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### DH-DD(2026)296

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Meeting: 1553<sup>rd</sup> meeting (March 2026) (DH)

Communication from an NGO (R.I.W.E. (Refugees International Women Empowerment Foundation)) (11/02/2026) in the Osso group of cases v. Bulgaria (Application No. 51056/21).

Information made available under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1553<sup>e</sup> réunion (mars 2026) (DH)

Communication d'une ONG (R.I.W.E. (Refugees International Women Empowerment Foundation)) (11/02/2026) dans le groupe d'affaires Osso c. Bulgarie (requête n° 51056/21) **[anglais uniquement]**

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

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**Date:** February 11, 2026

**RULE 9.2 COMMUNICATION  
TO THE COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE**

Department for the Execution of Judgments of the European Court of Human Rights

Concerning the execution of the judgment in the case of

**OSSO v. BULGARIA** (Application No. 51056/21)

Judgment of 13 June 2023 — Violation of Article 8 of the Convention

*Submitted by:*

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*For the 1553rd meeting (9–11 March 2026) (DH)*

**EXECUTIVE SUMMARY**

In *Osso v. Bulgaria* (2023), the European Court of Human Rights established four procedural standards for Hague Convention child return proceedings: the court must examine whether the respondent parent can accompany the child; distinguish between ordinary inconveniences and grave risk; verify the factual basis for claimed risks; and consider protective measures. Bulgaria's Action Plan addresses the speed of proceedings. It does not address whether courts will receive the information these standards require.

This communication demonstrates that for the most affected population — approximately 65,000 Ukrainian women and children with temporary protection in Bulgaria — the *Osso* standards will be formally available but practically inoperative. Under the current procedural framework:

- The applicant parent (father) receives free legal representation through the Ministry of Justice;

- The respondent parent (Ukrainian mother) receives no legal representation, no interpretation, and no institutional support.

This structural imbalance means that the court will not examine the mother’s immigration status (§§12–13), will not assess displacement-specific risks for the child (§§14–17), will not verify the father’s factual claims (§§18–20), and will not test whether protective measures are enforceable (§§21–22) — not because it refuses to do so, but because it will never receive the relevant information.

Comparative practice from England, Germany, Denmark, and the United States confirms that meaningful application of the *Osso* standards requires the active participation of both parties. In every case where courts conducted the detailed analysis required by *Osso* — whether they ordered return or refused it — both parties were legally represented and presented evidence. The precedent in *Tereshchenko v. Karimi* (2d Cir. 2024), where the court ordered children returned to their father in France as a “temporary ameliorative measure,” confirms the “third country” scenario identified in this communication as the most dangerous and entirely unaddressed by Bulgaria’s Action Plan (§§9g–9i).

The communication draws on the **R.I.W.E. Survey 2025** — a community-based survey of 454 Ukrainian refugees in Bulgaria conducted under the UNHCR MAP Programme — which documents the language barriers, institutional inaccessibility, and information gaps that render effective participation in judicial proceedings impossible for this population.

**Six measures are proposed** (Section VI), led by:

- (a) Mandatory state-funded legal representation and interpretation for respondent parents in Hague Convention proceedings;
- (b) Codification of judicial obligations to examine the respondent’s immigration status, assess return-specific risks, verify factual claims, and test enforceability of protective measures in cases involving displaced persons;

supplemented by judicial training (c), a revised social report protocol (d), disaggregated statistical data (e), and information dissemination in accessible formats and channels (f).

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## I. INTRODUCTION

1. This communication is submitted pursuant to Rule 9.2 of the Rules of the Committee of Ministers in connection with the execution of the judgment in *Osso v. Bulgaria* (Application No. 51056/21, judgment of 13 June 2023), responding to Bulgaria’s Addendum to the Action Plan of 27 January 2026 (DH-DD(2026)134) and the initial Action Plan of 14 December 2023 (DH-DD(2023)1519).

2. The submitting organisation — R.I.W.E. Foundation — works directly with Ukrainian refugee women and children in Bulgaria and across Europe, providing legal assistance in cross-border family disputes and documenting gender-based violence in displacement contexts. This communication draws, *inter alia*, on the results of a community-based survey conducted by R.I.W.E. Foundation under the UNHCR MAP Programme among 454 Ukrainian refugees in Bulgaria in November–December 2025 (“R.I.W.E. Survey 2025”).

3. The central concern of this communication is as follows. In *Osso*, the Court established four standards that Bulgarian courts must apply in Hague Convention proceedings. These standards are correct and necessary. Bulgaria’s Action Plan addresses the speed of proceedings. It does not address whether the court will actually *receive the information* that these standards require. This communication demonstrates, standard by standard, that for the most vulnerable category of respondents — approximately 65,000 Ukrainian women and children with temporary protection in Bulgaria — the answer is that it will not. The court will not examine the mother’s immigration status, because no law requires it and the mother cannot raise the argument herself (§13). The court will not assess the risks of return for the child, because the social report describes only the child’s current situation (§§15–17). The court will not verify the father’s claims, because evidence is accessible through Ukraine’s Diia system but the mother does not know what to challenge (§§19–20). The court will not examine whether protective measures are enforceable, because nobody raises the mother’s lack of legal status in the destination State (§§21–22). In every case, the cause is the same: the respondent has no legal representation, no language access, and no institutional support (§§23–25). The submitting organisation proposes six specific measures, led by legislative amendments, to close this gap (§26).

## II. THE FOUR STANDARDS ESTABLISHED IN OSSO

4. The Court found a violation of Article 8 because the Sofia Appellate Court (“SAC”) failed to conduct a genuine examination of four questions that are essential to any Hague Convention decision (§§15–19 of the judgment):

**Standard 1:** The court must examine **whether the respondent parent can accompany the child** to the State of habitual residence. The SAC assumed that the mother’s refusal to return to Switzerland meant the child would inevitably be separated from her, without exploring whether she could in fact return. Allowing the return mechanism to be “automatically deactivated on the sole basis of a refusal by the abducting parent” would subject the Hague Convention to the “unilateral will of that parent” (*Thompson v. Russia*, §70). (§17)

**Standard 2:** The court must **distinguish between ordinary inconveniences of return and situations exceeding what a child can reasonably bear**. A “grave risk” under Article 13(1)(b) “cannot be read ... as including all of the inconveniences necessarily linked to the experience of return” (*X v. Latvia* [GC], §116). Separation from the abducting parent does not automatically constitute grave risk (*K.J. v. Poland*, §67). (§§15–16)

**Standard 3:** The court must **verify the factual basis for claimed risks**. The SAC cited criminal proceedings against the mother in Switzerland but ignored the fact that Swiss authorities had refused to open such proceedings. (§18)

**Standard 4:** The court must **consider protective measures and voluntary undertakings** by the left-behind parent, as recommended in the Guide to Good Practice under the Hague Convention. (§18)

5. Additionally, the Court found the proceedings excessively long: 17 months and 2 weeks, far exceeding the 6-week benchmark in Article 11 of the Hague Convention. (§§20–22)

### III. WHAT THE ACTION PLAN DOES AND DOES NOT DO

#### A. The Action Plan addresses the length of proceedings

6. The legislative amendments of May 2024 — Article 22c(2) (time limit for evidence) and Article 22e(2) (one month for appellate decision) — respond to the excessive length identified by the Court. The statistical data for 2023–2025 shows improvement: 24 of 39 cases resolved within 3 months. This is acknowledged as a positive step.

#### B. The Action Plan does not address the quality of judicial reasoning

7. None of the four *Osso* standards has been codified in the Child Protection Act. The law does not require courts to examine whether the respondent parent can accompany the child, to distinguish between ordinary inconveniences and grave risk, or to verify claimed risks. As regards protective measures, Article 22b of the Act empowers the court to order provisional measures for the protection of the child during proceedings, but this provision concerns court-ordered measures, not the obligation identified in *Osso* (§18) to consider *voluntary undertakings by the left-behind parent* as a means of mitigating risks upon return, as recommended by the Guide to Good Practice under the Hague Convention (Part VI(II)(2)(i)(67)). Bulgaria relies on case law rather than legislative codification to demonstrate compliance with the *Osso* standards.

8. The case law overview in the Addendum presents seven SAC decisions, all of which are refusals to return. While these decisions demonstrate a protective approach, they do not show how courts apply the *Osso* standards when *ordering* return, nor do they include any case involving a respondent with temporary protection or refugee status.

### C. The Action Plan does not address equality of arms

9. Under Article 22a of the Child Protection Act, the Ministry of Justice represents the applicant parent and may appoint counsel on the applicant’s behalf. The respondent parent has **no equivalent right** to state-funded legal representation or interpretation. The 2024 amendments eliminated prosecutorial participation in Hague Convention proceedings initiated by a parent through the Ministry of Justice, reclassifying them as purely civil. This reform is consistent with the Brussels II *ter* Regulation and with the practice of most EU Member States, where prosecutors do not participate in child return proceedings. However, in those Member States, the absence of a prosecutor is compensated by other safeguards: mandatory appointment of a lawyer for unrepresented respondents, state-funded legal aid, or a *Guardian ad litem* or *Verfahrensbeistand* (as in Germany) who independently represents the child’s interests. Bulgaria removed the prosecutor — the only institutional actor who could raise child protection concerns independently of the parties — **without introducing any compensating mechanism**. The result is a structural imbalance: the applicant parent is represented by the State; the respondent parent faces the proceedings alone.

### D. Comparative European and international practice confirms the need for procedural safeguards

9a. Since the outbreak of armed conflict in Ukraine in February 2022, courts in England, Germany, Denmark, and the United States have adjudicated a growing number of Hague Convention cases involving Ukrainian families. This comparative practice is directly relevant to the execution of *Osso* because it reveals two things: first, the type of judicial analysis that the *Osso* standards require; and second, the procedural conditions without which such analysis is impossible.

#### The emerging judicial consensus: case-by-case analysis, not automatic refusal

9b. European and American courts have rejected the notion that the armed conflict in Ukraine automatically establishes a grave risk under Article 13(1)(b). Instead, they insist on detailed, region-specific assessment of the risks facing the particular child. In *Q v R* (2022), the English High Court held that courts must “avoid generalities” and evaluate “the particular risk to this particular child in a return to this particular area, rather than to apply a general or a broad brush.”<sup>1</sup> The court ordered return to a region of Ukraine not directly affected by hostilities. In contrast, in *Re Z* (2023), the same court refused return to Kyiv, finding that no protective measures could mitigate the grave risk.<sup>2</sup> In *Re N* (2024), the court ordered the return of a 12-year-old child to Ukraine despite the ongoing war, again conducting an individualised risk assessment.<sup>3</sup>

9c. The Higher Regional Court of Stuttgart (Germany, 2022) reached the opposite conclusion, holding that the *entire territory* of Ukraine constitutes a war zone and refusing return to Odessa.<sup>4</sup> The same court subsequently contrasted the Ukrainian situation with other conflicts, describing Ukraine as facing “a massive, formally organized war” from “a

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<sup>1</sup>*Q v R* [2022] EWHC 2961 (Fam) (Williams J).

<sup>2</sup>*Re Z (Children) (Article 13(b): Return to Kyiv)* [2023] EWHC 602 (Fam) (Dexter Dias KC, sitting as Deputy High Court Judge).

<sup>3</sup>*Re N (A Child) (Ukraine: Article 13(b))* [2024] EWHC 871 (Fam).

<sup>4</sup>Oberlandesgericht Stuttgart (Higher Regional Court of Stuttgart), Beschluss v. 13.10.2022, Az. 17 UF 186/22.

militarily dominant great power,” making the circumstances qualitatively different.<sup>5</sup> The Danish Supreme Court (6 March 2025) refused return to Ukraine but, significantly, based its decision not on the dangers of war as such, but on the *practical consequences* the war created: the mother’s inability to travel to Ukraine with her other child, the child’s close bond with the mother as sole caregiver, and the disruption that return would cause to an established family situation.<sup>6</sup>

9d. Most recently, in *Re G and B* (England, April 2025), the court refused return of five-year-old twins to the Cherkasy region of Ukraine on two independent grounds: first, that the children were “settled” in England within the meaning of Article 12 (having lived there for 19 months, enrolled in school, registered with a GP, and integrated into a family support network); and second, that return would expose them to a “grave risk” under Article 13(1)(b), it being “intolerable” to uproot their settled lives and move them to a country subject to war.<sup>7</sup> The court further noted that the lack of contact with the father had affected one twin’s psychological settlement — a finding that required detailed evidence from both parents.

### **The critical observation: genuine examination requires active participation of both parties**

9e. The essential lesson from this comparative practice is not about which outcome is correct. It is about what the courts *needed* in order to reach properly reasoned decisions. In every case — whether the result was return or refusal — the court conducted a detailed factual analysis based on evidence and arguments presented by **both parties**. In *Re G and B*, the English court considered evidence of missile attacks near Cherkasy, the children’s school reports, medical registrations, and testimony about the family’s support network.<sup>8</sup> In the Danish case, the Supreme Court evaluated the mother’s role as primary caregiver, the practical barriers to travel, and the length of the child’s stay in Denmark.<sup>9</sup> In *Yuriiovych v. Hryhorivna* (United States, 2024), the court heard expert testimony from a former Assistant Secretary of State on the military situation in different Ukrainian regions before ordering return to Chernivtsi.<sup>10</sup>

9f. Judge Yuliia Cherniak of the Ukrainian Supreme Court, member of the International Hague Network of Judges, confirmed that in 2022–2023, the majority of return applications to Ukraine were dismissed by foreign courts under Article 13(1)(b).<sup>11</sup> She observed, however, that the practice is evolving: foreign courts now assess specific regional risk levels rather than treating the conflict as a uniform bar to return. This evolution itself presupposes detailed

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<sup>5</sup>See also OLG Stuttgart, *Beschluss v. 2024* (Az. 17 UF), ordering return of a child to Israel and explicitly distinguishing its 2022 Ukraine decision, holding that Ukraine faces “a massive, formally organized war” from a “militarily dominant great power,” making the situations non-comparable.

<sup>6</sup>Danish Supreme Court, decision of 6 March 2025. See analysis: European Association of Private International Law (EAPIL), 25 March 2025, *Danish Supreme Court: Refugee’s Child Cannot Be Returned to Father in Ukraine*.

<sup>7</sup>*Re G and B (Children) (Abduction: Settlement: Grave Risk: Ukraine)* [2025] EWHC 795 (Fam), judgment of 2 April 2025.

<sup>10</sup>*Yuriiovych v. Hryhorivna*, CV 24-78-BU-DLC (D. Mont., judgment of 20 December 2024). Return ordered to Chernivtsi, Ukraine.

<sup>11</sup>Roundtable “Application of the Hague Conventions on the Protection of Children’s Rights in Time of War in Ukraine”. Remarks of Judge Yuliia Cherniak, Civil Cassation Court of the Supreme Court of Ukraine, member of the International Hague Network of Judges. Published by the Judicial Authority of Ukraine, 2023.

factual submissions — on the security situation in the particular region, on the child’s circumstances, on the mother’s ability to follow — from a respondent who understands the proceedings and is in a position to present her case.

### **The “third country” scenario: confirmed by precedent, unaddressed by Bulgaria**

9g. The scenario of greatest concern — identified in §12 below and absent from Bulgaria’s Action Plan — has now been confirmed by binding judicial precedent. In *Tereshchenko v. Karimi* (United States Court of Appeals for the Second Circuit, 2024), the court found that return to Ukraine would constitute a grave risk under Article 13(1)(b), but nevertheless ordered the children returned to the father *in France*, where he was then residing, as a “temporary ameliorative measure.”<sup>12</sup> The Second Circuit held that the Convention permits, in rare circumstances, return of a child to a petitioner located in a country other than the habitual residence.<sup>13</sup>

9h. This precedent is directly material to the Bulgarian context. If a Ukrainian father who has established himself in Germany, France, or another EU Member State applies for return of a child from Bulgaria, the Bulgarian court may follow the *Tereshchenko* approach and order return to the father in a third country. But the Second Circuit’s decision was rendered in proceedings where both parties had full legal representation. The mother’s counsel argued Article 13(b), Article 12 (“now settled”), Article 13(a) (consent), and Article 20 (fundamental principles). The court considered detailed expert testimony on the military situation. The mother was ordered to bear \$253,139.27 in the father’s attorneys’ fees.<sup>14</sup> None of these procedural conditions exists for a Ukrainian refugee mother in Bulgaria: she has no counsel to raise any defence, no interpreter to understand the proceedings, and no institutional support to navigate the consequences of a return order to a State where she has no legal status.

9i. The comparative practice thus confirms that the *Osso* standards can be meaningfully applied only where **both parties have effective access to the proceedings**. Where courts conducted genuine examination — whether they ordered return or refused it — they did so on the basis of contested evidence, legal argument from both sides, and detailed factual analysis. Bulgaria’s current procedural framework does not provide the conditions for such examination in cases involving Ukrainian refugee mothers. The Action Plan does not address this gap.

## **IV. WHY THE OSSO STANDARDS CANNOT BE PROPERLY APPLIED TO UKRAINIAN REFUGEE FAMILIES WITHOUT ADDITIONAL SAFEGUARDS**

10. Bulgaria hosts approximately 65,000 Ukrainian refugees, 92% of whom are women and children (UNHCR data). 28% of households are headed by single mothers. The average duration of stay is approximately two years. These families hold temporary protection status

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<sup>12</sup>*Tereshchenko v. Karimi*, 102 F.4th 111 (2d Cir. 2024). Affirmed in part and remanded by the United States Court of Appeals for the Second Circuit on 16 May 2024.

<sup>13</sup>*Tereshchenko*, 102 F.4th at 132: “The ongoing war in Ukraine simply precludes entry of the ordinary Hague Convention order. Even so, the District Court’s order returning the children to Tereshchenko in France must be tailored to secure the continued authority of the Ukrainian courts.”

<sup>14</sup>In *Tereshchenko*, the respondent mother was ordered to pay \$253,139.27 in the petitioner’s attorneys’ fees and costs: *Tereshchenko v. Karimi*, No. 1:2023cv02006, Doc. 159 (S.D.N.Y., 9 July 2024).

under Council Directive 2001/55/EC. This is the largest displaced population in Bulgaria and the most likely group to be affected by Hague Convention proceedings.

10a. The R.I.W.E. Survey 2025, conducted among 454 Ukrainian refugees along Bulgaria's Black Sea coast, confirms and deepens this profile. 92.3% of respondents are women. 46.5% have lived in Bulgaria for over three years; a further 39.2% for one to three years — indicating deep-rooted settlement and children's integration into Bulgarian schools (41.9% of respondents). Despite the fact that over 80% hold higher education degrees, 24% report financial debts or obligations creating pressure, and 29.5% report unmet medical needs. 72.2% of respondents identified loss of residence status as their primary concern regarding the end of temporary protection, and 65.9% fear being compelled to return to Ukraine. A combined 65.6% anticipate that exploitation risks will increase after temporary protection ends.

11. The submitting organisation sets out below how each of the four *Osso* standards requires specific procedural conditions to be properly applied to this population — conditions that are absent from the current legal framework.

### **Standard 1: Can the mother accompany the child?**

12. This is the most critical standard for Ukrainian mothers. The Court held that the SAC must examine whether the respondent parent can realistically accompany the child to the State of return. For a Ukrainian mother with temporary protection in Bulgaria, the answer depends on the destination:

**If return is ordered to Ukraine:** The armed conflict makes return objectively dangerous. European courts have systematically applied the Article 13(1)(b) exception in this context. The Higher Regional Court of Stuttgart (Germany, 2022) refused return to Odessa; the Danish Supreme Court (6 March 2025) refused return to Ukraine; Judge Yuliia Cherniak of the Ukrainian Supreme Court, member of the International Hague Network of Judges, confirmed that in 2022–2023 the majority of return applications to Ukraine were dismissed by foreign courts. Proper application of Standard 1 requires that Bulgarian courts be aware of and consider this European consensus.

**If return is ordered to another EU Member State:** This is the most dangerous scenario and the one entirely absent from the Action Plan. Temporary protection under Directive 2001/55/EC is *territory-specific*: it is granted by Bulgaria and does not transfer to another Member State. If the father has established himself in Germany, Poland, or Italy and demands return of the child there, the mother *loses her protection status upon leaving Bulgaria*. She would arrive in the destination State without legal status, without housing, without income, and without access to social services. Proper application of Standard 1 requires that the court examine this reality. But an unrepresented mother who does not speak Bulgarian cannot present this argument to the court.

13. **What is missing:** No provision in the Child Protection Act requires the court to examine the respondent's immigration status. No judicial training addresses the meaning or consequences of temporary protection. No legal aid is available to the respondent. The only remaining possibility for the temporary protection argument to reach the court is if the mother raises it herself. The R.I.W.E. Survey 2025 demonstrates that this is practically impossible: 53.7% of respondents identify the language barrier as the primary obstacle to seeking any

form of assistance; only 2.4% prefer to receive information in Bulgarian; and 92.5% rely on informal digital channels rather than institutional sources. A mother who cannot communicate with Bulgarian institutions about basic needs cannot be expected to present a complex legal argument about the territorial limitations of Directive 2001/55/EC to a court. The result is that Standard 1 will not be applied to Ukrainian mothers — not because the court rejects the argument, but because the argument is never raised.

## **Standard 2: Does the situation exceed what the child can reasonably bear?**

### **What the court must assess**

14. Standard 2 requires the court to determine whether the specific circumstances of *this child* go beyond the ordinary inconveniences of return. For a child of a Ukrainian refugee mother, three categories of risk are directly relevant:

**(a) Secondary displacement.** The child has already experienced forced displacement from a war zone. Ordering return to a third country constitutes a second uprooting — a recognised risk factor for developmental trauma in child psychology. The R.I.W.E. Survey 2025 confirms that 46.5% of Ukrainian families have lived in Bulgaria for over three years; 41.9% report their children are enrolled in Bulgarian schools, kindergartens, or universities. These children speak Bulgarian, have peer relationships, and have built stability. As one respondent stated: “Children experience great psychological stress if they return to Ukraine — changing schools, losing friends, adapting again.” Another: “Nowhere to return to, the city is destroyed.”

**(b) Separation from the sole caregiver.** If the mother cannot accompany the child (because she loses her temporary protection status upon leaving Bulgaria), the child faces separation from the only parent who has provided continuous care throughout the displacement. This is not an “inconvenience inherent in return” — it is a situation that goes well beyond what a child can reasonably bear.

**(c) Gender-based violence and coercive control.** Domestic violence by the left-behind parent is a classic Article 13(1)(b) argument. A peer-reviewed study in *Frontiers in Sociology* (2025), based on longitudinal UNHCR data from Bulgaria, documented increasing violence against Ukrainian refugee women (verbal harassment rising from 37% in 2023 to 45% in 2024) and found that domestic violence victims among refugees declined to report abuse due to fear linked to their precarious legal status. The R.I.W.E. Survey 2025 corroborates this: 12.7% of respondents report personal or indirect exposure to GBV; 6.6% report coercive control over documents, money, or movements; and 87.9% identify economic dependence as the primary factor increasing the risk of violence.

### **Why the court will not receive this information**

15. The only institutional source of information on the child’s circumstances is the social report prepared by the Social Assistance Directorate (“Direkciya Sotsialno Podpomagane”) under Article 22a. This report describes the child’s *current situation in Bulgaria* — housing, school attendance, health. It is **not designed to assess what will happen if the child is returned**: whether the mother can follow, whether the child faces secondary displacement trauma, or whether there is a history of violence that the mother is afraid to disclose.

16. Three structural failures prevent the court from obtaining the information that Standard 2 requires:

- The social workers who prepare the report have **no training** on forced displacement, war trauma, secondary displacement risk, or the specific vulnerabilities of temporary protection holders;
- There is **no protocol** requiring coordination with the State Agency for Refugees, UNHCR, or UNICEF protection services, who hold the relevant expertise on displaced families;
- There are **no guaranteed interpretation services** for the social assessment. A mother who fears domestic violence but cannot communicate with the social worker in her language will not disclose it. The R.I.W.E. Survey 2025 confirms this silence: 59.3% of respondents react with scepticism to offers of help from Bulgarian authorities; only 3.5% would contact a Bulgarian NGO or hotline if they experienced violence; and 7.9% preferred not to answer questions about online coercion — in THB research, non-response on sensitive items is itself treated as a risk signal.

17. The result is that the court receives a social report saying “the child is fine in Bulgaria” — which is not what Standard 2 asks. Standard 2 asks whether *removing* the child from Bulgaria will create a situation exceeding what the child can reasonably bear. The current social report framework cannot answer that question. This is addressed in recommendation (d) below.

### **Standard 3: Verification of facts**

18. In *Osso*, the SAC relied on a claimed risk (criminal proceedings in Switzerland) without verifying that it existed — Swiss authorities had in fact refused to open proceedings. The Court held that the factual basis for claimed risks must be independently verified (§18). For Ukrainian families in Bulgaria, the risk of unverified or false factual claims is acute, but for reasons different from simple unavailability of documents.

19. Ukraine operates **Diia** (Дія), a comprehensive digital government platform through which birth certificates, marriage records, custody decisions, residence registration, and other civil status documents can be obtained electronically. Moreover, under the bilateral Mutual Legal Assistance Agreement between Bulgaria and Ukraine, Ukrainian documents **do not require apostille** — they need only certified translation into Bulgarian. The documents exist and are accessible. The problem is not the absence of evidence. The problem is that **an unrepresented mother does not know what she needs to challenge:**

- The father’s application, prepared by the Ministry of Justice, presents a version of events: where the child habitually resided, when and why the mother left, what custody arrangements existed. These assertions *can* be verified through Ukrainian records. But the mother, without a lawyer and without Bulgarian, does not know which of the father’s claims are legally significant, which can be challenged, or what counter-evidence to request;
- Even where the mother suspects the father’s account is false, she does not know how to obtain documents through Diia from abroad, how to arrange certified translation in Bulgaria, or how to present them to the court within the compressed timeframe of one month per instance;

– Certain categories of evidence — particularly police reports, protection orders, and records of domestic violence — may genuinely be unavailable for regions affected by active hostilities, even through Diia.

20. **What is missing:** The court’s power to collect evidence on its own initiative under Article 22a is discretionary, not mandatory. There is no obligation on the court to verify the applicant’s factual assertions, even where the respondent is manifestly unable to do so herself. The father arrives with a case prepared by the Ministry of Justice. The mother sits in a courtroom where she does not understand the language, facing claims she does not know how to challenge about a legal system she does not know how to navigate. The father’s version becomes the only version — not because the truth is unknowable, but because nobody asks the question. This is precisely the deficiency the Court identified in *Osso*.

#### **Standard 4: Protective measures**

21. The Court criticised the SAC for not exploring voluntary undertakings by the father. For protective measures to be meaningful, they must be enforceable in the State of return. If the mother has no legal status in the destination State, undertakings regarding housing, financial support, or contact arrangements are unenforceable. A promise by the father to “provide housing” in Germany is meaningless if the mother cannot legally reside in Germany.

22. **What is missing:** The law does not require courts to assess the enforceability of protective measures in the specific circumstances of displaced families. There is no provision requiring the court to verify whether the respondent parent has legal access to the State of return before accepting undertakings as adequate.

### **V. THE EQUALITY OF ARMS PROBLEM**

23. The preceding analysis reveals a consistent pattern across all four *Osso* standards. In each case, the standard itself is sound, but its application depends on information that **the court will not receive** under the current procedural framework:

**Standard 1** (can the mother accompany the child?) requires examination of the mother’s immigration status — but no law obliges the court to consider it, and the mother cannot raise the argument herself (§13);

**Standard 2** (does the situation exceed what the child can bear?) requires assessment of return-specific risks — but the social report describes the child’s current situation in Bulgaria, not the consequences of removal, and the mother will not disclose domestic violence to a social worker she cannot communicate with (§§15–17);

**Standard 3** (verification of facts) requires the court to check the applicant’s claims — but the evidence is accessible through Diia and needs only certified translation, yet the mother does not know what to challenge and the court is not obliged to verify (§§19–20);

**Standard 4** (protective measures) requires that undertakings be enforceable — but the court is not required to verify whether the mother has legal access to the State of return before accepting the father’s promises (§§21–22).

The common cause in every case is the same: the respondent has no representation, no language access, and no institutional support. This is the equality of arms problem.

24. Under the current framework:

**The applicant parent (father)** receives free representation by the Ministry of Justice, which may appoint counsel on his behalf. His application is prepared, translated, and filed by the Central Authority.

**The respondent parent (Ukrainian mother)** receives nothing. She must find and pay for a private attorney in Sofia, in a language she does not speak, within compressed time limits (one month for first instance, one month for appeal). She has no right to interpretation services in court. She may not even know that proceedings have been initiated against her. The R.I.W.E. Survey 2025 demonstrates that these are not hypothetical obstacles: 68.3% of respondents identified a clear and simple “service map” as the single most needed resource; 59% requested access to legal assistance; 41.9% requested Ukrainian-speaking mediators; and 15.9% stated that they would simply not know where to turn if they or someone they knew experienced violence or exploitation. 74.2% prefer contact via Telegram or Viber rather than phone or in-person channels, but no Hague Convention proceedings information exists in these formats or in Ukrainian or Russian.

25. The result is that in proceedings involving Ukrainian refugee mothers, the *Osso* standards will be formally available but practically inoperative. The court will not refuse to apply them — it will simply never receive the information they require. The decision will be made on the basis of the applicant’s unchallenged presentation alone. This is not a properly reasoned return order or a properly reasoned refusal: it is a decision made in the absence of relevant information — precisely the procedural deficiency that the Court found incompatible with Article 8 in *Osso*.

## VI. RECOMMENDATIONS

26. The submitting organisation respectfully requests the Committee of Ministers to invite Bulgaria to supplement its Action Plan with the following measures.

**Hierarchy of measures.** Legislative amendments (recommendations (a) and (b)) are the priority. Only a statutory obligation creates an enforceable duty on the court and a corresponding right for the respondent. The analysis in Sections IV and V demonstrates that in every case the critical failure is the same: the court is *permitted* but not *required* to examine the respondent’s circumstances. A trained judge who is not legally required to examine the respondent’s immigration status remains free not to do so, and the respondent has no basis for appeal if the court omits this examination. The law creates the obligation; training ensures the competence to fulfil it. Both are necessary; neither alone is sufficient.

### (a) Legal representation and interpretation.

Amend Article 22a of the Child Protection Act to provide respondent parents who lack the means to retain counsel with state-funded legal representation and professional interpretation services in Hague Convention proceedings. This is the single most important measure. Without it, every other recommendation remains dependent on the court’s own initiative. With it, the respondent has a representative who can: raise the immigration status argument (Standard 1, §13); present evidence of displacement-specific risks and domestic violence (Standard 2, §§15–17); challenge the applicant’s factual assertions and obtain counter-evidence through Diia (Standard 3, §§19–20); and argue that protective measures are

unenforceable because the mother has no legal access to the State of return (Standard 4, §§21–22).

### **(b) Codification of judicial obligations.**

Amend Articles 22c–22e of the Child Protection Act to require the court, when the respondent parent holds temporary or international protection status, to:

- (i) **examine the respondent’s immigration status** and determine whether she can realistically accompany the child to the State of return, including whether her protection status transfers or terminates upon departure (Standard 1). Article 22b provisional measures are not a substitute: they concern court-ordered measures during proceedings, not the §18 *Osso* requirement to evaluate whether the mother can follow the child;
- (ii) **assess the consequences of return for the specific child**, not merely the child’s current circumstances in Bulgaria, with mandatory consideration of secondary displacement risk, separation from the sole caregiver, and history of gender-based violence (Standard 2);
- (iii) **take active steps to verify the applicant’s factual assertions** where the respondent is unrepresented or unable to produce counter-evidence within the prescribed timeframe, converting the court’s current discretionary power under Article 22a into a mandatory obligation in cases involving displaced persons (Standard 3);
- (iv) **verify the enforceability of protective measures** in the destination State in light of the respondent’s actual legal status there, including whether the respondent has legal residence, access to housing, and access to enforcement mechanisms in that State (Standard 4).

### **(c) Judicial training.**

Expand the National Institute of Justice training programme to include: the meaning and legal consequences of temporary protection under Directive 2001/55/EC, including its territorial limitation; the determination of habitual residence in contexts of forced displacement from armed conflict; the assessment of secondary displacement risk for children; the distinction between Article 22b provisional measures and the *Osso* §18 obligation to examine whether the respondent parent can accompany the child; and the emerging European judicial practice on Article 13(1)(b) in the context of the war in Ukraine. Training is essential but insufficient without the legislative amendments in (a) and (b): a trained judge who is not legally required to act remains free not to do so.

### **(d) Social report protocol.**

Establish a binding protocol requiring the Social Assistance Directorate, when preparing reports in Hague Convention cases involving temporary protection beneficiaries, to: coordinate with the State Agency for Refugees and, where relevant, UNHCR/UNICEF protection services; assess not only the child’s current circumstances but specifically **the risks that would arise from return**, including secondary displacement, separation from the caregiver, and loss of stability; conduct the assessment with qualified interpretation in the respondent’s language; and include screening for indicators of gender-based violence, coercive control, and trafficking — which the R.I.W.E. Survey 2025 documents as present

but largely undisclosed (12.7% GBV exposure, 6.6% coercive control, 59.3% institutional distrust).

**(e) Data.**

Provide statistical data on Hague Convention proceedings involving persons with temporary or international protection status, disaggregated by: nationality; outcome (return ordered / return refused); whether the respondent parent was legally represented; whether interpretation was provided; and whether the court examined the respondent's immigration status. The current Action Plan Addendum presents seven SAC decisions, all refusals to return, without information on how the *Osso* standards were applied in contested cases or in cases where the respondent was unrepresented.

**(f) Information in accessible formats and channels.**

Develop materials in Ukrainian and Russian explaining Hague Convention proceedings, the respondent's rights, available defences, and how to obtain legal assistance. Materials must be distributed through the channels that Ukrainian refugees actually use: the R.I.W.E. Survey 2025 shows that 95.8% use Telegram, 92.5% rely on social media and messengers for information, while only 6.6% engage with government institutions. Distribution limited to UNHCR/UNICEF Blue Dots, refugee reception centres, and Social Assistance Agency offices will not reach the population. Distribution must include community Telegram groups and Viber channels, which 74.2% of respondents prefer for contact.

## VII. CONCLUSION

27. This communication has examined each of the four *Osso* standards as applied to Ukrainian refugee families in Bulgaria. The findings are consistent: in every case, the standard is sound, but the procedural framework prevents the court from receiving the information it needs to apply the standard. The mother's immigration status is not examined because no law requires it. The child's return-specific risks are not assessed because the social report is not designed for this purpose. The father's factual assertions are not verified because the mother does not know what to challenge — even though the evidence exists and is accessible through Diia without apostille. Protective measures are not tested for enforceability because nobody raises the mother's lack of legal status in the destination State. The common cause is structural inequality of arms: the father has state representation; the mother has nothing.

28. Bulgaria's Action Plan addresses the speed of proceedings. Speed without substance does not execute the *Osso* judgment — it accelerates the very deficiency the Court identified. A procedure that reaches a decision faster but on the basis of one party's unchallenged presentation alone creates a higher, not a lower, risk of further violations of Article 8.

29. The R.I.W.E. Survey 2025, based on 454 responses from Ukrainian refugees in Bulgaria, confirms that these are not hypothetical risks. The language barriers, institutional inaccessibility, distrust, and information gaps documented in the survey describe the reality in which Hague Convention proceedings will take place. The six measures proposed in Section VI — led by legal representation and codification of judicial obligations — are the minimum necessary to ensure that the *Osso* standards function in practice for all families, not only for those who happen to have the resources to participate.

30. No European State has yet addressed this gap systematically. Bulgaria has the opportunity to do so in the context of executing the *Osso* judgment, and the submitting organisation respectfully urges the Committee of Ministers to invite Bulgaria to take this step.

## ANNEX

**Annex 1:** R.I.W.E. Foundation, *Ukrainian Refugees in Bulgaria: Risks of Vulnerability, THB/GBV and Exploitation, Access to Support and Perceptions of 2027 Transition*, Analytical Report based on Online Survey Data, under MAP Programme by New Women Connectors (in partnership with and funded by UNHCR), n = 454, November–December 2025.

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*K.J. v. Poland*, Application No. 30813/14, Judgment of 1 March 2016

### Committee of Ministers documents

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### International instruments

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Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection

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*Q v R* [2022] EWHC 2961 (Fam) (Williams J): return ordered; individualised assessment of regional risk rejected automatic approach

*Re Z (Children) (Article 13(b): Return to Kyiv)* [2023] EWHC 602 (Fam) (Dexter Dias KC): return to Kyiv refused; grave risk of physical harm

*Re N (A Child) (Ukraine: Article 13(b))* [2024] EWHC 871 (Fam): return of 12-year-old to Ukraine ordered despite war; region-specific analysis

*Re G and B (Children) (Abduction: Settlement: Grave Risk: Ukraine)* [2025] EWHC 795 (Fam): return of twins to Cherkasy refused on both settlement (Article 12) and grave risk (Article 13(1)(b)) grounds

### *Germany*

Oberlandesgericht Stuttgart, Beschluss v. 13.10.2022, Az. 17 UF 186/22: refusal to return child to Odessa; entire territory of Ukraine treated as war zone under Article 13(1)(b)

### *Denmark*

Danish Supreme Court, decision of 6 March 2025: refusal to return child to Ukraine; based on practical consequences of war (travel difficulties, family disruption) rather than war itself

### *United States of America*

*Tereshchenko v. Karimi*, 102 F.4th 111 (2d Cir. 2024): grave risk found for return to Ukraine; children ordered returned to father in France as “temporary ameliorative measure”; order required to preserve Ukrainian courts’ jurisdiction

*Yuriiovych v. Hryhorivna*, CV 24-78-BU-DLC (D. Mont., 20 December 2024): return ordered to Chernivtsi (western Ukraine); expert testimony on military situation

### *Ukraine (domestic)*

Civil Cassation Court of the Supreme Court of Ukraine, Resolution of 11 December 2023, case No. 607/20787/19: child’s residence abroad is not an independent reason for refusing to determine place of residence with a parent in Ukraine

## Academic and empirical sources

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R.I.W.E. Foundation, *R.I.W.E. Survey 2025*: community-based survey of 454 Ukrainian refugees in Bulgaria (Black Sea coast), conducted November–December 2025 under the UNHCR MAP Programme by New Women Connectors (Annex 1)

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*Respectfully submitted,*

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