

## Case Note

# CHILD HOMELESSNESS AND NEGLECT IN UKRAINE AND POLAND IN THE 1920S: THE STATE OF THE PROBLEM AND LEGAL MEASURES TO COMBAT IT

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**Summary:** 1. Introduction. – 2. Child Homelessness and Neglect in Ukraine in the 1920s. – 2.1. *Protection measures for homeless and neglected children.* – 2.2. *The issue in the case law of Ukraine.* – 3. Child Homelessness and Neglect in Poland in the 1920s. – 4. Protection of Homeless and Neglected Children. – 5. Conclusions.

**Keywords:** war-affected child, child's rights in wartime, child protection, child in need, war orphans.

## ABSTRACT

**Background:** *With Russia's full-scale invasion of Ukraine and other problems that have arisen in recent years, the issue of Ukrainian children who find themselves in difficult life circumstances has become a significant problem. This situation demands urgent measures. For better or worse, Ukraine has experience in this regard and a history of combating the problem of child homelessness and neglect in the 1920s. Moreover, Ukraine's neighbour, Poland, also has a history of combating the same problem in the 1920s. In this article, child homelessness*

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and neglect in Ukraine and Poland were studied. Furthermore, legal measures to combat this problem were explored. It was useful to examine the state of the problem and legal measures to combat it to see what lessons could be learned from the successful experience in Ukraine and Poland in solving the problem of child homelessness and neglect in the 1920s.

**Methods:** Historical and legal methods were used to study the issue effectively. This method allowed us to investigate the state of the problem in two countries at the same time and to outline the main measures that were used to combat the problem of child homelessness and neglect. The comparative method was also used to reveal the differences in combating the problem mentioned above.

**Results and Conclusions:** Some suggestions that could be used in Ukraine to solve the problem of children who find themselves in difficult life circumstances were proposed in the conclusions.

## 1 INTRODUCTION

Even though we live in an age of economic and social progress, in an era of advanced technologies, child homelessness and neglect, unfortunately, remain a common phenomenon in the world (including Ukraine). Assuredly, this issue became acute in our country after the beginning of Russia's aggression against Ukraine in 2014, and after the start of a full-scale invasion on 24 February 2022, it deepened even more. This is explained by the fact that one of the consequences of hostilities is an increase in the number of orphans, as well as children who, due to the difficult financial situation and/or psychological state of their parents/guardians (or the passing of one parent/guardian), have become neglected or become homeless. However, currently, there is no classical child homelessness in Ukraine. Homeless and neglected children in Ukraine have slightly changed their 'face', meaning that now, they are children who find themselves in difficult life circumstances. However, as a result of the war, classic homelessness may return to the territory of Ukraine. According to OCHA's data as of 19 December 2022<sup>1</sup> and UNICEF's data (reporting period 24 February – 31 December 2022),<sup>2</sup> some 3.3 million children are in need of child protection interventions in Ukraine. According to OCHA's data, as of 27 January 2023, children are also at risk of war crimes, and there are 2,415 proceedings being investigated by prosecutors covering crimes against children and in the field of child protection.<sup>3</sup> The problem is not new – it existed not only in Ukraine but also in other European countries in the twentieth century, in particular, after the First World War. Based on this, I believe that it is expedient to comprehensively investigate the state of child homelessness and neglect in Ukraine and Poland in the 1920s and the experience of combating it. The choice of Poland as a country for comparison is justified firstly by the level of losses as a result of the First World War, secondly by the close territorial location with Ukraine, thirdly by the presence of a common history, and lastly, as it currently maintains a different system of values, specifically European ones. The historical period was chosen in view of the similarity of the historical realities of that time with the present in Ukraine.

During the First World War, the population of Ukraine and Poland suffered very large material, cultural, and physical losses. As a result, both countries found themselves in a deep economic crisis. However, the saddest thing was that because of the hostilities, there were

- 1 UN OCHA, 'Ukraine Humanitarian Response – Key Achievements in 2022: Situation Report' (OCHA, 19 December 2022) <<https://reports.unocha.org/en/country/ukraine>> accessed 19 February 2023.
- 2 UNICEF, 'Ukraine Humanitarian Situation Report No 24: 24 February – 31 December 2022' (UNICEF Ukraine, 31 December 2022) <<https://www.unicef.org/ukraine/en/documents/humanitarian-situation-report-december-2022>> accessed 19 February 2023.
- 3 UN OCHA, 'Ukrainian Crisis: Situational Analysis 27 January 2023' (OCHA, 27 January 2023) <<https://reliefweb.int/report/ukraine/ukrainian-crisis-situational-analysis-27-jan-2023>> accessed 19 February 2023.

a large number of orphaned children, many of whom were forced to live on the streets, so to speak. In Ukraine, the situation was complicated by the famine of 1921-1923. Thereby, in the post-war years, in both Ukraine and Poland, state policy was developed and implemented with an emphasis on the protection of such a category of people as homeless and neglected children.

The research and analysis of such a phenomenon as child homelessness and neglect, as well as the means of overcoming it in the territory of Ukraine and Poland in historical retrospect, will provide the necessary scientific basis to help us find mechanisms for overcoming the problem in our state, which has been recognised by the entire civilised world as one of the terrible consequences of Russia's war against Ukraine.

## 2 CHILD HOMELESSNESS AND NEGLECT IN UKRAINE IN THE 1920S

The First World War had a disastrous impact on families, as most of the fathers were sent to the war, and many of them died on the front, and mothers, in order to feed their children, were engaged in production almost around the clock. As a result, a significant number of children were deprived of proper care. In addition, the network of schools shrank, and education was disrupted. By the early 1920s, cities were overrun with homeless children, and juvenile crime had nearly doubled and become more dangerous. According to statistics, the number of homeless children reached 1 million, which was an eighth of all children in the country.<sup>4</sup> According to O.I. Anatolyeva at the end of 1920, there were more than 50,000 pupils in 760 orphanages in the republic, and 125,000 children visited playgrounds and clubs. However, this was not enough: almost 750,000 orphans and semi-orphans needed immediate help.<sup>5</sup>

Considering the complexity and acuteness of the problem, the Council of People's Commissars of the Ukrainian SSR issued a Decree<sup>6</sup> that provided an exhaustive list of cases when a child could be recognised as homeless, which was an important and timely event. The Decree stated that minors under the age of 18 were considered homeless in the following cases:

- a) if they were left without any supervision and care by their parents or people who could replace them;
- b) if there was cruel treatment by the people specified in point a;
- c) if there was a failure to provide them with the necessary minimum education and training provided for by current legislation;
- d) if they were under the influence of a corrupting home environment;
- e) if they were leading a vicious lifestyle, including begging or vagrancy;
- e) if they were engaging in any kind of trade.

4 Tetjana Antoniuk, 'Orphanage as a Form of Social Education: Historical Aspect' (2004) 8 Bulletin of the Taras Shevchenko National University of Kyiv, Ukrainian Studies 22.

5 Olga Anatolyeva, 'Legal Regulation of Combating Homelessness, Neglect and Crime in the USSR in the 20s of the XX century' (PhD (Law) thesis, National Academy of Internal Affairs of Ukraine 2003) 55.

6 Decree of the Council of People's Commissioners of the Ukrainian SSR 'On Measures to Combat Child Homelessness' of 16 June 1921 [1921] Collection of Laws and Decrees of Workers' and Peasants' Government of Ukraine 11/293.

## 2.1 Protection measures for homeless and neglected children

It is worth pointing out that in the early 1920s, the Council of Children's Protection (hereinafter – the Council)<sup>7</sup> became the first Soviet body in Ukraine, one of the main tasks of which was the nutrition, sanitary protection, and civic education of children. In addition to this function, the Council resolved the issue of providing children with clothes and shoes, as well as looking for premises for children's institutions. At the same time, in its activities, the Council often used methods of administrative coercion (requisitions, taxation, imposition of fines).<sup>8</sup> Based on the decisions of the executive authorities and with the active support of the Council, in the early 1920s, kindergartens, clubs, and communes began to open everywhere. It was during this period that the network of institutions for homeless, neglected children and juvenile delinquents expanded significantly: day orphanages were formed,<sup>9</sup> which took on the upbringing of those children who were left without the care of their parents during the day due to their work, and orphanages were opened<sup>10</sup> to accept orphans and children under the age of 16 who were left without parental care.

However, this body operated for only two years because, on 6 December 1922, instead of the Council of Children's Protection, a new group was created – the Central Commission for Children's Assistance (CCCA),<sup>11</sup> the main task of which was to combat child homelessness, improve the living conditions of children's institutions and public child nutrition, and re-evacuate children to the homeland when needed. It should be noted that at that time, the powers in the field of combating homelessness were significantly expanded: departments of the social and legal protection of minors were created, daycare centres for children whose parents were unemployed, playgrounds, nurseries, etc. were opened, guardianship and patronage institutes were introduced on a much larger scale, and children's social inspection, rehabilitation measures, etc., were carried out. Also, it should not be overlooked that it was in the 1920s when special institutions for children with vision and hearing disorders, mentally disabled children, and children with physical disabilities were first established in Ukraine.<sup>12</sup>

As for re-evacuation, significant work in this direction was carried out by the children's address desks of the People's Commissariat of Education. In particular, in 1923, they processed more than 3,000 requests from parents who lost contact with their children during the evacuation. According to the data, the search for children was successful in 42% of these

7 Decree of the Council of People's Commissioners of the Ukrainian SSR 'On the Establishment of the "The Council of Children's Protection"' of 29 June 1920 [1920] Collection of Laws and Decrees of the All-Ukrainian Revolutionary Committee 18/341.

8 Central Council for the Protection of Children and Provincial Council for the Protection of Children 'Report on the Activities of the Central Council for the Protection of Children and the Provincial Council for the Protection of Children for 1920' (Central State Archives of the Higher Organs of the Government of Ukraine, f 166, inv 2, case 578) 89-95.

9 Decree of the Council of People's Commissioners of the Ukrainian SSR 'On Day Orphanages' of 8 June 1920 [1920] Collection of Laws and Decrees of the All-Ukrainian Revolutionary Committee 17/338.

10 Decree of the Council of People's Commissioners of the Ukrainian SSR 'On Open Orphanages' of 10 June 1920 [1920] Collection of Laws and Decrees of the All-Ukrainian Revolutionary Committee 17/337.

11 Decree of All-Ukrainian Central Executive Committee 'Regulations on the Central Commission for Assistance to Children under the All-Ukrainian Central Executive Committee' of 6 December 1922 [1922] Collection of Laws and Decrees of Workers' and Peasants' Government of Ukraine 53/773.

12 Viktor Yermolaiev, Aisel Omarova and Hanna Ponomarova, 'The Development of Children's Medical Rights in Ukraine (1919 – beginning of the XXI century)' (2021) 28 (4) Journal of the National Academy of Legal Sciences of Ukraine 184, doi: 10.37635/jnalsu.28(4).2021.181-189.

cases.<sup>13</sup> In general, in 1923, about 18,000 minors were re-evacuated.<sup>14</sup> The return of children to their parents was seen both outside and within the borders of Ukraine.<sup>15</sup> It is noteworthy that the children who were still on the street arrived in place of the re-evacuated children. Thus, thanks to the re-evacuation, it became possible to accommodate other homeless children in children's shelters.

That said, given the huge number of homeless people, the existing institutions were not able to receive all the children who needed state protection. This indicates that against the background of the significant scale of child homelessness, the network of children's institutions was insufficiently developed – that is, it did not meet the needs of the time. It cannot be overlooked that one of the measures to combat neglect was the placement of children among the urban and rural populations on the basis of a voluntary agreement between child protection authorities and citizens who gave their consent. However, this measure was temporary until the situation with food and other supplies improved.<sup>16</sup> The absence of a legal basis for the use of such forms of placement of children as adoption and guardianship should be recognised as a significant problem of neglect prevention. It is also should be added that due to the state's inability to provide reliable protection to homeless children, the practice of patronage – the transfer of homeless and neglected children to care – was introduced.<sup>17</sup> It bears noting that public organisations were involved in the provision of financial assistance to families who took children for patronage. The CCCA provided scholarships for the studying of former homeless people.<sup>18</sup> However, primarily younger children were placed in children's institutions and foster care. It is clear that when considering this issue, special attention should be paid to the fact that in the first half of the 1920s, Ukraine was experiencing a deep economic crisis, which affected the income of the population (due to poverty, not all families were able to participate in the patronage of homeless and neglected children) and financing of children's institutions, which was insufficient.

Equally difficult was the increase in the level of unemployment, which, of course, had a negative impact on patronage as well as on the possibility of legal earnings for teenagers. As is known, it was at this time that the number of enterprises decreased, and a trend towards massive downsizing was observed, primarily among teenagers who, in order to feed themselves, were forced to commit crimes. Identifying teenagers who broke the law and placing them in boarding schools became the main focus of the work of the commission on juvenile affairs.<sup>19</sup> It is worth pointing out that in the activities of this commission, an

13 'Information about homeless children in Ukraine and the work of childhood protection according to data for 1923' (Central State Archives of the Higher Organs of the Government of Ukraine, f 166 inv 2, case 1623) 18.

14 Central Commission for Assistance to Children, 'Brief report on the activities of the Central Commission for Assistance to Children under the All-Ukrainian Central Executive Committee for the period: September 1923 – June 1924' (Central State Archives of the Higher Organs of the Government of Ukraine, f 1, inv 20, case 1958) 1-14.

15 Decree of All-Ukrainian Central Executive Committee 'On the Combat Against Child Homelessness' of 17 April 1924 [1924] Collection of Laws and Decrees of Workers' and Peasants' Government of Ukraine 21-22/190.

16 Aisel Omarova, 'State and Legal Policy of Combating Juvenile Delinquency in Ukraine in the 1920s' in *Juvenile Policy as a Component of Supporting Ukraine's National Security and Defense* (Baltija Publishing 2023) 256, doi: 10.30525/978-9934-26-276-0-12.

17 Decree of the Council of People's Commissioners of the Ukrainian SSR 'On Homeless Children' of 14 October 1921 [1921] Collection of Laws and Decrees of Workers' and Peasants' Government of Ukraine 20/591.

18 Anatolyeva (n 6) 67.

19 Decree of the Council of People's Commissioners of the Ukrainian SSR 'On the Responsibility of Minors' of 12 June 1920 [1920] Collection of Laws and Decrees of the All-Ukrainian Revolutionary Committee 15/281.

important role was also assigned to preventive work, the main forms of which were the examination of the conditions of raising children in families, in relation to which there were reports of violations of the rights of minors or the commission of offences by themselves, detection of cases of parental rights abuse, provision of assistance for children, protection of their rights in administrative and judicial bodies, consideration and resolution of cases of neglect, care of children recognised as neglected (appointment of supervision, placement in educational institutions), and prosecution of parents and guardians if children were left without supervision due to the fault of a guardian, that is, those who did not perform their duties properly.

According to the Soviet tradition, one of the measures to combat child homelessness and neglect was the involvement of teenagers in work. Thus, the practice of reserving workplaces for teenagers at enterprises was introduced. That said, a global solution to this problem required taking measures to bring the country out of the economic crisis. It was for this reason that a new economic policy was developed, which made it possible to create an adequate material base for the combat against child homelessness and neglect. Of course, the legislative basis was also laid. Thus, the Labor Code of 1922<sup>20</sup> provided for a lowering of the age of employment while at the same time enshrining broader guarantees of the labour rights of minors. It was forbidden to hire people under the age of 16, but in exceptional cases, on the basis of a special instruction of the authorised People's Commissariat of Labor, in agreement with the Southern Bureau of the All-Union Central Council of Trade Unions, the labour inspector was given the right to grant employment permits to minors under the age of 14. The introduction of compulsory primary education, summer campaigns, sanatoriums, and school camps should be recognised as an equally important measure to combat child homelessness and neglect.<sup>21</sup> In particular, the network of schools was significantly expanded, which allowed all children to receive education and be under supervision. Moreover, in order to prevent homelessness, neglect, and the commission of crimes by graduates of orphanages in these institutions, they tried to change the priorities of education. In particular, they organised work in such a way that after graduating from these institutions, children were prepared for independent life. For example, industrial training continued to be developed in boarding schools. Of no less importance is the fact that in the work of orphanages was the organisation of medical assistance for homeless children.

Thus, a new economic policy, consolidation of compulsory primary education with a simultaneous increase in the network of children's institutions, industrial training, activities of bodies and organisations dealing with the issue of eliminating homelessness and neglect of children, etc. All this made it possible to almost get rid of the mass homelessness of children. However, the social and political processes that took place at the end of the 1920s, namely the roll-back of the new economic policy, the announcement of a course for industrialisation and collectivisation, the formation of a command-administrative management system, the roll-back of the work of special bodies that cared for minors, etc., nullified the achieved successes, and as a result, a new wave of homeless and neglected children began.

20 Decree of All-Ukrainian Central Executive Committee 'On the Enactment of the Code of Labor Laws' of 2 December 1922 [1922] Collection of Laws and Decrees of Workers' and Peasants' Government of Ukraine 52/751.

21 Decree of All-Ukrainian Central Executive Committee 'On the entry into force of the Code of Laws on Public Education' of 22 November 1922 [1922] Collection of Laws and Decrees of Workers' and Peasants' Government of Ukraine 49/729.



## 2.2 The issue in the case law of Ukraine

One of the directions of Ukraine's Association Agreement implementation is the adaptation of national legislation to European standards. The protection of children's rights is one of the relevant areas of law-making and law-enforcement activities. Thus, the national normative regulation of homeless children and those in need of protection is reflected in a number of laws and subordinate legal acts (the Law of Ukraine 'On the Protection of Childhood', the Law of Ukraine 'On the Basics of Social Protection of Homeless Citizens and Homeless Children', etc.). The main emphasis in the national legislation is on the protection of children's property rights. According to the Resolution of the Civil Court of Cassation,<sup>22</sup> it is assumed that it is the parents' duty to take care of the preservation and use of the child's property in his/her interests. In order to guarantee the state-declared priority of the child's interests, the law provides for the additional means of control by the state over the proper performance of their duties by parents, prohibiting the parents of a minor and people who replace them from carrying out certain transactions regarding his/her property rights without the prior permission of the guardianship authorities.

In order to prevent the violation of the principle of legal certainty and the formation of a uniform practice of the court of cassation, the Supreme Court tries to interpret broadly normative acts that are devoted to the protection of children's rights. However, these views are not unanimous, which, to some extent, creates legal conflicts.

The legislative construction on the protection of children's property rights is sometimes a tool for the manifestation of the unscrupulous behaviour of the parties to the dispute and a result of the abuse of rights. As the Supreme Court notes, the parents of a minor do not have the right, without the permission of the guardianship authorities, to carry out transactions regarding the child's property rights, including renouncing those rights (sub-section 3 para. 2 of Art. 177 of the Family Code of Ukraine).

One of the fundamental principles of civil legislation is good faith (para. 6 of Art. 3 of the Civil Code of Ukraine), and the actions of participants in the civil legal relations must be in good faith, i.e., meet a certain standard of behaviour characterised by honesty, openness, and respect for the interests of the other party to the contract or the relevant legal relationship. According to para. 2 and 3 of Art. 13 of the Civil Code of Ukraine, when exercising his/her rights, a person is obliged to refrain from actions that could violate the rights of other people, cause damage to the environment, or damage cultural heritage. Actions of a person with the intention of harming another person, as well as abuse of rights in other forms, are not allowed. Thus, the deed committed by the parents (or adoptive parents) in relation to real estate, the ownership of which or the right to use belongs to the children, in the absence of prior permission of the guardianship authorities, may be recognised by the court as invalid (para. 6 of Art. 203, para. 1 of Art. 215 of the Civil Code of Ukraine). This is the case if it is established that the contested deed contradicts the rights and interests of the child, narrows the scope of the existing property rights of the child, and/or violates the legally protected interests of the child in relation to the residential premises.<sup>23</sup>

In some cases, realising the important role of the child as an indicator of the legal regulation of contractual relations and the order of executive proceedings, debtors begin to manipulate the child. This leads to the impossibility of executing the court decision. When analysing the law enforcement activity of national courts, attention should be paid to the Resolution

22 Case No 201/9425/18 (Civil Cassation Court of the Supreme Court of Ukraine, 2 November 2022) <<https://reyestr.court.gov.ua/Review/107219343>> accessed 19 February 2023.

23 Case No 727/2116/20 (Civil Cassation Court of the Supreme Court of Ukraine, 14 September 2022) <<https://reyestr.court.gov.ua/Review/106280330>> accessed 19 February 2023.

of the Grand Chamber of the Supreme Court, according to which it is indicated that unlike the execution of the court decisions, which directly provide for the foreclosure of specifically defined residential premises in a specifically defined manner, for other court decisions, which provide for the general right to collect a debt (including joint debt) from the debtor (his guarantor) for a specified amount of obligations, obtaining the corresponding permission of the guardianship authorities by the State Executive is mandatory by virtue of the very fact of the existence of the right of ownership or the right of use of a minor in relation to immovable property, which is realised within the framework of executive proceedings. The protection of the relevant rights of a minor is ensured by the body of the guardianship authorities within the limits of its powers in deciding to grant the specified permission or refuse to grant the specified permission to the State Executive, as well as the court in the case of an appeal to it by an authorised person regarding the actions of the State Executive and/or the guardianship authorities. This also applies to the actions of private parties.<sup>24</sup>

In other cases, the role of guardianship authorities is so significant that parents, acting in the interests of their children, cannot properly obtain permission to alienate property. In this context, the issue of jurisdictional certainty of the dispute subject is quite interesting. Thus, considering the dispute regarding the appeal of the refusal of the guardianship authorities to grant a permit for the sale of real estate, the courts of the first and appellate instances reached a unanimous conclusion on the satisfaction of the claim. When discharging these decisions and closing the proceedings in the case, the court of cassation reached the following conclusions. Disputed legal relations arose regarding the implementation and protection of the property interests of the plaintiff and her son, in whose interests a lawsuit was filed, as a result of the enforced execution of a court decision on the division of the property of the spouses and the collection of funds. The disputed decisions of the defendant became an obstacle to further enforcement of the decision and sale of property. Therefore, the disputed actions and decisions, though taken by the subject of authority, were aimed at implementing the prescriptions of the civil legislation and affected the property rights of the plaintiff and a third party. In this instance, the disputed legal relations had a private law character. In view of the above, and taking into account the nature of the disputed legal relationship, the panel of judges came to the conclusion that the specified dispute was not a public legal dispute and did not belong to the jurisdiction of administrative courts and therefore the conclusions of the courts of first instance and appeals about the consideration of the case in the order of administrative proceedings were erroneous.<sup>25</sup>

Revealing such an applied problem as determining who exactly is considered a homeless child and what are the criteria of this definitive apparatus, attention should be paid to the decision of the ECtHR *Mamchur v. Ukraine*.<sup>26</sup> After the death of his wife, the child's father tried to establish custody of his child, who lived with his grandparents for some time. National methods of protection did not grant him such a right, denying him the satisfaction of the claim. That said, the ECtHR, when determining the violation of the right to respect for private life (Art. 8 of the ECHR), noted the following. When making decisions about measures to protect children, national authorities and courts often face a task that is extremely difficult. They tend to have the advantage of direct contact with all concerned parties, often at the stage when the need for social protection measures first arises or immediately after their implementation. Therefore, there is a need to provide them

24 Case No 755/12052/19 (Grand Chamber of the Supreme Court of Ukraine, 26 October 2021) <<https://reyestr.court.gov.ua/Review/101584602>> accessed 19 February 2023.

25 Case No 337/2021/17(2-a/337/159/2017) (Administrative Cassation Court of the Supreme Court of Ukraine, 21 February 2020) <<https://reyestr.court.gov.ua/Review/87758724> > accessed 19 February 2023.

26 *Mamchur v Ukraine* App no (ECtHR, of 16 July 2015) <<https://hudoc.echr.coe.int/eng?i=001-156388>> accessed 19 February 2023.



with some discretion in deciding how best to deal with their cases, subject to appropriate and professional conclusions being reached. The task of the Court is not to replace the national authorities but to consider the conformity of the decisions and conclusions of the authorities with the Convention in the exercise of their freedom of discretion. The scope of the review may vary depending on the nature and importance of the intervention. While national authorities generally exercise wide discretion in resolving disputes between parents regarding child custody, the Court should take a closer look at cases where the restriction of parental rights may cause the termination of the family relationship between the parent and the child. Moreover, the Court notes that the assessment of the overall proportionality of any measure taken, which may cause the breakdown of the family ties, will require the courts to carefully assess a number of the factors, and, depending on the circumstances of the respective case, they may differ. However, it is necessary to remember that the main interests of the child are extremely important. When determining the main interests of the child in each specific case, two conditions must be taken into account: first, it will be in the best interests of the child to maintain his/her ties with the family, except in cases where the family is particularly unsuitable or clearly dysfunctional; second, it will be in the best interests of the child to ensure his/her development in a safe, calm, and stable environment that is not disadvantaged.

### 3 CHILD HOMELESSNESS AND NEGLECT IN POLAND IN THE 1920S

After regaining independence in 1918, Poland did not become a single and integral state. This is because the territory of Poland at the end of the 18th century was divided between the Kingdom of Prussia, the Russian Empire, and the Austrian monarchy. Poland lost its statehood for 123 years, and, accordingly, in 1918, at the time of the revival of Poland, there was no single system of law on its territory. Moreover, like Ukraine, it had to overcome social, economic, cultural, and educational difficulties. After the First World War, children made up a vast proportion of refugees from areas of combat, primarily in Galicia and Volyn.<sup>27</sup> At that time, thousands of Polish families lived in extreme poverty and material and moral neglect and were waiting for social assistance from the state. There was a considerable lack of economic stability and the presence of such phenomena as impoverishment, hunger, infectious diseases, homelessness, and unemployment (almost the same set as in Ukraine at that time). However, the most important and most dangerous thing was that, first, it was difficult to overcome these challenges quickly, and second, they had a negative impact on the public mood and led to demoralisation, which threatened children and teenagers in particular. It is worth adding that vagrancy became widespread in Poland at that time; it was especially characteristic of large cities. Most often, children resorted to vagrancy due to the death of their parents, or because their parents left them, so to speak, to the mercy of fate, or because demoralised parents forced them to cadge, thus earning a living for their parents and family. The main occupation of this category of children was trade, cadging, or theft. According to statistical data, there were from 1,000–2,000 street children in every provincial city<sup>28</sup> and they had no support from either their mother or their father. It is noteworthy that the problem of child homelessness was mostly a problem in cities, not villages. It should also not be overlooked that as a result of the war and the backwardness of many regions, there was a catastrophic housing situation in Poland, due to which the number of children who became homeless increased.

Based on the above, it is worth emphasising that the worst thing was that orphans, homeless, and vagrant children found themselves on the street, which was a source of

27 Natalia Krestovska, 'Children and the Armed Conflict in Eastern Ukraine' in S Sayapin and E Tsybulenko (eds), *The Use of Force against Ukraine and International Law* (Asser Press Springer 2018) 265.

28 Marian Balcerak, *Child Rights* (PWN 1986) 210.

the spread of alcoholism, prostitution, and crime, considered it a salvation from family problems and poverty. As a result, a generation of street children grew up. It is quite clear that these phenomena required not only recognition but also the adoption of radical measures by the state.

Let me dwell on one more point. According to documents, about 50,000 illegitimate children are born annually in Poland.<sup>29</sup> This category was in the worst situation, especially if the mother of such a child had a low status. In this case, she could not count on help and therefore had to provide the child with material conditions for life, which confirms the existence of discrimination against these people. Under the conditions of that time, they were most often not able to do this, and as a result, women abandoned their children.

To the above, let me add that in interwar Poland, the very refusal of a child (abandonment of a child) was understood in two categories: material and moral. According to J. C. Babicki and W. Woytowicz-Grabieńska, moral refusal occurred when the child lacked conditions for normal mental development – this refers to situations when the child’s mental development was hindered and ethical and social tendencies were distorted. It is noteworthy that the term ‘abandoned child’ did not define any negative features of the child (neither physical nor mental); therefore it did not characterise the child him/herself but only contained information about the conditions in which he/she found himself/herself. This reflects the goal of social care for a child deprived of a natural upbringing environment, which can be formulated as follows: ‘so that the child is well, and society is well with him’.<sup>30</sup> As for material refusal, it is clear enough here: the child’s parents/guardians could not provide for the child’s basic needs (a place to live and food).

However, in the 1920s and 1930s, private individuals, church organisations, and public associations, created first aid centres, mother and child homes, and shelters for foundlings. Some shelters for foundlings were converted into mother-child homes, where they not only cared for the children but even tried to find the mothers.

To sum up, let me emphasise that it was the First World War, during which many people died, that caused the appearance of the largest group of homeless and neglected children – orphans – as well as children who became orphans due to the loss of their parents during their return to the Motherland from abroad. There were also cases when, due to a lack of means of livelihood, children were temporarily placed in boarding schools, even when they had living parents. Some authors cite the following statistics: in 1921, of the total number of children under 16, about 15% were orphans of the war,<sup>31</sup> which indicates the scale of the tragedy.

What is interesting is the fact that in Ukraine at that time, there was already a legally established concept of ‘homeless child’, while in the normative acts of Poland, this concept was absent in the 1920s. According to M. Rodak, in Poland, a homeless person was considered to be someone who did not have a home (owned/rented) and was forced to use social assistance to get a replacement home or decided/was forced to live on the street.<sup>32</sup> In addition, the fact that no separate act was adopted in Poland to solve the problem of

29 Łucja Kabzińska and Krzysztof Kabziński, ‘Childhood in Jeopardy – on Various Hazards of Growing up in Interwar Poland’ (2012) 4 *Warmia and Mazury Scientific Quarterly*, Social Sciences 26.

30 Ibid 31.

31 J Wojtyński and H Radlińska, *Orphanhood: Reach and Alignment* (Polish Institute of Social Service 1946) 20.

32 Mateusz Rodak, ‘The Phenomenon of Homelessness in the Second Rzeczpospolita (with a Special Inclusion of Warsaw)’ in P Grat (ed), *From the Working Issue to the Modern Social Issue: Studies in Polish Social Policy of the XX and XXI Centuries*, vol 1 (University of Rzeszów 2013) 41.

homelessness seems rather surprising, given the scale of the problem (during the period under study, not only children were homeless, but also adults).

## 4 PROTECTION OF HOMELESS AND NEGLECTED CHILDREN

The Law 'On Social Security' of 16 August 1923<sup>33</sup> was used to resolve the issue of homelessness of children. According to Art. 1 of this Law, social security was understood as meeting the vital needs of those people who cannot permanently or temporarily do so with their own material resources or their own labour at the expense of state funds, as well as preventing the creation of the above conditions. Art. 2 of the mentioned act is worthy of attention, which, among other things, states that social security includes the care of infants, children, and adolescents, especially orphans, half-orphans, neglected, abandoned, or criminal children, and those who are at risk of being influenced by a bad environment. Having analysed the prescriptions of the specified article, it could be concluded that, though not directly, the division of the homeless into victims of war, vagrants, and cadgers was foreseen. In this regard, it is considered appropriate to note that the Law provided for the fight against cadging and vagrancy and not for helping cadgers and vagrants. The care of the homeless, and therefore the obligation to provide housing, according to the provisions of the Law, was entrusted to local self-government bodies. They had to help all residents who lived on their territory, regardless of their territorial affiliation. According to the Law, two types of social security were distinguished – shelter (in care institutions) and care. The first form consisted in placing the needy in care facilities, namely non-treatment facilities, city shelters, or other care facilities. The second provided for the provision of: 1) necessary food products, linen, clothes, and shoes; 2) a suitable room with fuel and light; 3) assistance in acquiring the necessary professional skills and obtaining medical care and medicines at the expense of the commune; 4) assistance in restoring lost or improving reduced working capacity. In addition, in Art. 3 of the Law stipulated that the basic life needs of children were considered to be their religious, moral, mental, and physical upbringing, and that of teenagers included help in preparing for professional activities. Teenagers could work after they turned 15, with the permission of their parents or guardians and with the mandatory provision of a certificate of schooling and a doctor's certificate from the labour inspectorate that the work did not exceed their capabilities.<sup>34</sup> Young workers under the age of 18, pupils, and students had the right to a 14-day holiday in case of continuous work during the year.<sup>35</sup> Thus, attempts were made to give children from the age of 15 the opportunity to support themselves and not be forced to look for means of life on the street.

The Resolution of the President of Poland of 14 October 1927<sup>36</sup> enshrined in Arts. 2 and 3 the definitions of the concepts of 'cadger' (one who professionally asks for alms in any way) and 'vagrant' (a person who, having no work and means of livelihood, constantly changes his/her place of residence for reasons other than to find a job). This resolution also contained a list of institutions that were used to combat cadging and vagrancy. These included voluntary labour houses, shelters, and forced labour houses.

33 Law of Poland 'On Social Security' of 16 August 1923 [1923] DzU 92/726 <<https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19230920726>> accessed 19 February 2023.

34 Law of Poland 'On the Work of Young People and Women' of 2 July 1924 [1924] DzU 65/636 <<https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19240650636>> accessed 19 February 2023.

35 Law of Poland 'On Holidays for Employees Working in Industry and Trade' of 16 May 1922 [1922] DzU 40/334 <<https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19220400334>> accessed 19 February 2023.

36 Resolution of the President of Poland 'On Combating Begging and Vagrancy' of 14 October 1927 [1927] DzU 92/823 <<https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19270920823>> accessed 19 February 2023.

Their organisation was already determined by the Decree of the Minister of Labor and Social Care of 25 May 1929.<sup>37</sup> In shelters, work was organised according to the physical condition of dependents determined by a doctor. Religious care was also provided, together with medical care and assistance. Dependents were rewarded for their work in the form of monetary bonuses, the amount of which depended on the type of work and the diligence shown by the dependent. Cadgers and vagrants who were fit for work and had no means of subsistence were placed in the forced labour houses, in respect of which the court decided to place them in forced labour. They worked eight hours a day. A separate section was created for minors. Cadgers and vagrants were placed in voluntary labour houses to the extent possible and at their own will after release from forced labour houses, with those serving a prison sentence, persons with partial working capacity, and all other persons who could not either be employed in another way or find another job. Moral care for minors was carried out in voluntary workhouses by appointing a special educator.

Other ways of combating child homelessness and neglect were nurseries, children's homes, orphanages, etc. Some of them provided full care, others material (clothes, food), and only some provided school education. According to M. Łapot, in 1927, there were 1,011 care and education institutions and special institutions in Poland managed by *gmina* (commune), associations, as well as individuals or private foundations, which cared for 53,000 children.<sup>38</sup> The introduction of compulsory seven-year school education also had a positive effect on the situation.<sup>39</sup> It is interesting that the parents were responsible for the child's non-fulfilment of the school duty (primarily the father, but in his absence, the mother). Keeping a child from enrolling in school resulted in criminal liability (fine, arrest, imprisonment). Therefore, the state tried to reduce the number of neglected children by making parents accountable. However, this only applied to those children who had parents or guardians, while the situation was different for orphans.

Some orphans were grouped in separate institutions, others were given to relatives, and the rest were sent to their *gminas*, where they were placed in institutions of care of the state, public, and local authorities. For example, nine guardian districts were created in Lviv.<sup>40</sup> It should be noted that by the Resolution of the President of Poland of 10 March 1927,<sup>41</sup> the responsibilities of communal guardianship unions were separated. Among the responsibilities was the duty to organise institutions for the care of mothers and children, as well as orphans. The act also established the provision that assistance is provided in kind or in cash.

The formation of summer camps played an equally important role in combating child homelessness and neglect. Their goal was to save the lives and health of orphans, exhausted by the poverty of several years of war. In particular, in Galicia, the opening of summer camps for children was initiated by the Polish Pedagogical Society, as well as other societies and public committees. For orphans who were kept in the city shelter, the Lviv *gmina* established

37 Ordinance of the Minister of Labor and Social welfare of Poland 'Issued in Consultation with the Minister of Justice and the Minister of Internal Affairs On the Organization of Foster Houses, Voluntary and Forced Labor Houses' of 25 May 1929 [1929] DzU 41/350 <<https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19290410350>> accessed 19 February 2023.

38 Mirosław Łapot, *From the History of Caring for a Jewish Orphan Child in Lviv (1772-1939)* (Gliwice Higher School of Entrepreneurship 2011) 100.

39 Decree of the President of Poland 'On Compulsory Education' of 7 February 1919 [1919] DzPrPP 14/147 <<https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19190140147>> accessed 19 February 2023.

40 Łapot (n 39) 104.

41 Resolution of President of Poland 'On the Delineation of the Duties of Municipal Community Associations' of 6 March 1928 [1928] DzU 26/232 <<https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19280260232>> accessed 19 February 2023.

a camp in Brzhuhovycze near Lviv. Every year, about 200 children and young people took advantage of the several-week vacation.<sup>42</sup>

Due to such initiatives, at the end of the 1920s in Lviv, there was already a network of orphanages, cultural centres and youth clubs, vocational and technical schools with boarding schools, a sanitary and hygienic campaign, and a summer camp. The workers were mostly volunteers. In addition, attempts were made to connect the work of institutions for orphans with vocational and technical educational institutions so that young people could acquire a profession and become independent. However, the lack of appropriate financial resources was still particularly acute, and this made it difficult to professionalise activities according to Western models.

Thus, despite the establishment of an effective system of care for orphans, there was still a problem with funding. The Law on Social Security of 1923 and other acts that developed its provisions, according to Polish researchers, turned out to be unviable.<sup>43</sup> However, the main problem was the lack of legal acts that would oblige *gminas* to fulfil their social security obligations. Moreover, the self-governing *gminas* were underfunded and did not prioritise social welfare.

## 5 CONCLUSIONS

In the 1920s, the position, fate, and development opportunities of the children both in Ukraine and in Poland were the result of many factors, such as socio-economic relations, the level of civilisation and culture, the state of the family, and forms of assistance and care, as well as legal guarantees of its functioning. It should be borne in mind that in both countries, the terrible consequences of the First World War were evident, especially in terms of human resources – both countries were in a deep economic crisis. All this had a negative impact on the situation of children, and a large number of them became homeless or neglected. However, in Ukraine for a certain time (closer to the end of the 1920s), it was possible to overcome this phenomenon, although the results were completely levelled by the roll-back of the new economic policy and the introduction of the command-administrative management system. By the end of the 1920s, it was also possible to stabilise the situation of child homelessness and neglect in Poland, but inadequate financing of measures minimised the work of the relevant bodies in this direction.

Considering the generally positive experience of combating child homelessness and neglect in Ukraine and Poland in the 1920s, I can suggest that present-day Ukraine take the following measures. First, it is necessary to suspend the implementation of the provisions of the national strategy for reforming the system of institutional care and upbringing of children for the years 2017–2026, which was adopted in 2017 and provides for a significant reduction of institutional care and upbringing of children. Instead, it is advisable to provide an opportunity to place homeless and neglected children in these institutions for a 24-hour stay because these institutions have the necessary material and technical base for the introduction of care and guardianship.

Second, given that the European standard is to create conditions for the realisation of the right of every child to be raised in a family and ensure the priority of family forms of child placement, it is also necessary to support the foster care form of upbringing (patronage) by increasing funding. It should be considered that under the current conditions of the state of

42 Miroslaw Łapot, 'Activities of the Adolf Lilien Society of Children's Friends in Lviv in the Interwar Period' (2006) 15 Research Works of the Academy of Jan Długosz in Częstochowa, Pedagogy 187.

43 Łapot (n 39) 108.

war and the economic crisis in Ukraine, there will be fewer people willing to become foster carers than before the start of a full-scale war on the territory of Ukraine.

Third, at the same time, the financial instability of parents can also cause a new wave of neglected children, and therefore prevention of child homelessness and neglect is necessary. In the countries of Western Europe, there is a practice of paying monthly cash benefits to the parents of children under the age of 18. For example, in present-day Poland, this payment is 500 PLN for each child. The purpose of childcare assistance is to partially cover the costs associated with raising a child, including taking care of him/her and meeting vital needs.<sup>44</sup> Unfortunately, such a practice does not currently exist in Ukraine. The legislative consolidation of such social assistance from the state is timely and necessary.

Fourth, homeless and neglected children are one of the main sources of juvenile delinquency. That is why, as was recommended in previous research,<sup>45</sup> the draft law on child-friendly justice, which was submitted to the Verkhovna Rada of Ukraine on 4 July 2021,<sup>46</sup> should be adopted.

To implement the proposed measures to combat/prevent child homelessness and neglect, Ukraine needs the financial support of its partners and allies more than ever. Today, humanitarian aid is no less important than military aid.

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