted during their stay abroad are registered locally after their return to Ukraine.

An important aspect of limiting the adoption of children who are temporarily evacuated abroad is that such children, as well as children of Ukrainian citizens found on the territory of other states who are subject to return to Ukraine, are not subject to the effect of this Order in the part that regulates adoption of a child who is a citizen of Ukraine but lives abroad. Adoption of such children is carried out after their return to Ukraine. Such a restriction is intended to protect children staying abroad from violation of their rights and interests, as well as abuse of the situation in which such children find themselves.

### 3.4 Registration of candidates for adopters

Another practical point in adoption activities is the registration of candidates for adopters. This process also underwent certain changes due to the introduction of martial law on the territory of Ukraine. In particular, during the state of war, the records of citizens of Ukraine who permanently reside on its territory and wish to adopt a child are kept by the children's services of district state (military) administrations, and executive bodies of city councils at the place of residence of such citizens.

If such citizens moved to another part of Ukraine for temporary residence, they can contact the children's affairs service at the place of temporary relocation or evacuation to get acquainted with information about children who are on the regional register. For this, it is necessary to provide the necessary package of documents and a conclusion about the possibility of being adoptive parents. This can be done in order of priority, taking into account the date of registration of candidates for adoptive parents by place of permanent residence.

In the case of temporary relocation, citizens of Ukraine who have not previously been on the register of candidates may be registered at the place of temporary relocation or evacuation. For this, one of the key documents that must be submitted, in addition to the standard package of documents, is a certificate confirming the status of an internally displaced person who wishes to become a candidate for adoption. If the housing of the candidates for adoption, where they lived before being registered, is destroyed, they must provide documents confirming the possibility of living together with the adopted child in another residential premises that belongs to them by right of ownership or use. Such a provision is extremely important, as it eliminates possible discrimination of prospective adoptive parents and their deprivation of the opportunity to realise their sincere desire to adopt a child due to the lack of their own housing, which was destroyed as a result of the military aggression of the Russian Federation.

Citizens of Ukraine who temporarily moved or evacuated outside of Ukraine during martial law are registered as adoptive parents after they return to their permanent place of residence in Ukraine. Citizens of Ukraine who live or are in the temporarily occupied territories are registered as adoptive parents after the authorities of Ukraine resume work in such territories.

As a consequence of military action in part of the territory of Ukraine, some state bodies have temporarily stopped their activities. Due to this, it was necessary to introduce some

compromise *solutions regarding the package of documents* for persons wishing to adopt a child to acquire the status of adopter candidates. For example, during martial law, citizens of Ukraine who wish to adopt a child can be registered as potential adopters without completing a training course on raising orphans and children deprived of parental care if candidate training is suspended during martial law in the region of the adopter. At the same time, such prospective adoptive parents are required to undergo an appropriate training course after the resumption of such training, which they are informed about by the children's affairs service at the place of registration.

During martial law, the validity period of the documents of candidates for adoption and the opinion on the possibility of being adopters is 18 months from the date of issue. If, during martial law, the term of validity of the conclusion on the possibility of being adoptive parents has expired, candidates for adoption who are in the territory of Ukraine can apply to the children's affairs service at the place of their registration or to the affairs service at the place of their relocation (evacuation) with a statement about continuation of the conclusion. In the event that the place of registration of adopter candidates is a temporarily occupied territory, the conclusion on the possibility of being an adopter is not continued. In this case, prospective adoptive parents have the right to apply for inclusion in the register of prospective adoptive parents to the children's affairs service at the place of their relocation (evacuation).

### 3.5 Entities that can be adopters

In our opinion, one of the most important restrictions on adoption activities during martial law is the *limitation of the range of entities that can adopt children*. During martial law and for three months after its termination or cancellation, the activity of adopting children by citizens of Ukraine who temporarily or permanently reside outside Ukraine, and by foreigners, is not carried out. This applies, among other things, to registering such persons as potential adopters, and issuing them referrals for getting to know and establishing contact with the child. However, exceptions to this rule are cases where the adopter is a relative of the child, or the adoption of a child who is a biological brother/sister of a previously adopted child is being decided. Establishing such a restriction is a safeguard against possible trafficking of children abroad.

Another exception to the above-mentioned rule are cases when citizens of Ukraine who temporarily or permanently live outside of Ukraine, and foreigners, met and established contact with a child based on the referral of the National Social Service, which was issued before the introduction of martial law in Ukraine. Such prospective adopters can complete the adoption of a child in accordance with the legislation of Ukraine, regardless of the established restrictions<sup>12</sup>.

### 3.6. Institute of Temporary Placement of Children in Ukraine

During martial law, the issue of *placement of children who were left without parental care*, including children who were separated from their families as a result of the armed aggression of the Russian Federation, became acute. The Cabinet of Ministers of Ukraine tried to settle these issues by making changes to the Procedure for the Proceedings of Guardianship Authorities in Activities Related to the Protection of Children's Rights. During a state of

<sup>12</sup> Poryadok provadzhennya diyalnosti z usynovlennya, zatverdzhenny Postanovoyu Kabinetu Ministriv Ukrayiny The Procedure for carrying out adoption activities, approved by the Resolution of the Cabinet of Ministers of Ukraine No. 905 of 08.10.2008 <<https://zakon.rada.gov.ua/laws/show/905-2008-п#Text>> accessed 15 October 2022.

emergency or war on the territory of Ukraine, *children left without parental care, including children separated from their families*, are temporarily accommodated in functioning foster families and family-type children's homes under the conditions of temporary placement within the stipulated maximum number of children, which can be arranged for such forms of education.

If it is not technically possible to issue an order of the children's affairs service at the place of operation of the respective foster family or family-type orphanage, children are accommodated according to the orders of the children's affairs service of the relevant regional and Kyiv city military administration<sup>13</sup>.

Foster families and family-type children's homes are family forms of education where children left without parental care can be accommodated under the conditions of temporary placement. A foster family is a family that voluntarily take from 1 to 4 children from institutions for orphans and children deprived of parental care to live together and be raised. A family-type orphanage is considered to be a separate family, created at the request of a spouse or an individual who is not married, who take in at least 5 orphans and children deprived of parental care for education and cohabitation<sup>14</sup>.

The purpose of creating such forms of education is to ensure proper conditions for the education of orphans and children deprived of parental care in a family environment. Based on the analysis of the changes made to the legislative framework, as well as the current practice of placement of children left without parental care, it can be seen that the legislator gave priority to the institution of temporary placement of children over the institution of adoption during martial law in Ukraine, relying on the fact that in most cases caused by the consequences of military actions, it is impossible to carry out the adoption procedure (for example, it is not possible to establish the life circumstances of the parents of the children who wish to be adopted, etc.). Although it is fair to note that family forms of education were quite relevant and actively used even before the beginning of the war, and are also predominant over residential forms of education.

It is known that as of December 31, 2020, 1,235 family-type children's homes and 3,172 foster families were operating in Ukraine<sup>15</sup>. At the same time, there was a tendency to increase the number of family-type orphanages and decrease the number of foster families. At the moment, statistics regarding the quantitative changes during martial law of these family forms of education remain unknown.

It should be emphasised that the category of "*children left without parental care*" is mentioned in the order almost for the first time. This category is different from the concept of "children who are deprived of parental care", as it refers to children who are only temporarily left without parents under circumstances that do not depend on the will of the parents and on which they have no influence. Once there is a restoration of the previous state, which existed before the occurrence of these circumstances or their termination, the children will be reunited with their parents (both children and parents are victims of war). For such children, it is possible to apply only temporary forms of placement, which include family forms of education.

13 Poryadok provadzhennya organamy opiky ta pikluvannya diyalnosti, povyazanoyi iz zahystom prav dytyny, zatverdzhennyi Postanovoyu Kabinetu Ministriv Ukrainy The Procedure for the proceedings of guardianship authorities in activities related to the protection of children's rights, approved by the Resolution of the Cabinet of Ministers of Ukraine No. 866 of 24.09.2008 <<https://zakon.rada.gov.ua/laws/show/866-2008-n#Text>> accessed 15 October 2022.

14 Zakon Ukrainy pro ohoronu dytynstva Resolution of the Verkhovna Rada of Ukraine No. 2402-III of 26.04.2001 'On the protection of childhood', VVR 2001, No. 30, p. 142.

15 *Zahyst prav ditey ye odnym iz priorytetiv Minsocpolityky* 'Protection of children's rights is one of the priorities of the Ministry of Social Policy' (2021) Ministry of Social Policy <<https://www.msp.gov.ua/news/20075.html>> accessed 15 October 2022.

In the event that a temporarily placed child acquires the status of *an orphan child or a child deprived of parental care*, such a child is placed in foster families and family-type children's homes on general grounds with the appointment of state social assistance. The status of an orphan child is acquired by a child whose parents have died. The status of a child deprived of parental care is acquired by a child whose parents do not fulfill their parental duties for the reasons specified by law, and the fact of deprivation of parental care established by the children's affairs service on the basis of the documents collected by it<sup>16</sup>.

### 3.7 Institute of guardianship and care during martial law

The institution of guardianship and care works effectively in Ukraine. *The establishment of guardianship and care* represents the placement of orphans or children deprived of parental care in the families of citizens of Ukraine who are mainly family or family relations<sup>17</sup>. Guardianship is established over a child who has not reached the age of 14, and custodianship over a child between the ages of 14 and 18. The guardian or custodian is the legal representative of the child's interests and is responsible for his/her life, health, physical and mental development.

A person who is in a family relationship (including godparents) with an orphaned child or a child deprived of parental care may express a desire to take him or her into custody. To do this, such a person must submit a package of documents to the children's affairs service at his/her place of residence or at the place of discovery of the child, defined in the Procedure for proceedings by guardianship and authorities in activities related to the protection of children's rights<sup>18</sup>. It is worth noting that during the martial law, some requirements for this package of documents were relaxed. In particular, if it is impossible to obtain a certificate of no criminal record, a candidate for guardian, custodian who is in a family relationship with the child (including godparents), submits a statement that he is not held criminally liable. The responsibility for the accuracy of the information provided to the children's affairs service regarding the absence of a criminal record rests with the guardians or custodians.

On September 10, 2022, the government again made changes to the Procedure for proceedings by guardianship authorities in activities related to the protection of children's rights<sup>19</sup>, namely, *the grounds for granting the status of an orphan child or child deprived of parental care, and the grounds for losing such status* were expanded. In accordance with the changes made, the status of a child deprived of parental care is granted, in particular, to children whose parents do not fulfill their duties to raise and support the child for reasons that cannot be ascertained in connection with the parents' stay in an occupied territory

16 Poryadok provadzhennya organamy opiky ta pikluvannya diyalnosti, povyazanoyi iz zahystom prav dytyny, zatverdzhennyi Postanovoyu Kabinetu Ministriv Ukrainy, The Procedure for the proceedings of guardianship authorities in activities related to the protection of children's rights, approved by the Resolution of the Cabinet of Ministers of Ukraine No. 866 of 24.09.2008 <<https://zakon.rada.gov.ua/laws/show/866-2008-п#Text>> accessed 15 October 2022.

17 Simeynyy kodeks Ukrainy, *Family Code of Ukraine*, No. 2947-III of 10.01.2002, VVR 2002, No. 21-22, p. 135.

18 Poryadok provadzhennya organamy opiky ta pikluvannya diyalnosti, povyazanoyi iz zahystom prav dytyny, zatverdzhennyi Postanovoyu Kabinetu Ministriv Ukrainy, The Procedure for the proceedings of guardianship authorities in activities related to the protection of children's rights, approved by the Resolution of the Cabinet of Ministers of Ukraine No. 866 of 24.09.2008 <<https://zakon.rada.gov.ua/laws/show/866-2008-п#Text>> accessed 15 October 2022.

19 Postanova Kabinetu Ministriv Ukrainy pro vnesennya zmin do Poryadku provadzhennya organamy opiky ta pikluvannya diyalnosti, povyazanoyi iz zahystom prav dytyny, Resolution of the Cabinet of Ministers of Ukraine No. 1013 of 10.09.2022 'On Amendments to the Procedure for the proceedings of guardianship authorities in activities related to the protection of children's rights' <<https://zakon.rada.gov.ua/laws/show/1013-2022-п#Text>> accessed 15 October 2022.

or where active hostilities are conducted, which is confirmed by an act drawn up by the children's affairs service. After the termination or abolition of martial law, the child's status must be confirmed or denied on the basis of documents provided for by law.

Orphans and children deprived of parental care, by the decision of the body of guardianship and care at the place of stay (evacuation) or detection of such a child, may be placed in another foster family or family-type orphanage under guardianship or care in the event that their legal representatives do not fulfill their responsibilities for raising and maintaining a child for the following reasons:

- the presence of legal representatives in territories located in the area of military (combat) operations, temporarily occupied or encircled (blockaded) territory
- are wanted as missing or recognised as missing under special circumstances
- are prisoners of war (held captive by the aggressor state)
- are deprived of personal freedom (detained, taken hostage) by the authorities of the aggressor state (occupation administrations and armed formations)

Such an arrangement takes place until such legal representatives are able to fulfill their responsibilities for the upbringing and maintenance of the child.

In cases of orphans and children deprived of parental care placed under guardianship or care with persons who are family or family relations (including godparents), a training course on raising such children in the center of social services is not required<sup>20</sup>.

In addition, the Cabinet of Ministers determined *grounds for termination of guardianship and care* by legal representatives of orphans and children deprived of parental care. In particular, if the legal representatives refuse the mandatory evacuation of orphans, children deprived of parental care, guardianship or care of such children shall be terminated. Guardianship bodies can unilaterally terminate agreements on the placement of such children in a foster family on the organisation of a suitable family-type orphanage and the patronage of such a child<sup>21</sup>.

During martial law, 1) children who are in difficult life circumstances, 2) children who were left without parental care, 3) orphaned children and 4) children deprived of parental care who live or are enrolled in institutions of various types and forms of ownership and subordination for round-the-clock stay, can be temporarily arranged in other institutions, where children are provided for round-the-clock stay, or in settlements where it is possible to ensure the safety of children, taking into account their age and state of health<sup>22</sup>. Thus, the issue of temporary placement of children identified by guardianship and guardianship

20 Postanova Kabinetu Ministriv Ukrayiny pro vnesennya zmin do Poryadku provadzhennya organamy opiky ta pikluvannya diyalnosti, povyazanoyi iz zahystom prav dytyny, Resolution of the Cabinet of Ministers of Ukraine No. 1013 of 10.09.2022 'On Amendments to the Procedure for the proceedings of guardianship authorities in activities related to the protection of children's rights' <<https://zakon.rada.gov.ua/laws/show/1013-2022-п#Text>> accessed 15 October 2022.

21 Postanova Kabinetu Ministriv Ukrayiny pro vnesennya zmin do deyakyh postanov Kabinetu Ministriv Ukrayiny shchodo udoskonalennya mehanizmu provedennya evakuatsiyi, Resolution of the Cabinet of Ministers of Ukraine No. 940 of 23.08.2022 'On Amendments to Certain Resolutions of the Cabinet of Ministers of Ukraine Regarding Improvement of the Mechanism of Evacuation' <<https://zakon.rada.gov.ua/laws/show/940-2022-п#Text>> accessed 15 October 2022.

22 Postanova Kabinetu Ministriv Ukrayiny pro vnesennya zmin do Poryadku provadzhennya organamy opiky ta pikluvannya diyalnosti, povyazanoyi iz zahystom prav dytyny, Resolution of the Cabinet of Ministers of Ukraine No. 1013 of 10.09.2022 'On Amendments to the Procedure for the proceedings of guardianship authorities in activities related to the protection of children's rights' <<https://zakon.rada.gov.ua/laws/show/1013-2022-п#Text>> accessed 15 October 2022.

authorities and in need of such placement is resolved. As we can see, the legislation provides for a fairly wide list of alternatives to adoption, which allows the needs and protection of the interests of the child to be ensured.

### 3.8 Procedure for trial of adoption cases

Adoption in Ukraine is carried out on the basis of a court decision<sup>23</sup>. Martial law was not the reason for the creation of exceptions to this rule. Trial of adoption cases takes place in the order of a separate proceeding. Peculiarities of judicial proceedings regarding this category of cases are defined in the Civil Procedure Code of Ukraine. The existing procedure for trial of adoption cases has not undergone any changes since the beginning of Russia's full-scale war against Ukraine. All adoption cases initiated before the introduction of martial law in Ukraine, as well as court proceedings which were already opened during the period of martial law, are considered by the courts in the order of separate proceedings according to the standard rules established for this category of cases. The end of the adoption process is the adoption of a decision on the case by the court.

As of today, according to information received from the official state web portal "Unified State Register of Court Decisions", in the period from February 24 to October 15, 2022, 773 cases of adoption by citizens of Ukraine living in Ukraine and 35 cases of adoption either by citizens of Ukraine living outside the territory of Ukraine or by foreigners were considered and decisions were made<sup>24</sup>. In 447 out of 773 cases and 21 out of 35 cases, information is prohibited for publication, as the case was considered in a closed court session in order to ensure the secrecy of adoption in accordance with the Resolution of the Verkhovna Rada of Ukraine «On Access to Court Decisions»<sup>25</sup>. Out of 371 adoption cases by Ukrainian citizens living on the territory of Ukraine, the decisions of which are published in the Unified State Register of Court Decisions, *only 7 cases* were considered in the mode of video conference, the rest in closed or open court sessions in the courtroom. Similarly, *7 cases* of adoption by Ukrainian citizens living outside Ukraine or foreigners were considered in the video conference mode. This is an indicator of the fact that, despite the ongoing war, courts in Ukraine are functioning normally where possible.

Among the foreign adopters, according to open information from the Unified State Register of Court Decisions, were citizens of the Republic of Italy (8 cases), citizens of the United States (6 cases), citizens of the Czech Republic (1 case), and citizens of the Federal Republic of Germany (1 case).

It should also be noted that decisions in adoption cases made between February 24 and November 13, 2022, were never appealed.

### 3.9 National control mechanisms for displaced children

Within the scope of the research topic, it is also necessary to mention the state control mechanisms for displaced children within and outside of Ukraine. In accordance with the Procedure for the proceedings of guardianship and guardianship authorities in activities related to the protection of children's rights during a state of emergency or war in Ukraine,

23 Simeynyy kodeks Ukrainy, Family Code of Ukraine, No. 2947-III of 10.01.2002, VVR 2002, No. 21-22, p. 135.

24 *Yedynyy derzhavnyy reyestr sudovyh rishen*, Unified State Register of Court Decisions <<https://reyestr.court.gov.ua/Page/52>> accessed 15 October 2022.

25 *Zakon Ukrainy pro dostup do sudovyh rishen*, Resolution of the Verkhovna Rada of Ukraine No. 3262-IV of 22.12.2005 'On the access to court decisions' VVR 2006, No. 15, p. 128.

entries of orphans; children deprived of parental care; children raised in foster families who are also ensured educators; and children who do not belong to the previously listed categories and are enrolled in institutions of various forms of education, and who are temporarily relocated (evacuated) on the territory of Ukraine where hostilities are not taking place, or outside of Ukraine. Such control is carried out by the children's affairs services of the regional and Kyiv city military administrations according to the place of origin, residence (stay) of children before temporary transfer (evacuation), and location of the institution in which they lived or were enrolled for a 24-hour stay. In the event that such services for children are unable to ensure the registration of a child in connection with hostilities, the registration of the child is carried out by the service for children's affairs at the place of temporary relocation (evacuation) of the child with the note «child from another region». In some cases, accounting can be carried out by the National Social Service Service of Ukraine<sup>26</sup>.

Today, the issue of control over illegally deported children from the areas of military (combat) operations and temporarily occupied territories of Ukraine is painful. For this purpose, the Ministry of Social Policy of Ukraine has developed a special algorithm for interaction and exchange of information regarding children who were illegally deported from areas of military (combat) operations or temporarily occupied territories of Ukraine to the Russian Federation and illegally relocated to the occupied territories of Luhansk, Donetsk Oblasts and Crimea AR. Within this algorithm, a number of state authorities, in particular, the Ministry of Internal Affairs of Ukraine, the Office of the Prosecutor General, the National Police of Ukraine, the Advisor to the President of Ukraine on Children's Rights and Child Rehabilitation, the Human Rights Commissioner of the Verkhovna Rada of Ukraine, the National Information Bureau, and the National Social Service of Ukraine interact with each other, process, generalise, verify and check the facts of deportation and illegal movement of children. In accordance with the established procedures for coordination of foreign policy activities of the state, the National Information Bureau transmits the processed information to the International Committee of the Red Cross. The Ministry of Foreign Affairs of Ukraine must be constantly informed about all processes of international cooperation regarding the control of illegally deported and displaced children and their return<sup>27</sup>.

### 3.10 Foreign experience regarding the problem of “children of war”

Unfortunately, this is not the first time we have faced the problem of “children of war” in modern history. Children in Syria, Georgia (in particular, Abkhazia and South Ossetia), Yugoslavia, Iraq, and Israel had a similar experience at different times.

During the decade of civil war in Syria, 28,000 children died, more than 800,000 became orphans and semi-orphans, and millions became refugees<sup>28</sup>. Young Syrians who lost their parents during the war live in orphanages on the territory of Turkey and Syria. In Turkey, the

26 Poryadok provadzhennya organamy opiky ta pikluvannya diyalnosti, povyazanoi iz zahystom prav dytyny, zatverdzhennyi Postanovoyu Kabinetu Ministriv Ukrayiny, The Procedure for the proceedings of guardianship authorities in activities related to the protection of children's rights, approved by the Resolution of the Cabinet of Ministers of Ukraine No. 866 of 24.09.2008, <<https://zakon.rada.gov.ua/laws/show/866-2008-п#Text>> accessed 15 October 2022.

27 *Informatsiya shchodo zabezpechennya prav ditey v umovah vinyi* 'Information on ensuring the rights of children in wartime' (2022) <<https://ukurier.gov.ua/uk/articles/informatsiya-shodo-zabezpechennya-prav-ditey-v-umov/#:~:text=Станом%20на%2001.09.2022%20вж,виховуються%20в%20сiмейних%20формах%20виховання>> accessed 15 October 2022.

28 Samchuk, T., *Yak dolaly syrytstvo i bezprytulnist pislya dvoh svitovyh voyen* 'How orphanhood and homelessness were overcome after two world wars' (2022) <<https://media.zagoriy.foundation/velyka-istoriya/vtrachene-dytnstvo-yak-dolaly-syrytstvo-i-bezprytulnist-pislya-dvoh-svitovyh-voen/#:~:text=Упродовж%20десятиліття%20громадянської%20війни%20у,та%20напiвсиротами%2С%20мiльйони%20—%20бiженцями>> accessed 15 October 2022.

practice of caring for Syrian orphans and children deprived of parental care by volunteers and the provision of humanitarian funds is widespread<sup>29</sup>. Volunteers usually reimburse the costs of housing rent for orphans and provide them with food and moral and psychological support. Millions of children became forced refugees in Yugoslavia during the 1990s and in Georgia during the events of 1992-1993 and 2008, and illegal deportation of children was also established.

Another option for solving the problem of orphanhood arose after the Second World War and is successfully functioning in countries in Europe, America, Asia and Africa<sup>30</sup>. This is the activity of the international federation of charitable non-governmental organisations SOS Children's Villages International (SOS Kinderdorf). A member of this federation operates in Ukraine - the charitable non-governmental organization "SOS Children's Villages". A network of these organisations works for the prevention of orphanhood, the development of family forms of education for children deprived of parental care, and support for youth who leave care. The ideologue and founder of SOS Kinderdorf was the Austrian Hermann Gmeiner, who argued that for orphaned children it is necessary to create an environment that is as similar to a family as possible. The idea of the organisation is that children in such towns are not isolated from society - they attend school together with all other children, can freely move around the town, play with other children or do household chores. Over a long period of time, this model of children's towns was able to prove its effectiveness as a good alternative for raising children in conditions as close as possible to family ones.

## 4 CONCLUSIONS

Having studied the above changes in the national legislation regarding the adoption procedure, it can be concluded that the adoption procedure in conditions of the military aggression of the Russian Federation will continue to follow the standard procedure, without simplifying or complicating this process. However, it is logical that due to the objective realities caused by the war and the occupation of part of the territory of Ukraine, the procedures related to adoption activities required changes that would regulate auxiliary accompanying issues that contribute to the implementation of the adoption process during martial law. These can be summarised as follows.

One of the first changes was to settle the issue of reunification of adoptive parents and a child who was adopted before the introduction of martial law and who was temporarily evacuated abroad until the moment of reunification. For this, the Cabinet of Ministers defined a special procedure and established it at the regulatory level.

The possibility of adopting children was determined depending on their place of stay. First of all, it is emphasised that children who were temporarily relocated (evacuated) outside of Ukraine can be adopted only after their return to Ukraine, and children who are in the war zone and occupied territories cannot be adopted.

The registration of candidates for adoptive parents and children who can be adopted was adapted to territorial changes of the place of residence or stay of these categories. In addition, the requirements for the submitted documents were eased (in particular, regarding

29 Zhinochy Konsorcium Ukrayiny, *Za chas viyny v Syriyi 600 tysyach ditey staly syrotamy* 'During the war in Syria, 600,000 children became orphans' (2016). <[https://wcu-network.org.ua/ua/Zaxist\\_prav\\_dtei/news/Za\\_chas\\_vini\\_v\\_Siri\\_600\\_tisjach\\_dtei\\_stali\\_sirotami](https://wcu-network.org.ua/ua/Zaxist_prav_dtei/news/Za_chas_vini_v_Siri_600_tisjach_dtei_stali_sirotami)> accessed 15 October 2022.

30 Samchuk, T., *Yak dolaly syrytstvo i bezprytulnist pislya dvoh svitovyh voyen* 'How orphanhood and homelessness were overcome after two world wars' (2022) <<https://media.zagoriy.foundation/velyka-istoriya/vtrachene-dytynstvo-yak-dolaly-syrytstvo-i-bezprytulnist-pislya-dvoh-svitovyh-voyen/#:~:text=Упродовж%20десятиліття%20громадянської%20війни%20у,та%20напівсиротами%2С%20мільйони%20—%20біженцями>> accessed 15 October 2022.

the certificate of no criminal record for some candidates for guardians, custodians), the possibility of applying for the status of a candidate for adopter through Diya was digitized, the validity period of the documents of a candidate for adopter was extended, and cases of the possibility of its extension were determined.

The circle of entities that can adopt children during martial law was limited. In particular, a ban has been established on the adoption of children by foreigners and citizens of Ukraine living outside its borders, except for cases when the adoption by these subjects was started before the introduction of martial law, and when these subjects are relatives of the child or have previously adopted his/her siblings.

During the state of war, preference is given to the institution of temporary placement over the institution of adoption due to the impossibility of carrying out the adoption procedure in most cases caused by war. Temporary placement of children left without parental care is carried out in family forms of education - foster families and family-type children's homes.

The list of reasons for acquiring the status of a child deprived of parental care, as well as the reasons for which orphans and children deprived of parental care, who were under guardianship or care, can be temporarily placed in family forms of education, was supplemented. Also, special grounds and procedures were established for termination of guardianship and care in case of refusal of legal representatives of orphans and children deprived of parental care from mandatory evacuation.

During martial law, no changes were made to the judicial procedure for consideration of adoption cases. Court consideration of adoption cases will be carried out in the order of a separate proceeding, taking into account the peculiarities of this category of cases defined by the Civil Procedure Code.

During martial law, a large number of children were moved from the territory of Ukraine in various ways (evacuation or illegal deportation). These children are monitored by state bodies in cooperation with international institutions in ways determined by approved procedures and developed algorithms.

The issue is simple: civilised society depends on a high level of social protection of children. The protection of orphans and children deprived of parental care is one of the most urgent problems to be solved during the conditions of martial law in Ukraine, as we are talking about processes on which the future of the Ukrainian nation depends.

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