

Review Article

DETERMINING JURISDICTION IN CHILD  
RETURN PROCEEDINGS  
UNDER THE 1980 HAGUE CONVENTION:  
EUROPEAN STANDARDS  
AND UKRAINIAN JUDICIAL PRACTICE

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DOI:

<https://doi.org/10.33327/AJEE-18-9.2-r0001971>

Date of submission: 14 Jan 2026  
Date of acceptance: 14 Apr 2026  
Publication: 20 May 2026

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ABSTRACT

**Background:** *Cross-border disputes concerning the removal or retention of children expose the decisive role of jurisdiction in the effective protection of children's rights: procedural choices frequently predetermine substantive outcomes. This relevance has become particularly acute in relation to Ukrainian children following the large-scale displacement triggered by the Russian Federation's armed aggression against Ukraine, which has multiplied transnational family conflicts and intensified jurisdictional uncertainty in child return proceedings.*

**Method:** *This article examines the jurisdictional architecture of the 1980 Hague Convention on the Civil Aspects of International Child Abduction through the lens of Ukrainian legal practice. It analyses how the Convention's jurisdictional logic, anchored in the notion of the child's habitual residence, interacts with Ukrainian procedural regulation, primarily the*

*Civil Procedure Code of Ukraine, and assesses whether the existing framework ensures predictability, coherence, and effective access to justice in return cases.*

*The study focuses on the legal nature of return proceedings as an interim procedural remedy distinct from custody adjudication, the conceptual boundary between jurisdiction and judicial competence, and the practical challenges faced by national courts in cases involving parallel proceedings and competing jurisdictional claims. Drawing on doctrinal sources, Ukrainian case law, and European standards developed by the European Court of Human Rights, the article identifies recurrent methodological inconsistencies in determining habitual residence and in balancing security-related considerations with the Convention's objectives of prompt return and prevention of forum shopping.*

**Results and Conclusions:** *By situating Ukrainian judicial practice within the broader European interpretative context, conclusions contribute to the development of a more consistent jurisdictional methodology for child return disputes, particularly in exceptional circumstances characterised by armed conflict and mass displacement.*

## 1 INTRODUCTION

The protection of children's rights in cross-border family disputes constitutes one of the most sensitive areas of contemporary private international law.<sup>1</sup> This sensitivity is particularly evident in cases involving the wrongful removal or retention of children across national borders, where legal, social, and emotional dimensions intersect. In such situations, the law is required not only to resolve conflicts between parental claims but also to ensure that procedural mechanisms genuinely serve the child's long-term interests rather than formal jurisdictional convenience.<sup>2</sup>

In recent years, the scale and complexity of international child abduction disputes have increased significantly, especially in the context of large-scale forced displacement caused by armed conflict. The full-scale invasion of Ukraine by the Russian Federation has led to the relocation of millions of children beyond national borders, often under conditions of urgency and insecurity. These circumstances have exposed structural weaknesses in existing legal frameworks, particularly in determining jurisdiction in child return proceedings, where traditional assumptions about stability, residence, and integration are increasingly difficult to apply.

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1 Rhona Schuz, *The Hague Child Abduction Convention: A Critical Analysis* (Hart Publishing 2013) doi:10.5040/9781474200318.

2 Özlem Canbeldek Akin, 'Applying the Principle of Best Interests to the Hague Convention on the Civil Aspects of International Child Abduction in Light of the Decisions of the European Court of Human Rights and of Turkish Courts' (2023) 43(1) *Public and Private International Law Bulletin* 177, doi:10.26650/ppil.2023.43.1.1202464.

Within this evolving context, the 1980 Hague Convention on the Civil Aspects of International Child Abduction remains the cornerstone of international cooperation in cases concerning the return of children.<sup>3</sup> The Convention establishes a procedural mechanism to prevent unilateral alterations of the child's living environment through wrongful removal or retention, and to ensure the prompt restoration of the status quo ante. However, the effective operation of this mechanism depends less on the Convention's formal existence and more on how its jurisdictional logic is interpreted and implemented by national courts.

A central difficulty arises from the Convention's deliberate avoidance of defining key concepts, most notably the notion of the child's habitual residence. While this open-textured approach offers flexibility, it also creates legal uncertainty and divergent judicial practices. Courts are required to engage in a complex factual assessment to determine whether they are competent to hear a case, often in circumstances where the child's living situation has been shaped by temporary protection regimes, emergency relocation, or prolonged displacement.

The determination of jurisdiction in child return cases thus operates as a critical gateway: it shapes the procedural trajectory of the dispute and directly influences the effectiveness of the child's protection. An erroneous or overly formalistic approach to jurisdiction may result in delayed proceedings, conflicting decisions, or the erosion of the Convention's preventive function against forum shopping. These risks are particularly pronounced in cases involving States affected by armed conflict, where security considerations may implicitly reshape judicial reasoning. Against this background, the present article examines the problem of jurisdictional determination in cases concerning the return of children from abroad through the prism of the 1980 Hague Convention. Particular attention is paid to the legal nature of child return proceedings, the role of habitual residence as a jurisdictional connecting factor, and the interaction between international standards and national procedural law. The analysis draws on the jurisprudence of the European Court of Human Rights, the Court of Justice of the European Union, and the judicial practice of Ukrainian courts, with a view to identifying inconsistencies, structural challenges, and emerging trends.

The article argues that the principal difficulty in applying the Hague Convention does not lie in normative deficiencies but in the absence of a coherent and predictable jurisdictional methodology at the national level. By critically assessing judicial approaches to jurisdiction in child return cases, this study seeks to contribute to the development of more consistent legal standards that ensure both legal certainty and the effective protection of children's rights in cross-border family disputes.

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3 Convention on the Civil Aspects of International Child Abduction (adopted 25 October 1980) <<https://www.hcch.net/en/instruments/conventions/full-text/?cid=24>> accessed 10 January 2026.

## 2 GENERAL ISSUES CONCERNING THE TRANSFER OF CHILDREN

The international legal protection of children operates within a multifaceted regulatory framework, the structure and content of which depend on the nature of the legal relationship involving the child. At the general level, international human rights instruments articulate overarching standards to safeguard family life and the fundamental rights of the child.<sup>4</sup> These instruments establish a normative foundation but, in themselves, do not provide procedural solutions to disputes arising from cross-border family relations. In response to such disputes, a range of specialised international conventions has been developed, each addressing specific categories of legal relationships involving children.

Within this specialised framework, the 1980 Hague Convention on the Civil Aspects of International Child Abduction occupies a central position.<sup>5</sup> Unlike general human rights treaties, the Hague Convention introduces a procedural mechanism specifically designed to address situations in which a child has been wrongfully removed or retained across national borders. Its normative logic is based on the unilateral interference that a child's living environment, created by parental action, constitutes an autonomous legal wrong and, as a rule, undermines the stability necessary for the child's development.

The conceptual foundations of this approach were articulated in the early explanatory work accompanying the Convention. Adair Dyer's report underscored that international child abduction primarily affects children themselves, exposing them to abrupt disruptions of their social environment, the loss of meaningful contact with a primary caregiver, and the psychological strain associated with forced adaptation to unfamiliar cultural, linguistic, and educational settings. Although acknowledging that relocation may, in exceptional circumstances, result in improved living conditions, particularly in situations involving domestic violence, Dyer emphasised that the act of abduction or forced retention, as such, is generally incompatible with the child's interests.<sup>6</sup> This premise is particularly important, as the Hague Convention deliberately refrains from defining the "best interests of the child" in abstract terms and instead structures its procedural response on the presumption that wrongful removal is inherently detrimental.

An examination of the Convention's operative provisions reveals several interconnected elements that shape its application. These include the temporal dimension of the child's absence from the State of habitual residence, the procedural time limits for initiating

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4 Convention on the Recovery Abroad of Maintenance (adopted 20 June 1956) [1957] UNTS 268/3; Declaration of the Rights of the Child (adopted 20 November 1959 UNGA Res 1386(XIV)) United Nations, Treaty Series <<https://digitallibrary.un.org/record/195831>> accessed 10 January 2026; Convention on the Rights of the Child (adopted 20 November 1989 UNGA Res 44/25) [1999] UNTS 1577/3.

5 Convention on the Civil Aspects of International Child Abduction (n 3).

6 Adair Dyer, 'Report on International Child Abduction by One Parent ("Legal Kidnapping")' in *Actes et documents de la Quatorzième Session, t 3: Enlèvement D'enfants, Child Abduction* (SDU Publishers 1982) 12.

return proceedings, the factual assessment of habitual residence itself, and the existence of narrowly construed grounds that may justify a refusal to order the child's return. Together, these elements form a procedural architecture intended to ensure both efficiency and legal predictability.

Despite this structured framework, determining the competent court remains one of the most contested aspects of child return proceedings. Jurisdictional uncertainty arises from a combination of legal and factual factors that directly affect the protection of children's rights and the effectiveness of the Convention mechanism. Socio-economic disparities between States may influence parental decisions to relocate with a child, often under the justification of securing better living conditions. In disputes arising from such relocations, courts are required to assess the strength and stability of the child's social, educational, and familial ties in a particular State in order to determine whether that environment genuinely reflects the child's habitual residence.

Concerns relating to the child's safety further complicate jurisdictional determinations. The Hague Convention permits exceptions to the obligation of return where there is a grave risk that return would expose the child to physical or psychological harm. However, distinguishing between legitimate protective measures and the misuse of safety arguments to justify wrongful removal presents a significant challenge. This difficulty is particularly acute in contexts of armed conflict or occupation, where claims of child protection may intersect with practices amounting to forced displacement.

The ongoing armed aggression against Ukraine illustrates the extent to which such exceptional circumstances strain the Convention's jurisdictional framework. Official statements by the Russian authorities indicate that hundreds of thousands of Ukrainian children have been transferred to the territory of the Russian Federation since the beginning of the full-scale invasion. At the same time, data from Ukrainian authorities demonstrate that only a limited number of these children have been successfully identified and returned.<sup>7</sup> These figures underscore the scale of the problem and the limitations of existing legal mechanisms in responding to mass violations.

The international legal response to these events confirms their gravity. In March 2023, the International Criminal Court issued arrest warrants in connection with the unlawful deportation and transfer of Ukrainian children from occupied territories, qualifying such conduct as war crimes under the Rome Statute.<sup>8</sup> This assessment was subsequently reinforced by the European Parliament, which characterised the forced transfer of

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7 Mariia Ulianovska, 'Lubinetz: Ukraine's appeal to the UN court regarding the genocide committed by the Russians is a matter of time' (*VOA - Voice of America*, 1 February 2024) <<https://www.holosameryky.com/a/sud-oon/7465574.html>> 10 January 2026.

8 International Criminal Court, 'Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova: Press Release' (*ICC - International Criminal Court*, 17 March 2023) <<https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and>> accessed 10 January 2026.

Ukrainian children as a serious violation of international law and emphasised the obligation of States to facilitate their return.<sup>9</sup>

These developments demonstrate that the forced removal of children from Ukraine has been unequivocally recognised by the international community as a violation of international law. At the same time, they reveal the necessity of ensuring the effective operation of civil and procedural instruments governing the return of children, particularly with regard to jurisdictional determination. Against this background, the present article focuses on the legal assessment of parental actions involving the cross-border relocation of a child against the will of the other parent, with particular emphasis on jurisdictional determination under the 1980 Hague Convention and its interaction with national procedural law.

### 3 ANALYSIS OF THE CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

Although the 1980 Hague Convention establishes a uniform procedural framework for addressing cases of wrongful removal or retention of children, its practical operation cannot be assessed in isolation from the broader human rights context in which national courts function.<sup>10</sup> The interpretative role of the European Court of Human Rights is therefore of particular significance, as it delineates the limits within which domestic authorities may exercise jurisdictional discretion while remaining compatible with the guarantees enshrined in the European Convention on Human Rights.<sup>11</sup>

Rather than treating the Hague Convention as a self-contained instrument, the ECtHR has consistently approached child return disputes as situations engaging fundamental rights, most notably the right to respect for private and family life. Through its jurisprudence, the Court has articulated a set of procedural expectations applicable to national authorities when dealing with return applications, thereby transforming jurisdictional determination into a matter of substantive human rights relevance.

A pivotal shift in this regard emerged from the Court's reasoning in *Neulinger and Shuruk v. Switzerland*,<sup>12</sup> which reframed the relationship between the Hague Convention and the

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9 European Parliament resolution 2025/2691(RSP) of 8 May 2025 'On the Return of Ukrainian Children Forcibly Transferred and Deported by Russia' <[https://www.europarl.europa.eu/doceo/document/TA-10-2025-0096\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-10-2025-0096_EN.html)> accessed 10 January 2026.

10 Jürgen Basedow and others (eds), *Encyclopedia of Private International Law* (Edward Elgar Publishing 2017).

11 Maja Stanivuković and Sanja Djajić, 'The Right of the Parent to Return to Its Country of Origin in the Light of the Hague Convention on the Civil Aspects of International Child Abduction and the European Convention on the Protection of Human Rights' (2022) 70(1) *Anali Pravnog Fakulteta u Beogradu* 123, doi:10.51204/Anali\_PFBU\_22105A.

12 *Neulinger and Shuruk v Switzerland* App no 41615/07 (ECtHR, 6 July 2010) <<https://hudoc.echr.coe.int/?i=001-99817>> accessed 10 January 2026.

European Convention on Human Rights. Instead of prioritising the automatic operation of the return mechanism, the Court emphasised the need to situate Hague proceedings within a broader normative framework that includes the Convention on the Rights of the Child. This approach underscored that the restoration of the status quo ante cannot be pursued at the expense of a meaningful assessment of the child's concrete situation.

From a jurisdictional perspective, this judgment signalled a move away from rigid proceduralism towards a model requiring contextual judicial engagement.

In subsequent case law, the ECtHR further conceptualised the Hague Convention as an element of European public policy, the effectiveness of which depends on mutual trust between Contracting States. However, this trust is not unconditional. The Court has asserted its supervisory role over national procedures to verify whether domestic courts have genuinely examined the parties' arguments and afforded sufficient weight to the interests at stake. The decisive issue is not whether national authorities enjoy a margin of appreciation, but whether that margin has been exercised in a manner that reflects a fair and reasoned balancing of competing interests.

This approach directly affects jurisdictional determination, as it limits the scope for formalistic reliance on territorial or procedural criteria detached from the child's lived reality.

The Court's understanding of the child's best interests further illustrates this evolution. Rather than treating the concept as an abstract principle, the ECtHR has consistently linked it to two interrelated dimensions: the maintenance of meaningful family relationships and the assurance of a stable environment conducive to the child's development. While the Hague Convention presumes that prompt return ordinarily serves these interests, the Court has clarified that this presumption may be rebutted in narrowly defined circumstances. The exceptions contained in Articles 12, 13, and 20 of the Convention are therefore not peripheral safeguards but integral components of the jurisdictional assessment that must be explicitly addressed by national courts.<sup>13</sup>

This interpretative stance was refined in *X v. Latvia*, where the ECtHR rejected the notion that the best interests of the child could be equated with the preferences or claims of either parent. Instead, the Court required domestic authorities to engage in a structured examination of the factual elements relevant to the child's situation, including the passage of time, the existence of a serious risk, and the compatibility of the requested return with fundamental human rights standards.<sup>14</sup>

The judgment thus reinforced the requirement that jurisdictional decisions under the Hague Convention be grounded in individualised reasoning rather than automatic application of predefined rules.

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13 *ibid*

14 *X v Latvia* App no 27853/09 (ECtHR, 26 November 2013) <<https://hudoc.echr.coe.int/?i=001-138992>> accessed 10 January 2026.

A similar emphasis on substantive judicial reasoning can be observed in *Satanovska and Rodgers v. Ukraine*. In that case, the ECtHR identified deficiencies in the manner in which domestic courts had handled the return proceedings, noting that mechanical reliance on the Convention's objectives is insufficient where relevant arguments concerning the child's welfare have been raised. While recognising that national authorities are best placed to assess factual circumstances, the Court reaffirmed that such assessments remain subject to European supervision.<sup>15</sup>

This reasoning illustrates that jurisdictional autonomy at the national level is conditioned upon demonstrable engagement with the Convention's exceptions and with the child's individual circumstances.

Taken together, the ECtHR's jurisprudence reveals persistent structural challenges in the application of the Hague Convention by domestic courts. Inconsistent reasoning, excessive formalism, and insufficient articulation of the jurisdictional basis for return decisions continue to undermine the predictability and coherence of child return proceedings. These shortcomings not only expose States to findings of Convention violations but also weaken the preventive function of the Hague Convention by creating uncertainty about the competent forum.

Against this background, the comparative examination of national judicial practice becomes an essential complement to the Strasbourg case law, enabling the identification of recurring patterns and the formulation of more consistent jurisdictional standards.

#### 4 CRITERIA FOR DETERMINING THE «PERMANENT RESIDENCE OF A CHILD»

The procedural mechanism established by the 1980 Hague Convention on the Civil Aspects of International Child Abduction is built around a single, decisive connecting factor: the child's habitual residence. This concept performs a dual function. On the one hand, it serves as the legal benchmark for determining whether a removal or retention is wrongful; on the other hand, it serves as the primary basis for allocating jurisdiction between national courts. The effectiveness of the Convention, therefore, depends largely on how this notion is interpreted and applied in practice.

Rather than offering a detailed definition, the Hague Convention deliberately relies on an open-textured understanding of habitual residence. The Convention's operative provisions indicate that a return order is contingent upon the existence of a prior factual situation in which the child was integrated into the social and family environment of a particular State and that this situation was disrupted through unilateral parental action. From this

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15 *Satanovska and Rodgers v Ukraine* App no 12354/13 (ECtHR, 28 January 2021) <<https://hudoc.echr.coe.int/fre?i=001-207480>> accessed 10 January 2026.

perspective, habitual residence functions less as a formal legal status and more as a factual point of reference anchoring jurisdiction to the child's lived reality.

The temporal dimension of this assessment further illustrates its jurisdictional significance. Where return proceedings are initiated within a relatively short period following the child's removal, the Convention presumes that restoring the pre-existing situation best serves both legal certainty and the child's interests. However, as time passes, the factual circumstances surrounding the child's life may evolve, complicating the identification of the relevant connecting factor. In such cases, national courts are required to navigate between the Convention's objective of prompt return and the emerging reality of the child's integration elsewhere.

The absence of an autonomous definition of habitual residence in both international and domestic law inevitably grants national courts a broad margin of appreciation. This discretion, while necessary, also carries the risk of inconsistent jurisdictional determinations. The complementary role of the 1996 Hague Convention on Parental Responsibility is, therefore, particularly important. By emphasising the primary competence of the authorities of the State of the child's habitual residence to adopt long-term protective measures, the 1996 Convention reinforces jurisdictional stability and seeks to curb strategic relocation and forum shopping.

Comparative judicial practice has consistently treated habitual residence as a factual construct reflecting the child's degree of integration into a specific environment. Courts are expected to examine a constellation of factors, including the continuity and regularity of the child's presence, the circumstances surrounding the family's relocation, educational and healthcare arrangements, linguistic and cultural adaptation, and the existence of stable personal relationships. No single element is determinative; rather, the assessment requires a contextual evaluation of how the child's daily life is structured in practice.

This approach is clearly reflected in the Supreme Court of the United States's reasoning in *Monasky v. Taglieri*. Rejecting rigid formulas, the Court framed habitual residence as a fact-sensitive inquiry guided by common sense and attentive to the child's actual circumstances. While acclimatisation may be a relevant indicator for older children, the situation of infants and very young children necessitates greater attention to the caregiving environment created by those responsible for them. Crucially, the Court dismissed the notion that physical presence alone could establish habitual residence.<sup>16</sup>

From a jurisdictional standpoint, this reasoning confirms that habitual residence must be derived from a holistic factual assessment rather than inferred from formal or territorial indicators.

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16 *Monasky v Taglieri* no 18-935 (US Supreme Court, 25 February 2020) 140 S Ct 719.

A similar emphasis on stability can be found in the jurisprudence of the United Kingdom's courts. In *In re Bates*, the High Court articulated habitual residence as requiring a sufficient degree of permanence and settled purpose. Temporary motives, such as short-term employment, education, or medical treatment, may explain a person's presence in a given location but are insufficient, in themselves, to establish habitual residence.<sup>17</sup>

This distinction plays a crucial jurisdictional role by preventing the artificial creation of competence through transient or opportunistic relocation.

The relevance of time and continuity was further elaborated by the United States Court of Appeals for the Sixth Circuit in *Friedrich v. Friedrich*. The Court stressed that habitual residence must be identified on the basis of past and present factual circumstances rather than future plans or speculative intentions. Priority was accorded to the child's actual living conditions at the moment of removal, thereby anchoring jurisdiction to objectively verifiable elements.<sup>18</sup>

Such an approach enhances legal predictability and limits the potential for strategic manipulation of jurisdiction.

Within the legal order of the European Union, the Court of Justice of the European Union has adopted a convergent position. While recognising that physical presence in a Member State is a necessary prerequisite, the Court has consistently held that it is not sufficient on its own to establish habitual residence. Additional factors must demonstrate that the child's presence reflects genuine integration into a social and family environment. Parental intentions may inform the overall analysis, but, in isolation, cannot determine the outcome.<sup>19</sup>

Taken together, the CJEU's jurisprudence reinforces the understanding of habitual residence as a stabilising jurisdictional connecting factor designed to ensure coherence, predictability, and the effective protection of the child's interests.

## 5 PROBLEMS OF JURISDICTIONAL DETERMINATION IN UKRAINIAN JUDICIAL PRACTICE

The practical application of the 1980 Hague Convention in Ukraine has revealed a range of jurisdictional challenges, many of which stem from the unprecedented scale of cross-border displacement caused by the ongoing armed aggression against Ukraine. The determination of a child's habitual residence, a cornerstone of the Convention's jurisdictional framework,

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17 *In re Bates* no CA 122/89 (UK High Court of Justice (Fam Div), 23 February 1989).

18 *Friedrich v Friedrich (Friedrich I)* no 92-3117 (6th Cir, 22 January 1993) 983 F2d 1396; *Friedrich v Friedrich (Friedrich II)* no 94-3832 (6th Cir, 13 March 1996) 78 F3d 1060.

19 Case C-111/17 PPU *OL v PQ* (CJEU, 8 June 2017) paras 31–70; Case C-512/17 *HR* (CJEU, 28 June 2018) paras 38–46; Case C-393/18 *UD v XB* (CJEU, 17 October 2018) paras 43–55.

has become particularly complex in circumstances where millions of children have been forced to leave the country under conditions of urgency and insecurity.<sup>20</sup>

Since the beginning of the full-scale invasion, a substantial number of Ukrainian children have relocated to foreign States and obtained temporary protection status.<sup>21</sup> While such status facilitates access to education, healthcare, and social services in host States, it does not, in itself, resolve the jurisdictional question of whether the child's habitual residence has shifted for the purposes of return proceedings. Ukrainian courts are therefore confronted with the difficult task of distinguishing between emergency-driven displacement and a genuine reconfiguration of the child's social and family environment.

This difficulty is compounded by the evolving geopolitical assessments adopted by foreign States. In some jurisdictions, the armed conflict in Ukraine has been treated as a generalised risk factor affecting the entire territory of the State, whereas other States have begun to recognise specific regions as relatively safe.<sup>22</sup> These divergent external evaluations inevitably influence domestic judicial reasoning and create uncertainty about the identification of the competent forum.

An examination of the jurisprudence of the Civil Court of Cassation of the Supreme Court of Ukraine reveals an absence of a consistent methodological approach to these issues. In its decision, the Court explicitly acknowledged that the concept of habitual residence lacks a conventional definition and must be determined through an individualised assessment of all relevant circumstances.<sup>23</sup>

While this position formally aligns with international standards, it also leaves considerable discretion to lower courts, increasing the risk of divergent interpretations.

In a subsequent judgment, the Supreme Court clarified the evidentiary burden resting on the applicant in return proceedings. The Court emphasised that the claimant must demonstrate both the existence of the child's habitual residence in the requested State and the actual exercise of custody rights prior to removal. The Court identified a range of factual indicators relevant to this assessment, including educational enrolment, access to healthcare, social relationships, and the stability of family ties.<sup>24</sup>

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20 UNHCR, 'Ukraine Refugee Situation' (*Operational Data Portal (ODP)*, 2025) <<https://data.unhcr.org/en/situations/ukraine>> accessed 10 January 2026.

21 *ibid*

22 EnableMe Ukraine, 'Changes in the Stay of Refugees from Ukraine in Hungary in 2024' (*EnableMe*, July 2024) <<https://www.enableme.com.ua/ua/article/zmini-v-perebuivanni-v-ugorsini-dla-bizenciv-z-ukraini-v-2024-roci-11777>> accessed 10 January 2026; Norwegian Directorate of Immigration, 'More Areas Excluded from the Right to Collective Protection' (*UDI - Utlendingsdirektoratet*, 13 January 2025) <<https://www.udi.no/uk/important-messages/more-areas-excluded-from-the-right-to-collective-protection/>> accessed 10 January 2026.

23 Case no 336/5265/22 (Civil Cassation Court of the Supreme Court of Ukraine, 31 January 2024) <<https://reyestr.court.gov.ua/Review/117015388>> accessed 10 January 2026.

24 Case no 753/197/23 (Civil Cassation Court of the Supreme Court of Ukraine, 6 November 2024) <<https://reyestr.court.gov.ua/Review/123601846>> accessed 10 January 2026.

This reasoning reflects a fact-based understanding of habitual residence consistent with the jurisprudence of the ECtHR and the CJEU, yet its application remains uneven in practice.

Notwithstanding these clarifications, Ukrainian judicial practice continues to exhibit internal tension. The Civil Court of Cassation has repeatedly stated that a child's presence abroad, even if prolonged, cannot automatically justify a refusal to recognise Ukraine as the relevant jurisdiction. Neither the introduction of martial law nor the child's residence outside the territory of Ukraine is regarded as determinative in isolation. Instead, these elements must be weighed alongside other considerations, including parental equality and the child's best interests.<sup>25</sup>

This position underscores an attempt to preserve jurisdictional continuity but may also conflict with the Convention's emphasis on factual integration.

This tension is particularly evident in cases involving interim measures that restrict a child's departure from Ukraine without the consent of one parent. In such proceedings, the Supreme Court has acknowledged that ongoing hostilities and potential threats to the child's safety cannot be disregarded. At the same time, the Court has insisted that both parents bear equal responsibility for protecting the child's life and health. Accordingly, the objections raised by the non-consenting parent, especially when framed in terms of safety, must be duly considered.

In several instances, the Court has opted to preserve the status quo by temporarily limiting the child's right to leave Ukraine, thereby prioritising precaution over procedural symmetry.

While this approach reflects judicial caution, it also illustrates a broader tendency to allow security considerations to exert a decisive influence on jurisdictional determinations. As a result, the structured criteria developed under the Hague Convention risk being applied selectively or subordinated to context-specific concerns.

Such practice undermines legal certainty and weakens the Convention's objective of ensuring predictable and uniform jurisdictional outcomes.

Overall, Ukrainian judicial practice demonstrates an ongoing struggle to reconcile international jurisdictional standards with the realities of armed conflict and mass displacement. Although national courts formally reference the principles articulated by the ECtHR and comparative jurisprudence, their practical application remains inconsistent. This divergence not only generates uncertainty for the parties involved but also threatens the coherence of the Hague Convention mechanism itself. The development of a more consistent and transparent jurisdictional methodology, therefore, remains a pressing task for Ukrainian courts adjudicating child return disputes.

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25 Case no 711/4569/23 (Civil Cassation Court of the Supreme Court of Ukraine, 31 January 2024) <<https://reyestr.court.gov.ua/Review/116890959>> accessed 10 January 2026.

## 6 CONCLUSIONS

The analysis in this article confirms that determining jurisdiction in cases concerning the return of children from abroad is one of the most intricate challenges in contemporary private international law. While the 1980 Hague Convention on the Civil Aspects of International Child Abduction establishes a common procedural framework designed to ensure the prompt return of wrongfully removed or retained children, its practical effectiveness is contingent upon the consistent and methodologically sound identification of the child's habitual residence as the central jurisdictional connecting factor.

The study demonstrates that return proceedings under the Hague Convention are inherently procedural and interim in nature. They do not resolve disputes concerning parental responsibility on the merits, but instead seek to neutralise the legal consequences of unilateral parental action by restoring the factual situation that existed prior to the wrongful removal or retention. In this sense, jurisdiction under the Hague Convention performs a substantive protective function: it safeguards legal certainty, prevents jurisdictional manipulation, and ensures that decisions on long-term child protection measures are taken by the authorities most closely connected to the child's social and family environment.

A central finding of the article is that the Convention's deliberate omission of an autonomous definition of «habitual residence» constitutes both a source of flexibility and a catalyst for legal uncertainty. As demonstrated through the analysis of the jurisprudence of the European Court of Human Rights, the Court of Justice of the European Union, and comparative national case law, habitual residence must be understood as a factual concept grounded in the child's actual integration into a specific social and familial context. This assessment requires a holistic evaluation of objective circumstances and cannot be replaced by formal indicators, abstract parental intentions, or the child's physical presence alone.

The examination of Ukrainian judicial practice highlights the particular strain placed on this jurisdictional framework in situations of large-scale forced displacement resulting from armed conflict. Although Ukrainian courts formally rely on international and European interpretative standards, their application remains fragmented. Security considerations, temporary protection regimes, and emergency-driven relocation increasingly influence jurisdictional determinations, at times eclipsing the structured criteria embedded in the Hague Convention. Such an approach risks undermining legal predictability, producing inconsistent outcomes in analogous cases, and weakening the Convention's preventive function against forum shopping through international child abduction.

Against this background, the article argues that the primary difficulty lies not in deficiencies of the 1980 Hague Convention itself, but in the absence of a coherent, uniform methodology for jurisdictional determination at the national level. Greater emphasis must be placed on aligning domestic judicial reasoning with the

interpretative principles articulated by the ECtHR and the CJEU, particularly with respect to the factual assessment of habitual residence and the careful calibration of security-related concerns against the Convention's objectives.

In conclusion, the effective functioning of the Hague Convention in contemporary conditions - especially in contexts marked by armed conflict and mass displacement - requires a reinforced commitment to consistent jurisdictional reasoning. This includes developing clearer judicial guidelines, enhancing training for judges handling cross-border child disputes, and clarifying the criteria underpinning jurisdictional decisions. Only through such measures can the Convention continue to serve as a reliable instrument for the protection of children's rights and for the maintenance of trust and cooperation between States in cross-border family law matters.

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**Competing interests:** Dr Serhii Kravtsov serves as a Section Editor for Access to Justice in Eastern Europe. To ensure a rigorous and unbiased peer-review process, he was not involved in the editorial handling, selection of reviewers, or the final decision-making regarding this manuscript. No other competing interests were disclosed.

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## EDITORS

**Managing editor** – Valentina Krivolapova. **English Editor** – Robert Reddin.  
**Ukrainian language Editor** – Liliia Hartman.

## ABOUT THIS ARTICLE

### Cite this article

Kravtsov S, Panchenko V, Cherevatenko I, and Leiba L, 'Determining Jurisdiction in Child Return Proceedings under the 1980 Hague Convention: European Standards and Ukrainian Judicial Practice' (2026) 9(2) Access to Justice in Eastern Europe 511-28 <<https://doi.org/10.33327/AJEE-18-9.2-r0001971>>

**DOI:** <https://doi.org/10.33327/AJEE-18-9.2-r0001971>

**Summary:** 1. Introduction. – 2. General issues concerning the transfer of children. – 3. Analysis of the Case Law of the European Court of Human Rights. – 4. Criteria for determining the «permanent residence of a child». – 5. Problems of Jurisdictional Determination in Ukrainian Judicial Practice. – 6. Conclusion.

**Keywords:** *international child abduction, jurisdiction, return of children, 1980 Hague Convention, civil proceedings, cross-border family disputes, protection of children's rights.*

## DETAILS FOR PUBLICATION

Date of submission: 14 Jan 2026

Date of acceptance: 14 Apr 2026

Publication: 20 May 2026

Was the manuscript fast-tracked? - No

Number of reviewer reports submitted in the first round: 3 reports

Number of revision rounds: 1 round with major revisions

## Technical tools were used in the editorial process

Plagiarism checks - Turnitin from iThenticate  
<https://www.turnitin.com/products/ithenticate/>  
Scholastica for Peer Review  
<https://scholasticahq.com/law-reviews>

## AI DISCLOSURE STATEMENT

This article was prepared with the assistance of AI tools. Specifically, Grammarly was employed for proofreading during the drafting process. The authors confirm that all content, arguments, and conclusions were generated independently and remain their sole responsibility. No AI tool was used for generating original research findings or analysis.

## АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Оглядова стаття

### ВИЗНАЧЕННЯ ЮРИСДИКЦІЇ У СПРАВАХ ПРО ПОВЕРНЕННЯ ДІТЕЙ ЗГІДНО З ГААЗЬКОЮ КОНВЕНЦІЄЮ 1980 РОКУ: ЄВРОПЕЙСЬКІ СТАНДАРТИ ТА УКРАЇНСЬКА СУДОВА ПРАКТИКА

**Сергій Кравцов\*, Вікторія Панченко, Ірина Череватенко та Людмила Лейба**

#### АНОТАЦІЯ

**Вступ.** Транскордонні спори щодо незаконного переміщення або утримання дітей демонструють вирішальну роль юрисдикції в ефективному захисті прав дітей: процесуальні рішення часто зумовлюють матеріально-правові наслідки. Ця проблема стала особливо актуальною стосовно українських дітей після масштабного переміщення населення, спричиненого збройною агресією Російської Федерації проти України, що призвело до зростання кількості транснаціональних сімейних конфліктів та посилення юрисдикційної невизначеності у справах щодо повернення дітей.

**Методи.** У цій статті розглядається юрисдикційна архітектура Гаазької конвенції про цивільно-правові аспекти міжнародного викрадення дітей 1980 року крізь призму української юридичної практики. У ній аналізується, як юрисдикційна логіка Конвенції, що ґрунтується на понятті звичайного місця проживання дитини, взаємодіє з українським процесуальним регулюванням, насамперед Цивільним процесуальним кодексом України, та

оцінюється, чи забезпечує наявна система передбачуваність, узгодженість та ефективний доступ до правосуддя у справах про повернення дітей.

Дослідження зосереджується на правовій природі проваджень про повернення дітей як тимчасового процесуального засобу захисту, відмінного від розгляду справ про визначення місця проживання дитини (опіки), на концептуальному розмежуванні між юрисдикцією та судовою компетенцією, а також на практичних труднощах, з якими стикаються національні суди у справах із паралельними провадженнями та суперечливі претензії щодо юрисдикції. Спираючись на доктринальні джерела, українську судову практику та європейські стандарти, сформовані Європейським судом з прав людини, у статті виявлено повторювані методологічні неузгодженості у визначенні звичайного місця проживання дитини, а також у балансуванні між міркуваннями безпеки та цілями Конвенції — оперативним поверненням дітей і запобіганням *forum shopping* (вибору найвигіднішої юрисдикції).

**Результати та висновки.** Розміщуючи українську судову практику в ширшому європейському тлумачному контексті, стаття сприяє розробці більш послідовної юрисдикційної методології у справах про повернення дітей, особливо за виняткових обставин, що пов'язані зі збройним конфліктом та масовим переміщенням населення.

**Ключові слова.** Міжнародне викрадення дітей, юрисдикція, повернення дітей, Гаазька конвенція 1980 року, цивільне судочинство, транскордонні сімейні спори, захист прав дітей.