
Annex 2: Information on Ukraine

MARCH 2022

Provisions related to guardianship/custody of children

In our view, arts. 243 and following of the [Family Code \(Chapter 19\)](#) are to be read in conjunction with arts. 55 and following of the [Ukrainian Civil Code \(Chapter 6\)](#), which provide clear provisions on the appointment of a guardian/custodian by administrative or judicial authorities. Hence, as general rule the removal of parental rights and the conferring of 'status' of a child deprived of parental care must be undertaken by competent authorities (see also: *Procedure for the implementation of guardianship activities related to the protection of the rights of the child*, approved by the Decree of the Cabinet of Ministers of Ukraine, September 24, 2008 No. 866)¹.

Further, there are several provisions in the Ukrainian legislation referring to **the role of the State** towards children without parental care, among others:

- Constitution of Ukraine (Art. 52): "The maintenance and upbringing of orphans and children deprived of parental care is entrusted to the State."
- *Law of Ukraine on Social Protection of Orphans and Children Deprived of Parental Care of 2005*;
- *2001 Law on Protection of Childhood (and subsequent amendments)* also contains specific provision for children without parental care. If a child has been referred to, and assessed by, the authorities due to concerns for the child's protection or wellbeing, their case is referred by Service for Children's Affairs to the local Guardianship and Custody Body for a decision that would confer status of a child as an orphan or a children deprived of parental care; If a recommendation is made by Service for Children's Affairs for removal of parental rights, the case must be referred to the court for the final legal decision of a judge. If the judge removes parental rights, the child can receive a 'status' that leads to placement in alternative care. The Law also calls upon the State to act *in loco parentis* when parents are unable to provide care for their children or have been deprived of parental rights.

In the light of the above, according to our understanding, should there be no formal appointment of a guardian/custodian for a child living in a child care centre or health institution, **arts. 244 and 245 of the Family Code foresee a "default"/"de facto" solution**: functions of the custodian and caretaker in respect of the child are performed by the administration of these institutions. Arts. 65 and 66 of the Civil Code confirm this pragmatic approach of articles 244/245 Family Code.

¹ (1) whose parents are deprived of parental rights, confirmed by a court decision; (2) taken from parents without deprivation of parental rights, confirmed by a court decision, (3) whose parents are recognized as missing, as evidenced by a court decision, (...); (5) whose parents are recognized as incapable, as evidenced by a court decision (...).



The [Civil Code of Ukraine](#) deals also with the role, duties and powers of the guardian of children in several provisions by referring also to the institution/care facility as “relevant organisation performing concerning it functions of the guardian” (art. 29, para 5).

In particular:

- Arts. 29, 62: the **residence of the child is determined** by the residence of the guardian/location of the institution/care facility. This could possibly mean that the guardian/custodian has the right to determine the habitual residence of the child.
- **Arts. 67 and 69: rights and obligations of the guardian:**
 - **Care obligations** (living conditions, development of the child, training/education)
 - **Power to take protection measures:** authorization for necessary surgeries, requests for social service/aid/ insurances might fall under such measures;
 - Certain limitations are linked to property rights/contractual issues (see arts. 70 et seq.)

With regard to the authority **to move children**, we believe that art. 69 comes to help when stating “care for creation of necessary living conditions ... “. This might imply moving children to another country and/or oblast when children’s lives are endangered.

Additional clarity is now also provided by **Amendments to the Rules of crossing the state border by citizens of Ukraine, approved by the Cabinet of Ministers of Ukraine on February 28, 2022 No 166** and applicable to a state of emergency or martial law on the territory of Ukraine (see unofficial English translation attached).

- **Documentation needed to prove legal representation** of children who had previously been taken care of in institutions in Ukraine and to confirm the children’s status as being ‘accompanied’;
- **Registration requirements at the place of temporary stay outside of Ukraine:** accompanying persons are obliged to apply to the consular post of Ukraine in the host country within one working day to register children for consular registration;
- **The ratio of children per accompanying person:** “For the departure of children outside Ukraine, groups of children with accompanying persons can be formed at the rate of one accompanying person for no more than 15 children / one accompanying person for no more than four children with disabilities.”

Practical information on how children enter the care system

In 2020, ISS was commissioned by UNICEF Ukraine to conduct an evaluation of the child protection system as it particularly relates to alternative care. Please find hereafter further findings of the ISS mission report:

In Ukraine, there are unfortunately numerous pathways by which a child might enter the protection and alternative care system. Yet, in order to effectively apply gatekeeping principles and monitor all children coming into the national child protection and alternative care system, there should be one single pathway into and out of the care system.



Coupled with this, as per our field mission report in 2020, a very common scenario was the relinquishment of children to institutions by identified parent/s, or legal guardians – scenario in which the latter voluntarily transferred the full-time care of a child to another ‘carer’ without following a formally regulated process. This, however, does not automatically include legal removal of parental rights. Such removal, as required by the above-mentioned legal provisions, should be the result of a formal referral and assessment process, undertaken by social workers and other professionals.

This situation is confirmed by another source: according to the [Ukrainian alternative report to the CRC](#) (2018), a significant proportion of children are living in residential institutions based on written requests from parents who are unable to meet the child’s needs because of illness, alcoholism, poverty or unemployment.

Yet, no Government data has been seen by the ISS team that can provide an accurate figure of the number of children who, on an annual basis, are relinquished by their family. However, [Hope and Homes for Children](#) indicated that in 2015, 38,168 (38.2%) of the 99,915 children placed in residential institutions were there as a result of a direct application by parents or guardians.

Moreover, in the [additional submissions on Ukraine’s Implementation on the UN CRC](#), provided by Hope and Homes in July 2020, Ukraine has about 1,4% of all its child population in some form of institutions for children.

It is also worrying that abandonment through the baby box scheme is lawful, whilst article 155 of the Family Code, abandonment is ‘unlawful’. Babies are left in the care of the Ministry of Health authorities predominantly in health facilities. The Family Code allows parents to abandon/relinquish their child at the maternity home or any other health institution if the child suffers from serious physical and/or mental disability as well as under other essential circumstances. It is understood however, that there is no explanation in the Family Code as to what ‘other essential circumstances’ means, thus leaving this to interpretation by individuals accepting the child into care.

Furthermore, it seems that family re-integration efforts are quite limited. According to the [2015 report of Hopes and Homes for Children](#), ‘the institutional care system in Ukraine does not view a child’s return to a family environment as one of its priorities. Therefore, staff members do not work with parents to return children to their biological families or place them in family-based forms of care.’

In sum: gatekeeping mechanisms, including, case management tools are not being systematically and rigorously applied in Ukraine. This includes poor implementation of assessments that allow for well-informed and participatory decision making and lack of ongoing review to assess any changes in the situation of children and their families once a child is in care. Institutions continue to accept children without any due process as laid out in Ukrainian legislation and guidance, and systematic efforts to reunite children with their families are not being undertaken. This situation further raises concern that many of these children may have been placed in care unnecessarily and the possibility that timely assistance to the families might have prevented such actions.



International Reference Centre
for the rights of the children
deprived of their family (ISS/IRC)

Other sources of information

- [Ministry of Social Policy: About 5,000 children from vulnerable categories being brought up in institutional care facilities were evacuated | Cabinet of Ministers of Ukraine \(kmu.gov.ua\)](#)
- [Ukraine \(ohchr.org\)](#)
- [Treaty bodies Download \(ohchr.org\)](#) – Ukrainian replies to the list of issues, January 2022, see in particular paras. 33 and following, paras. 65, 71-72, 79.
- [Ukraine: Children without caregivers risk being forgotten - Ukraine | ReliefWeb](#)
- [Ukraine: Humanitarian Impact Situation Report](#)
- [Mentoring as an individual form of preparing orphans for independent living in Ukraine, 2020](#)

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