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## **EUROPEAN SOCIAL CHARTER**

Comments submitted by  
the Secretariat of the Ukrainian Parliament Commissioner  
for Human Rights  
concerning the 14th National Report on the implementation  
of the European Social Charter

submitted by  
**THE GOVERNMENT OF UKRAINE**  
Articles 7, 8, 16, 17, 19, 27, and 31  
for the period 01/01/2018 – 31/12/2021

Report registered by the Secretariat  
on 30 June 2023

**CYCLE 2023**

# **European Social Charter (revised)**

## **Comments on national report of Ukraine on the implementation of the provisions of the European Social Charter (revised) in relation to Articles 7, 16, 17, 27, 31**

(reporting period from January 1, 2018 to  
December 31, 2021)

## **Introduction**

This report was prepared by the Secretariat of the Ukrainian Parliament Commissioner for Human Rights (hereinafter - the Ombudsman's Secretariat) with the support of the Council of Europe in Ukraine during June 2023.

This report provides an overview of the status of implementation of the European Social Charter (revised) (hereinafter referred to as the "ESC") in relation to Articles 7, 16, 17, 27 and 31 for the period from January 1, 2018 to December 31, 2021.

At the same time, given the fact that on February 24, 2022, a full-scale invasion of Ukraine by the Russian Federation took place, a significantly larger amount of territory, compared to 2014 (the beginning of the Russian-Ukrainian war), is under temporary occupation, military operations are ongoing, martial law has been introduced, and millions of civilians were forced to leave their homes, tens of thousands of people died, we consider it necessary to provide some additional information for the period after the reporting one, because the deficiencies in the implementation of the mentioned articles of the ESC, both at the level of legislation and at the level of law enforcement, had a negative impact on the solution of urgent social issues that significantly worsened after February 2022.

The report is based on information collected from reliable sources, including appeals from Ukrainian citizens to the Ombudsman's Office, official sources of Ukrainian and foreign governments, reliable sources of mass media, as well as surveys conducted by the Ukrainian authorities and Ukrainian non-governmental organizations. The report contains an analysis of the implementation of the ESC articles in Ukraine, violations of human rights during this period, and measures taken by the Government of Ukraine in response to current challenges and social problems in the field.

### **The following abbreviations are used in this report:**

ISS - International Social Service (international organisation)

CF - charitable foundation

NGO - public organisation or non-governmental organization

PU - public union

DI - deinstitutionalisation

ESC - European Social Charter (revised)

PEI – preschool education institution

GSEI - general secondary education institutions

LU - law of Ukraine

Labour Code - the Labour Code of Ukraine

ICD - International Classification of Diseases

IF - international fund

ERC - educational and rehabilitation centre for children

UN - United Nations

SEN - special educational needs

RF - Russian Federation

Commissioner/Ombudsman - Ukrainian Parliament Commissioner for Human Rights

## **Article 7**

### **The right of children and young persons to protection**

#### **To paragraphs 1 to 4 of Article 7**

There is no definition of light work in the Labour Code of Ukraine<sup>1</sup> (hereinafter - the Labour Code). At the same time, the legislation refers to hard work, as well as work in harmful or dangerous working conditions.

The Order of the Ministry of Health of Ukraine<sup>2</sup>, approved the State Sanitary Norms and Rules "Hygienic Classification of Labour by Indicators of Hazardousness and Danger of Factors of the Production Environment, Severity and Intensity of the Labour Process", which came into force on 30.05.2014. According to the Order, the categories of work are divided into the following types of work: light, medium, heavy, and very heavy. The Order contains Annex 15 "Hygienic Classification of Labour by Indicators of Hazardousness and Danger of Factors of the Production Environment, Severity and Intensity of the Labour Process", which, in particular, discloses such class of working conditions as "optimal (light)"; Annex 16 "Hygienic Classification of Labour by Indicators of Hazardousness and Danger of Factors of the Production Environment, Severity and Intensity of the Labour Process", which, in particular, discloses such class of working conditions by indicators of labour intensity as "optimal (light, medium, heavy)".

Article 190 (1) of the Labour Code prohibits the employment of persons under the age of eighteen in heavy work and work in harmful or hazardous conditions, as well as underground work. An order of the Ministry of Healthcare<sup>3</sup> approved the List of hard work and work with harmful and dangerous working conditions, which prohibits the use of minors' labour.

Part two of Article 190 of the Labour Code prohibits the involvement of persons under the age of eighteen in lifting and moving things that exceed the weight limits established for them. An order of the Ministry of Health<sup>4</sup> approved the maximum limits for lifting and moving heavy objects by minors.

Depending on their age, in accordance with Article 51(1)(a) of the Labour Code, employees aged 16 to 18 may be entitled to reduced working hours of 36 hours per week, and persons aged 15 to 16 (students aged 14 to 15 who work during holidays) may be entitled to reduced working hours of 24 hours per week. The duration of working time of students working during the school year in their free time may not exceed half of the maximum duration of working time provided for in the first paragraph of this clause for persons of the corresponding age.

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<sup>1</sup> <https://zakon.rada.gov.ua/laws/show/322-08#Text>

<sup>2</sup> <https://zakon.rada.gov.ua/laws/show/z0472-14#Text>

<sup>3</sup> <https://zakon.rada.gov.ua/laws/show/z0176-94#Text>

<sup>4</sup> <https://zakon.rada.gov.ua/laws/show/z0183-96#Text>

The Labour Service provided statistical data on the results of state supervision of the limitation of working hours for persons under 18 years of age. The low numbers may indicate that Article 6 of the Law of Ukraine "On the Basic Principles of State Supervision (Control) in the Field of Economic Activity"<sup>5</sup> sets out the grounds for unscheduled inspections. According to this Law, the Labour Service is not entitled to conduct inspections on its own initiative. An inspection may be conducted at the request of an employee.

Unfortunately, according to inspections by the Labour Service, international reports and news reports, cases of child labour were recorded repeatedly during the reporting period. For example, in September 2021, in Odesa, sixth-graders (children aged 11-12) were cleaning<sup>6</sup> a flower bed in the schoolyard during handicraft lessons, and in Cherkasy region, they were harvesting<sup>7</sup> a village melon and carrying heavy pumpkins during a handicraft lesson. Teachers did not respond to children's complaints about feeling unwell, and neither children nor parents were warned to get hats or a change of clothes, etc. In different parts of the country, on weekends, local authorities, in agreement with school administrations, have schoolchildren cleaning parks and squares using child labour, for which they do not have to pay<sup>8</sup>. The Education Ombudsman of Ukraine commented on this situation the following<sup>9</sup>: "The new school year not only allowed students to return to full-time education in schools, but also, unfortunately, became a "good" opportunity for some teachers, principals of general secondary education institutions, representatives of local authorities, in particular, educational managers to shamefully use forced child labour during lessons. Such stories have recently become more frequent in the media and on social media: for example, harvesting (planting, caring for and harvesting) vegetables, berries and herbs for the winter by students and teachers, carrying heavy objects, including pumpkins, during lessons, cleaning the park by students and students from all over the city during lesson time". Hestressed that the exploitation of child labour is illegal and unacceptable, and that legal work of minors should be carried out only after school hours.

In addition, the US Department of Labour published a document<sup>10</sup> "Findings on the Worst Forms of Child Labour in 2021", which states that child labour is used in Ukraine to extract amber and coal, as well as to produce pornography. The document also states: " Children from Ukraine are trafficked both internationally and domestically for commercial sexual exploitation and forced begging. The

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<sup>5</sup> <https://zakon.rada.gov.ua/laws/show/877-16#Text>

<sup>6</sup> <https://www.facebook.com/groups/1447547535497898/permalink/2986552198264083/>

<sup>7</sup> <https://provce.ck.ua/na-cherkashchyni-vchytelka-zmushuvala-ditey-pratsiuvaty-na-shkolu/>

<sup>8</sup> <https://rubryka.com/article/school-work/>

<sup>9</sup> <https://eo.gov.ua/ekspluatatsiia-dytiachoi-pratsi-neprypustyma/2021/09/22/?fbclid=IwAR3bn8wOAOilUdUXzuMpJU1dq8OUvybk49GobDr9sJti0YRI5XDDsbYrJJA>

<sup>10</sup> <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/ukraine>

Ministry of Social Protection noted that due to the pandemic, many children spent more time on the Internet and were at increased risk of cybercrime victimization, including in the production and distribution of pornographic content. The pandemic also increased the risk of internal trafficking for children, particularly for labor exploitation and forced criminal activities. Girls from single-parent families, youth from disadvantaged families, children with disabilities and homeless, orphaned, and poor children, especially those living in state-run institutions, are at high risk of being trafficked. Some state-run orphanages have used children for illegal labor in business, seasonal agricultural work, construction, and sexual exploitation".

The report<sup>11</sup> also states that thousands of children participate in military-style training or other military-style activities carried out by Russia-led forces in so called "Donetsk People's Republic" and "Luhansk People's Republic," and by Russia's occupation authorities in Crimea. During the reporting period, proxy groups backed by Russia continued to recruit children to take part in armed combat. Children were trained in weapons use and organized into reserve militia battalions at militant-run camps and school programs located in territory controlled by Russia's proxies". Regarding Ukraine, the report also states that in 2021, the National Police opened criminal cases against 72 children for participation in Russia-led military formations in the so-called "Donetsk People's Republic" and "Luhansk People's Republic," as well as 1 child in the Russia-led forces in Crimea; it transferred 47 of these cases to courts for prosecution. Given the fact that the area of Ukrainian territory temporarily occupied by Russia has increased significantly since 24 February 2022, it is likely that the number of children exploited, forced to work and militarised and subject to violations of Article 7 of the ESC is much higher.

### **To Article 7, paragraph 5**

The Constitution of Ukraine guarantees timely receipt of remuneration for labour. Article 3 paragraph 4 of the Law of Ukraine "On Remuneration of Labour"<sup>12</sup> establishes that the minimum wage is a state social guarantee, mandatory throughout Ukraine for enterprises of all forms of ownership and business and individuals using the labour of employees under any remuneration system. Pursuant to Article 3-1(1) of the Law, an employee's salary for a fully completed monthly (hourly) work rate cannot be lower than the minimum wage. The Labour Service is not able to influence the employer in paying the minimum wage.

The Ukrainian Parliament Commissioner for Human Rights did not receive any appeals from citizens regarding violations of the right of minors to remuneration.

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<sup>11</sup> Ibid.

<sup>12</sup> <https://zakon.rada.gov.ua/laws/show/108/95-%D0%B2%D1%80#Text>

According to the results of inspections carried out by the Labour Service on non-compliance with minimum state guarantees in the remuneration of minors, in 2018, employers were fined UAH 37230, in 2019 - UAH 2086500, in 2020 and 2021 - 0. The monitoring of the Ukrainian Parliament Commissioner for Human Rights found that employers did not pay the fines for the specified period. This indicates the imperfection of the legislation in terms of control over the enforcement of sanctions and the lack of consequences for persons who do not comply with the relevant decisions.

### **To Article 7, paragraph 6**

Article 6 of the Law of Ukraine "On the Basic Principles of State Supervision (Control) in the Sphere of Economic Activity"<sup>13</sup> sets out the grounds for unscheduled inspections. According to the Law, the Labour Service is not entitled to conduct inspections on its own initiative. An inspection may be conducted at the request of an employee.

As a general rule, only persons who have reached the age of sixteen may be employed. As an exception to the general rule, persons who have reached the age of fifteen may be employed with the consent of one of their parents or a person in loco parentis. It is also permitted to hire persons who have reached the age of fourteen and work during the holiday period (Article 188 of the Labour Code).

Article 150 paragraphs 3 & 4 of the Family Code of Ukraine<sup>14</sup> stipulate that parents are obliged to take care of the child's health, physical, spiritual and moral development; to ensure that the child receives a complete general secondary education, and to prepare him or her for independent living.

Pursuant to Article 199 of the Labour Code, parents, adoptive parents and guardians of minors, as well as state bodies and officials responsible for supervising and controlling compliance with labour legislation, have the right to demand termination of an employment contract with a minor, including a fixed-term contract, if its continuation threatens the minor's health or violates his or her legitimate interests.

### **To paragraph 7 of Article 7**

Pursuant to Article 75(2) of the Labour Code, persons under the age of eighteen are entitled to an annual basic leave of 31 calendar days. Article 195 of the Labour Code provides that annual leave for employees under the age of eighteen is granted at a time convenient for them; annual leave for employees under the age of eighteen of full duration in the first year of employment is granted at their

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<sup>13</sup> <https://zakon.rada.gov.ua/laws/show/877-16#Text>

<sup>14</sup> <https://zakon.rada.gov.ua/laws/show/2947-14#Text>



request before the end of a six-month period of continuous employment at the enterprise, institution or organisation.

**To Article 7, paragraph 9**

Article 191 of the Labour Code stipulates that all persons under the age of eighteen are hired only after a preliminary medical examination and are subject to mandatory medical examination every year until they reach the age of 21. The Ministry of Health of Ukraine has approved the Procedure for conducting medical examinations of employees of certain categories<sup>15</sup>. This Procedure is intended, among other things, for persons under the age of 21.

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<sup>15</sup> <https://zakon.rada.gov.ua/laws/show/z0846-07#Text>

## Article 16

### The right of the family to social, legal and economic protection

#### Providing social assistance to low-income families

The issue of ensuring the appropriate amount of state social assistance to low-income families remains unresolved. According to the Law of Ukraine "On State Social Assistance to Low-income Families"<sup>16</sup>, a low-income family is defined as a family that, for reasons that are valid or beyond its control, has an average monthly total income below the subsistence level for a family.

The assistance provided by this Law should ensure that citizens have the constitutional guarantee, as defined by part three of Article 46 of the Constitution of Ukraine, to ensure a standard of living not lower than the subsistence level.

However, the relevant constitutional guarantees are not fulfilled due to the fact that the calculation of the amount of assistance is based on the "level of ensuring the subsistence minimum", which for able-bodied persons is less than the living wage (in 2018 it was 21% of the living wage, in 2021 – 35%; in 2023 – 45%).

State social assistance to low-income families should be provided to the least socially protected families. This includes those who have no income due to the inability to work for reasons beyond their control.

However, due to the application of the methodology for calculating the average monthly gross income, which provides for the determination of conditional income for each month with no income (in particular, 0.5 of the minimum wage for persons registered with the unemployment centre and not receiving unemployment benefits; for unemployed persons for whom a single contribution to the obligatory state social insurance is not paid in the amount not less than the minimum due to the employer's debt in paying such a contribution), and thus, many families in need are deprived of the state support.

The problem became even more complicated under martial law, when many citizens lost their jobs for reasons beyond their control.

Despite these challenges, the conditions for granting this aid have not been revised at the legislative level.

Example. The Ombudsman was approached by Mrs. N., who is raising a child on her own, regarding the violation of her family's right to receive state social assistance to low-income families.

During the proceedings conducted at the applicant's request, it was established that during martial law, the employer temporarily suspended the applicant's employment contract in accordance with Article 13 of the Law of Ukraine "On

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<sup>16</sup> <https://zakon.rada.gov.ua/laws/show/1768-14#Text>

the Organisation of Labour Relations under Martial Law"<sup>17</sup>, as amended). In such circumstances, the applicant continues to be in an employment relationship with the employer but does not receive a salary. At the same time, she cannot register with the unemployment centre, as she is considered an employed person.

The social protection authority, taking into account the requirements of the law, did not grant the applicant the said benefit, since she, as a person who is a member of the family, is able-bodied, but during the period for which income is taken into account for the calculation of the benefit, she did not work for a total of more than three months and did not pay a single contribution to the obligatory state social insurance at the minimum amount.

Considering the current approach to the calculation of benefits for able-bodied persons who lost their jobs during martial law for reasons beyond their control, including those with whom their employment contracts were temporarily suspended, to be unfair, the Ombudsman addressed recommendations to the Ministry of Social Policy of Ukraine to resolve this issue. However, the Ministry has not yet developed the necessary amendments to the legal acts to enable this category of persons to receive social benefits.

### **Provision of social services to families with children<sup>18</sup>**

According to the National Social Service of Ukraine, as of 1 January 2021, the following network of institutions and facilities operates in Ukraine to provide comprehensive assistance to children and families in difficult life circumstances:

- social service centres - 263;
- centres for the provision of social services (with a department for social work with families, children and youth) - 475;
- 20 centres for social and psychological assistance;
- social centres for mothers and children - 16;
- social dormitories for orphans and children deprived of parental care - 26;
- social and psychological rehabilitation centres for children and young people with functional disabilities - 17;
- centres for social and psychological rehabilitation - 3;
- Centres for HIV-infected children and youth - 6.

As of the end of 2021, there were 1,469 territorial communities in Ukraine, including 1,438 in the government-controlled area. Thus, only less than a third of

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<sup>17</sup> <https://zakon.rada.gov.ua/laws/show/2136-20#Text>

<sup>18</sup> This section, in particular, draws on the work done to prepare the Council of Europe study "Ensuring Children's Rights in Ukraine. Needs Assessment Report on Policy and Regulatory Review": <https://rm.coe.int/needs-assessment-ua/1680a85a60>

the communities had the organisational capacity to provide services to families with children in difficult life circumstances. In terms of staffing, the situation is even more complicated, as only a few communities have ensured staffing levels in line with the needs. According to the report "Assessment of the Alternative Care System", prepared by the International Social Service (ISS) at the request of the UN Children's Fund UNICEF in Ukraine, there are, in particular, the following problems with staffing the social sector: difficulty in recruiting due to low salaries, lack of prestige of social work and lack of support and supervision; improvement of training programmes for social workers; lack or insufficient skills in interagency cooperation; low level of knowledge on child development, attachment theory and children's rights in general, which significantly hinders deinstitutionalization. The document also states that a significant number of professionals believe that "poor parents are bad parents", and therefore there are many cases of inappropriate removal of children from their parents. The fact that some children repeatedly enter and leave the system of alternative care indicates significant difficulties with the quality of social work.

The results of the Ombudsman's monitoring of territorial communities in 2021 showed violations of the rights of citizens in difficult life circumstances to receive social services. It was established that the Law of Ukraine "On Social Services"<sup>19</sup>, which has been in force since the beginning of 2020, is not fully applied in practice due to the lack of necessary bylaws. Since 2020, a model regulation on Territorial Centres for Social Services has not been developed, and as a result, these institutions provide services to citizens in accordance with the requirements of the invalid Law of Ukraine "On Social Services" of 2003, which contradict the principles of social services defined by current legislation.

The monitoring of the activities of 26 territorial centres and their units for the provision of social services revealed the following violations: there is no proper organisation of social services and standards of their provision are not met (in particular, the needs of the population for social services are not identified; outreach to citizens on the provision of social services is not properly organised and conducted; the quality and scope of social services are focused mainly on financial capabilities rather than on the needs of individuals; proper assessment and forecasting of the needs for social services and monitoring of the quality of their provision are not carried out).

To eliminate the violations, the Commissioner submitted response acts to the monitored authorities and the Ministry of Social Policy. The Ministry of Social Policy has developed a draft resolution of the Cabinet of Ministers of Ukraine "Some Issues of Territorial Centres for Social Services (Provision of Social Services)", which has not been adopted as of June 2023.

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<sup>19</sup> <https://zakon.rada.gov.ua/laws/show/2671-19#Text>

The main problem is the inability of a significant number of local communities to fully exercise their powers to provide social services in their respective territories due to the lack of funds in their budgets.

Thus, in April 2021, a citizen L. from Poltava region appealed to the Ombudsman regarding a long-standing debt for non-payment of compensation to individuals providing social care services on a non-professional basis. In the course of the proceedings on the applicant's appeal, the Commissioner established that the compensation debts had been occurring throughout the entire period of its appointment, and the reason for this situation was the lack of necessary funding from the local budget (the amount of funds allocated from the territorial community budget for compensation payment in 2021 does not cover the total need for funds for its payment). As of the end of July 2021, the debts of compensation to the residents of the Kremenchuk city territorial community amounted to UAH 247,600. The Commissioner sent recommendations to the Department of Social Protection of the Kremenchuk City Council of Kremenchuk District, Poltava Region, and to the Mayor of Kremenchuk. At the expense of funds additionally allocated from the city budget under the relevant budget programme, the applicant was paid the debt for 5 months from March 2021. The local government undertook to resolve the issue of allocating the full amount of funds required to pay compensation by the end of 2021. However, as of December 2021, the debt for the community had not been repaid.

The problem has become even more complicated under martial law due to the increase in the number of potential recipients of social services from among internally displaced persons in communities, and thus in the number of persons providing such services.

Citizens' appeals to the Ombudsman in 2022 showed violations of the right of internally displaced persons to receive compensation for care for the provision of social services on a non-professional basis at their new place of residence/stay due to the lack of funds in the budget of host communities to pay it.

The amendments to the legislation guarantee an appropriate payment to persons when they move to a new place of residence, but do not specify the sources of funding for this compensation. As a result, due to the lack of funds in the budgets of communities, they refuse to grant such compensation.

Thus, the Ombudsman was approached by Mr. S. from Lviv region regarding the violation of his right to receive compensation for the provision of social services on a non-professional basis to his mother, who needs care due to the inability to move and take care of herself. The applicant and his mother are internally displaced persons. During the consideration of the appeal, it was established that the social protection authority had refused to grant the applicant compensation for the provision of social services for the care of his mother due to the lack of funds in the city budget for such purposes. The Commissioner made

recommendations to the local self-government body to restore the applicant's rights to receive the relevant compensation. However, the local authority did not resolve the issue, instead recommending that the applicant apply for social services for mother's care to the local organisation of the Red Cross Society in Ukraine. The Commissioner recommended the applicant to apply to court for protection of his violated right.

The Commissioner made recommendations to the Ministry of Social Policy to work out ways to solve this problem at the legislative level (in particular, by allocating a subvention from the state budget for this purpose). However, they were not supported.

In addition, we agree with the conclusion in the ISS report that the development of alternative care in Ukraine lacks consistency, in particular, there is a critical shortage of foster care families - families that provide temporary care, education and rehabilitation of a child for the period when the child, his/her parents or other legal representatives are overcoming difficult life circumstances. In other words, this is the link in the alternative care system that ensures crisis/emergency placement of a child in a family rather than institutional setting. The period of stay of a child in the family of a foster carer is set by the guardianship and custody authority and cannot exceed 3 months. In the presence of circumstances that justify the need and expediency of the child's stay in the family of a foster carer beyond the specified period, the guardianship and custody authority may extend it. The total period of stay of a child in the family of a foster carer may not exceed 6 months. It is assumed that during this time, the difficult life circumstances of the parents will be resolved and the child will be able to return to his or her birth family, or all the necessary decisions will be made when the child receives the status of an orphan or a child deprived of parental care and is placed in another form of alternative care: adoption, guardianship or custody, foster family or family-type children's home, small group home. The State Budget allocates funds to finance this form of alternative care, which are transferred to local budgets through subventions. Unfortunately, every year, a significant portion of these funds is returned as unused. As of August 2021, there were 220 foster families in Ukraine<sup>20</sup>, which only very slightly covers the need for this type of service.

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<sup>20</sup> <https://www.msp.gov.ua/news/20561.html>

## **Day care for preschool children<sup>21</sup>**

The most common service to achieve this goal is preschool education, which is a compulsory primary component of the lifelong learning system in Ukraine.

According to the Law of Ukraine "On Preschool Education"<sup>22</sup>, there are 9 types of preschool education institutions (hereinafter - PEI) in Ukraine. Most of them accept children from the age of 1, if a child has developmental disabilities or special educational needs (hereinafter - SEN) - from the age of 2.

Pre-school education institutions in Ukraine also include:

- baby home - a health care facility for medical and social protection of orphans and children deprived of parental care, as well as children with physical and/or intellectual disabilities from birth to three (for healthy children) and up to four (for sick children) years;
- A residential care facility (children's home) provides development, upbringing, education and social adaptation of orphans and children deprived of parental care, preschool and school age, who are in family relationships and are supported by the state.

However, these are institutional care facilities and they provide round-the-clock parental absence, which is a violation of a child's right to grow up in a family environment, which the UN Convention on the Rights of the Child recognises as a necessary condition for the full and harmonious development of the child's personality.

According to the State Statistics Service of Ukraine<sup>23</sup>, there were 14,974 PEIs in Ukraine at the end of 2021, with 1,111.4 thousand children enrolled in them. According to the data, the coverage of children by PEIs in Ukraine is 60%. At the same time, this figure is 71% in urban areas and 40% in rural areas. It is noteworthy that despite the growth in the number of PEIs, the overall coverage is decreasing in both urban and rural areas. Sumy, Kyiv, Zhytomyr and Cherkasy regions demonstrate the highest rates of coverage (70% and above), while Ivano-Frankivsk region has the lowest (47%). Ivano-Frankivsk region also shares the lowest rural coverage with Lviv region - 30% each.

If we take into account the net enrolment rate, this figure for Ukraine as a whole is 43.4% (50.6% for urban population, 29.8% for rural population).

According to the information received from the Ministry of Education and Science of Ukraine, in the 2020/2021 academic year, 15,319 PEIs are already operating in Ukraine, with 1,150,067 children, of whom 59,190 are children with

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<sup>21</sup> This section draws on the work done to prepare the Council of Europe study "Ensuring Children's Rights in Ukraine. Needs Assessment Report on Policy and Regulatory Review": <https://rm.coe.int/needs-assessment-ua/1680a85a60>

<sup>22</sup> <https://zakon.rada.gov.ua/laws/show/2628-14#Text>

<sup>23</sup> [https://www.ukrstat.gov.ua/operativ/operativ2005/osv\\_rik/osv\\_u/dosh\\_osvit/arch\\_dosh\\_osv.htm](https://www.ukrstat.gov.ua/operativ/operativ2005/osv_rik/osv_u/dosh_osvit/arch_dosh_osv.htm)

SEN, of whom 8,544 are children with disabilities. Comparing this information with the data from the State Statistics Service for 2021, we can conclude that there are significant differences between them. This issue requires further research.

In addition, according to the Ministry of Education and Science of Ukraine, 3,796 inclusive groups with a contingent of 6,849 children with SEN were created in 2,242 PEIs (14.64% of the total). In addition, the Ministry of Education and Science of Ukraine provides information that 4,369 special groups with 61,668 children are established in 1,630 PEIs. Thus, we can observe a contradiction in the data on children with SEN in PEIs received from the relevant ministry.

It is worth noting that the workload of PEIs in Ukraine as a whole is 97.7%, including 106% in urban areas and 78% in rural areas. The worst figures are in the Lviv region - 117%. The most overloaded institutions are in urban areas of Lviv Oblast (129%) and Ivano-Frankivsk Oblast (125%), and in rural areas - in Zaporizhzhia Oblast (112%). Most vacant places are in preschools in villages in Mykolaiv and Cherkasy regions (59% each).

taking into account that Ivano-Frankivsk and Lviv regions are among those that have received the largest number of internally displaced persons after 24.02.2022, including children, the need for preschool education in these regions has become even more acute.

From the above, it can be concluded that before the full-scale invasion, there were two main reasons for the low enrolment of children in preschool education: insufficient number of institutions and/or places in them (mostly in urban areas) and unpopularity of such education in rural areas. In turn, the reasons for the low popularity of preschool education in rural areas may include the lack of local traditions when children are looked after by grandparents, lack of staff, low quality of services, etc. This issue requires further research.

It is worth noting that according to Article 89 of the Budget Code of Ukraine, expenditures on preschool education are made from local budgets, and according to Article 32 of the Law of Ukraine "On Local Self-Government Bodies"<sup>24</sup>, promotion of preschool institutions is an inherent power of executive bodies of village, town and city councils. That is why the development of a network of preschool educational institutions is the responsibility of local authorities. At the same time, Article 78 of the Law of Ukraine "On Education"<sup>25</sup> stipulates that funding for preschool education is provided from the state and/or local budgets, as well as from other sources not prohibited by law, and the state may promote the development of preschool education by providing appropriate educational subventions.

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<sup>24</sup> <https://zakon.rada.gov.ua/laws/show/280/97-%D0%B2%D1%80#Text>

<sup>25</sup> <https://zakon.rada.gov.ua/laws/show/2145-19#Text>



The Law of Ukraine "On Preschool Education" declares that preschool education in state and municipal institutions is free of charge for all children, including children with SEN. Medical care in preschool education institutions is also free of charge. Parents pay for meals. However, local self-government bodies and local executive authorities provide free meals to orphans, children deprived of parental care, children with disabilities, children from families receiving assistance in accordance with the Law of Ukraine "On State Social Assistance to Low-income Families", children from among the persons defined in Article 10 of the Law of Ukraine "On the Status of War Veterans, Guarantees of Their Social Protection"<sup>26</sup>, who study in state and municipal preschool education institutions. In addition, by the decision of the local self-government body, preferential terms of payment for meals for children in preschool education institutions are provided at the expense of the local budget for large and low-income families and other categories in need of social support.

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<sup>26</sup> <https://zakon.rada.gov.ua/laws/show/3551-12#Text>

## Article 17

### The right of children and young persons to social, legal and economic protection

#### The right to education <sup>27</sup>

##### *Access to education*

According to the State Statistics Service of Ukraine, the coverage of children in Ukraine with secondary education in full-time general secondary education institutions in 2021 was 78.9% (see Table 1). This data does not include information from Luhansk and Donetsk oblasts, which were temporarily occupied, due to the low reliability of the data used for the calculation. In other oblasts, the coverage of children with secondary education in full-time general secondary education ranges from 80.9% in Ternopil oblast to 97.9% in Kyiv oblast.

It is worth noting that 150,458 children were students of vocational (vocational-technical) education institutions at the end of 2021, 157,082 were students of vocational pre-university education, and 151,451 were students of higher education.

Given that the total resident population of Ukraine at that time was 5,361,670 children aged 6-17, it is unclear whether more than 672,000 children had completed general secondary education. In particular, the problem may lie in the lack of a quality data collection system, as discussed above.

*Table 1*

Number of students in day schools general secondary education in % to total number of employees permanent population 6-17 years old	Quantity students aged up to and including 9 years of age in % to numbers permanent population 6-9 years old	Quantity students aged 10 - 14 years old in % to numbers permanent population 10-14 years old	Quantity students aged 15 years and older in % to numbers permanent population 15-17 years old	Quantity students 6 years in % to numbers permanent population 6 years
79,6	82,3	90,7	50,4	59,5

According to the Ministry of Education and Science of Ukraine, in the 2020/2021 academic year, it is operating in Ukraine:

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<sup>27</sup> This section, in particular, draws on the work done to prepare the Council of Europe study "Rights of Children in Ukraine. The report on the needs assessment with the respect to policy and legal framework revision": <https://rm.coe.int/needs-assessment-eng/1680a85a5f>

- 14,815 general secondary education institutions (hereinafter referred to as GSEIs), where 4,191,538 students receive education, including 74,354 students with disabilities. In particular, 6,394 general secondary schools (43.16% of the total) have 18,681 inclusive classes with 25,078 students with SEN, and 557 special classes with 5,844 students with SEN. Thus, a total of 30,922 students with SEN are enrolled in general education institutions;
- 65 sanatorium schools providing education to 14,548 people with various diseases;
- 77 educational and rehabilitation centres (hereinafter referred to as ERCs), where 7,639 students with complex developmental disabilities study;
- 242 special schools with 28,822 pupils.

### ***Education of children with disabilities***

Additionally, the Ministry of Education and Science of Ukraine received information that a total of 79,316 children with SEN studied in general education institutions in the 2021/2021 academic year, which is 1.89% of the total number of children enrolled in general secondary education institutions. Among them: 36,461 children study in special schools and ERCs, 5,844 children in special classes, 25,078 in inclusive classes, and 11,933 in individual tuition. Thus, the proportion of children with SEN studying in inclusive education in general education institutions is 0.6%.

It should be noted that in Ukraine, there is still a medical model of inclusive education, when special educational needs are equated with nosologies, which does not allow for an understanding of real special educational needs and the lack of real statistics on this indicator, as it does not take into account, for example, children who have SEN due to social, cultural, religious or other circumstances.

Based on the analysis of detailed information received from the Ministry of Education and Science of Ukraine (Table 2), the following conclusions can be drawn:

1. As of 2021, the most accessible educational services for children with disabilities in Ukraine are those provided in special educational institutions;
2. The largest proportion of children in special educational institutions are children with intellectual disabilities;
3. Almost 95% of deaf children study in special education institutions;
4. Children with mental retardation are the largest category of children with disabilities who are educated in inclusive education. Of all children with such disabilities, more than 59% study in inclusive classes;

5. Currently, inclusive education is least accessible to children with sensory (blind, deaf, visually impaired) and intellectual disabilities;
6. The availability of inclusive education services is quite high (more than 30% in each of the above categories) for children with hearing loss, musculoskeletal impairments, severe speech impairments, autism spectrum disorders and Down syndrome;
7. The proportion of children with autism spectrum disorders studying in inclusive classes is the highest among other forms of education;
8. More than 40 percent of children with musculoskeletal impairments are taught individually, which may indicate the presence of physical barriers in educational institutions.

Table 2

Name of the indicator	Number of children with SEN receiving general secondary education				
	<i>In special schools and ERCs</i>	<i>In special classes</i>	<i>In inclusive classes</i>	<i>Among those who study individually</i>	<i>Total by nosology</i>
Children with intellectual disabilities	16346	629	4817	3258	<b>25 050</b>
Blind children	403	4	43	32	<b>482</b>
Children with reduced vision (visual impairments)	4286	486	782	342	<b>5 896</b>
Deaf children	1605	2	55	33	<b>1 695</b>
Children with hearing loss	1835	41	949	263	<b>3 088</b>
Children with musculoskeletal disorders	1756	27	2237	2720	<b>6 740</b>
Children with severe speech impairments	4494	876	2741	335	<b>8 446</b>
Children with mental retardation	1354	3528	10622	2462	<b>17 966</b>
Children with complex developmental disabilities	2599	120	1055	1411	<b>5 185</b>
Children with autism spectrum disorders	1274	115	1285	758	<b>3 432</b>

Children with Down syndrome	509	16	492	319	<b>1 336</b>
<b>Total number of students</b>	<b>36 461</b>	<b>5 844</b>	<b>25 078</b>	<b>11 933</b>	<b>79 316</b>

Based on the information provided above, we can state that 82,898 children with disabilities studied in general education and special institutions in Ukraine. According to the State Statistics Service, in 2020, 4,825 children with intellectual and physical disabilities were enrolled in vocational education institutions. Thus, we can generalise that about 88,000 children with disabilities receive educational services in educational institutions. In turn, according to the Ministry of Health, as of 01.01.2021, there are 162,923 children with disabilities in Ukraine, of whom more than 127,000 are of school age, according to<sup>28</sup>. It remains unclear, as there is no relevant data, where about 48 thousand children with disabilities of school age receive education (and whether they receive it at all).

It should be emphasised that in recent years, there have been frequent complaints from parents and teachers about the organisation of inclusive education in some educational institutions. As part of the study "Equal Access to Educational and Developmental Services for Preschool and School-age Children"<sup>29</sup>, which was conducted by the NGO "Social Synergy" in 2021 with the support of the International Renaissance Foundation, a total of 1,065 people from 3 groups of respondents (parents, teachers and heads of institutions) named the following major barriers to access to educational and developmental services in the normal period (outside quarantine), in particular for children with SEN: lack of special equipment or materials for learning; lack of specialists providing correctional and developmental services; lack of an inclusive class/group; barrier environment, physical inaccessibility of some buildings, premises, floors in an educational institution. NGOs working in the field of child protection are constantly receiving requests from parents with SEN that their children are being refused inclusive education or that those already enrolled are being motivated to transfer to special schools or individual education. In addition, parents of children without SEN often complain that they are not ready to accept inclusion in education.

There are several reasons for dissatisfaction with the quality of inclusive education in Ukraine. According to the "Study of the Quality of Inclusive Education for Children with Special Educational Needs"<sup>30</sup>, which was commissioned by the State Education Quality Service of Ukraine with the support

<sup>28</sup> [https://dostup.pravda.com.ua/request/statistichni\\_dani\\_shchodo\\_osib\\_z\\_2#incoming-240494](https://dostup.pravda.com.ua/request/statistichni_dani_shchodo_osib_z_2#incoming-240494)

<sup>29</sup> <https://socsynergy.org.ua/resources/rivnyy-dostup-do-osvitnikh-i-rozvytkovykh-poslulh-v-ukraini-v-konteksti-poshyrennia-covid-19>

<sup>30</sup> [https://mon.gov.ua/storage/app/media/inkluzyvne-navchannya/2021/04/02/Doslidzhennya\\_yakosti\\_inklyuzyvnoyi\\_osvity\\_1\\_02\\_04.pdf](https://mon.gov.ua/storage/app/media/inkluzyvne-navchannya/2021/04/02/Doslidzhennya_yakosti_inklyuzyvnoyi_osvity_1_02_04.pdf)

of the Support to Ukraine's Government Reforms (SURGe) project, the following challenges need to be addressed:

1. **Class size.** In 2011, the Procedure for Organising Inclusive Education in General Education Institutions defined the number of students with SEN. It is up to 3 students with SEN per class. According to the study participants, practice shows that the normatively allowed number of children with SEN in one class is often violated - the number of children with SEN in one class can vary from 1 to 8 students. The problem with class size arises from the increased demand for schools that are already implementing inclusive education. Such educational institutions have a positive image, a sufficient staff of correctional teachers, an inclusive educational environment, appropriate material and technical facilities for correctional classes, and teachers who know how to work with children with SEN. This creates an increased demand for them from parents of children with SEN.
2. **Psychological and pedagogical support team.** Despite the fact that the law defines the procedure for organising the activities of a team of psychological and pedagogical support for children, in practice, principals form a support team depending on staffing capacities rather than the needs of the child. The biggest problem for school administrators is the staffing of correctional teachers (speech therapists, defectologists, rehabilitation specialists).
3. **Parents of children with SEN complain that their children's curricula are partly illogical and do not take into account the capabilities and abilities that their child has or wants to develop.** For example, some educational institutions for children with SEN use programmes for special institutions.
4. **Assessment of the achievements and level of knowledge of students with SEN is currently the next uncoordinated aspect in the system of ensuring quality inclusive education.** This means that each educational institution determines its own approach for a particular child, choosing from the available ones the one that, in the opinion of teachers and support teams, is most appropriate for the capabilities of a child with SEN. School principals expect the Ministry of Education and Science to develop criteria for assessing students with SEN in inclusive classes.
5. **Preventing bullying in schools is one of the key factors in ensuring the quality of education.** This issue becomes especially relevant when children with different abilities and educational needs find themselves in the educational space. However, the study found that this topic remains rather closed, if not taboo, and respondents from teachers, administrators and even parents of children with SEN are reluctant to share their problems. Parents of children with SEN talk about tensions between children in the context of high school and insist on the need for educational and informational work

with school students. Teachers recalled cases of negative attitudes of parents of classmates towards a student with SEN whose behaviour was complained about by classmates, which created problems with the child's integration into the team. In contrast, participants in the focus group with school leavers (former students with SEN) recalled many such cases. Almost every participant witnessed bullying of their classmates by other children.

Other significant problems that cause dissatisfaction with the quality of inclusive education in Ukraine include the following: lack of experience and low level of training of educational personnel, in particular teachers, to provide educational services to all children; cultural and social traditions stretching back to Soviet times, when children with disabilities and/or SEN were segregated from other children and such practices were considered normal; staff shortage - the profession of teacher or educator is not prestigious for various reasons (including low salaries compared to specialists in other fields), and therefore communities have a constant shortage of staff with an ever-growing demand.

At the same time, recent statements and actions by the authorities in Ukraine as of 2021 suggest that the inclusive education reform is being curtailed. At all levels of government, starting with the President<sup>31</sup>, the Prime Minister, and MPs<sup>32,33</sup>, there have been messages and decisions about the need to preserve special and sanatorium educational institutions, while inclusive education is not a state priority. In particular, in May 2021, the Minister of Education and Science stated that "children with blindness, deafness, intellectual disabilities and complex (combined) developmental disabilities should receive highly specialised educational services in institutions where the relevant specialists, educational environment and material and technical base are concentrated, that is, in specialised special schools and educational and rehabilitation centres"<sup>34</sup>. In other words, the minister supported the exclusion of children with disabilities from the general secondary education system on the basis of inclusive education and the segregation of such children in special institutions.

The limited nature of inclusive education in Ukraine is evidenced by the fact that in 2019, the cost of maintaining special and sanatorium boarding schools amounted to UAH 6.3 billion, while the state budget subvention for state support for people with special educational needs in 2019 was UAH 0.5 billion.

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<sup>31</sup> <https://www.president.gov.ua/news/volodimir-zelenskij-vidvidav-mikolayivsku-sanatornu-shkolu-d-62893>

<sup>32</sup> <https://www.kmu.gov.ua/news/denis-shmigal-reforma-inklyuzivnoyi-osviti-povinna-dati-batkam-i-dityam-pravo-viboru>

<sup>33</sup> <https://life.pravda.com.ua/society/2020/07/13/241630/>

<sup>34</sup> <https://mon.gov.ua/ua/news/mon-zahishatime-prava-ditej-z-osoblivimi-osvitnimi-potrebami-ne-pripuskayuchi-bezpidstavnogo-skorochennya-merezhi-specshkil-sergij-shkarlet>

## **Rights of children in state care** <sup>35</sup>

In 2017, the Cabinet of Ministers of Ukraine approved the National Strategy for Reforming the System of Institutional Care of Children for 2017-2026<sup>36</sup> (hereinafter referred to as the DI Strategy) and the action plan for the implementation of its first stage. The implementation plan of the first stage, which was due to be completed in July 2019, was executed by 30%, and the implementation plan of the second stage was approved with a one-year delay. Selective monitoring of the implementation of regional DI plans showed that the reform has been completely suspended: services are not being created, and institutional care facilities are being filled with new victims of such care and education. In particular, one of the expected results of the DI Strategy was "the suspension from 2020 of the placement of children under the age of three in institutions for institutional care and upbringing of children", however, to date such moratorium has been established and 38 baby homes of the Ministry of Health continue to accept children of the defined age.

At the beginning of 2020, there were 2,756 children in 38 baby homes in Ukraine. In 2019-2020, a study was conducted as part of the project "Pilot to assess the situation in baby homes and develop recommendations for their reform"<sup>37</sup>. According to the results study, it was found that the main reasons for children being placed in baby homes are the difficult financial situation of families, the inability of parents to take care of the child, neglect, careless treatment of the child due to the abuse of alcohol or drug abuse, and child abandonment. Almost all children stayed in children's hospitals during the period of preparation of documents required for placement in baby homes due to the lack of other alternatives for urgent placement. The vast majority of children (60.2 percent) were placed in facilities before the age of one. At the time of the study, up to a third of children had been living in baby homes for two or more years. In all baby homes, there is a correlation between the age of the child and the length of stay: older children on average stayed in the facility longer than younger children. 56.2 percent of children in baby homes were orphans and children deprived of parental care, while the rest had parents who were not restricted in their rights<sup>38</sup>.

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<sup>35</sup> In this section, in particular, the work developed for the preparation of the Council of Europe study "Ensuring Children's Rights in Ukraine. Needs Assessment Report on Policy and Regulatory Review": <https://rm.coe.int/needs-assessment-ua/1680a85a60>

<sup>36</sup> <https://zakon.rada.gov.ua/laws/show/526-2017-%D1%80#Text>

<sup>37</sup> The project was implemented with the support of the Health Care Reform Support Project, funded by the United States Agency for International Development (USAID) and the UK Government's Good Governance Fund, in 2019-2020 in five baby homes in Dnipro, Poltava and Kherson Regions. The pilot was implemented by the Charitable Organisation "Hope and Homes for Children" with the support of the Commissioner of the President of Ukraine for Children's Rights, in cooperation with the Ministry of Health of Ukraine and the Ministry of Social Policy of Ukraine, structural units of the three regional state administrations and baby homes.

<sup>38</sup> <http://hopeandhomes.org.ua/wp-content/uploads/2020/12/Zvit-PID-MASKOIu-TURBOTY.pdf>



The study found that almost 70 percent of children in baby homes are somatically/neurologically healthy and have only developmental delays due to deprivation. Staying in an institution aggravates existing health problems, and deprivation leads to developmental delays in healthy children. Almost all children in baby institutions need comprehensive rehabilitation services. The analysis revealed "mythical" diagnoses for children, in some cases incomplete listing of all components of the diagnosis, and inconsistencies with ICD-10 coding, especially for neurological diagnoses. Despite the presence of a significant number of medical personnel providing medical supervision, children do not receive sufficient amount of necessary services, including adequate nutritional support, screening for health disorders and developmental delays, and timely correction. Current regulations on the nutrition for children in baby homes do not meet their needs, especially in the presence of diseases. The baby homes are partly held hostage by outdated norms and/or the lack of regulatory and legal mechanisms for organising medical and psychological support for children.

An analysis of the published information on the number of children in institutional care facilities and the number of institutions shows that despite the fact that the DI reform has been ongoing in Ukraine for 5 years, the number of children receiving care and education in institutional care facilities in Ukraine is practically unchanged. Thus, according to the data of the Commissioner of the President of Ukraine for Children's Rights, as of January 1, 2017, there were 105,417 children in institutions, as of January 1, 2018 - 104,469, as of January 1, 2019 - 99,917 children, as of January 1, 2020 - 96,577 children<sup>39</sup>. However, in the summer of 2022, two international organisations monitored institutional care facilities and published information that as of the beginning of the full-scale invasion of Ukraine by the Russian Federation (February 24, 2022), 105,459 children were studying and/or staying in institutions with round-the-clock care (according to SURGE<sup>40</sup>). At the same time, according to the State Statistics Service, the number of children in Ukraine decreased by more than 267,000 from 2017 to 2022, meaning that the proportion of children in institutional care is growing.

As of the beginning of the full-scale invasion, on February 24, 2022, according to a study<sup>41</sup> conducted by Charity Foundation "Every Child Partnership" in partnership with the UNICEF, there were 722 institutional care and education facilities in Ukraine, both municipal and private, where 104,729 children were educated and brought up, of whom 56,658 children in these facilities received only educational services, returning to their parents every day. The subject of the

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<sup>39</sup> [Presentation of monitoring of residential institutions 01.01.2020.pdf - Google Drive](#)

<sup>40</sup> The monitoring conducted by SURGE took into account data from specialised boarding schools

<sup>41</sup> [https://www.unicef.org/ukraine/media/26731/file/UNICEF\\_CiAC-monitoring%20report.pdf?fbclid=IwAR2tw5xpsQ6ODMhLdHkuqSIZJPYLX8LII2cWqEEPOzOZRcCxP0AawZwrRk](https://www.unicef.org/ukraine/media/26731/file/UNICEF_CiAC-monitoring%20report.pdf?fbclid=IwAR2tw5xpsQ6ODMhLdHkuqSIZJPYLX8LII2cWqEEPOzOZRcCxP0AawZwrRk)

monitoring was children who stayed in these institutions around the clock, namely 48,071 children who were enrolled in institutional care, of whom 4,584 children (9.5 percent) had the status of an orphan or a child deprived of parental care.

The above information also shows that in fact, neither the state nor ministries have reliable information on the number of children in institutional care in Ukraine, as well as, very importantly, other quantitative and qualitative characteristics of such children. In addition, there is no approved methodology for monitoring institutional care facilities and children, who are there, as well as their own legally approved definition of “institutional care facility”, which allows for data manipulation and makes it impossible to make decisions.

In terms of jurisdiction, as of January 1, 2020, 89,387 (92.56 percent) children receive care and education in institutions of the Ministry of Education and Science, 2,819 (2.92 percent) children - in the Ministry of Health, 4,371 (4.52 percent) children - in the Ministry of Social Policy. 17,258 children in institutional care and education have disabilities, of whom 2,046 have disabilities of subgroup A.

According to the results of the monitoring of children's rights in inpatient healthcare and social protection institutions, conducted by the Ukrainian Helsinki Human Rights Union in 2018 with the support of international partners, it was found<sup>42</sup> that in such institutions: patients' privacy is not respected when using the toilet, shower or bathroom; children are significantly limited in the time they can see their families; staff monitor patients' correspondence by reading their correspondence; children are engaged in fine arts as a form of rehabilitation, production of various products, elements of physical rehabilitation are sometimes used, but there are no rehabilitation measures aimed at acquiring skills for independent living, staying in the community; conditions for children's involvement in decision-making concerning them have not been identified; “We are not able to go outside, freely use the refrigerator and take food, make phone calls, turn off the lights. Everything needs to be asked and agreed upon, even going to the toilet”; insufficient number of care staff (for example, 2 social workers per group where there are 21 children with complex developmental disorders); often the absence and sometimes insufficient number of correctional and developmental specialists (speech therapist, psychologist, special teacher); bars on the windows and cage beds that are still in use; a barrier environment that actually makes walking impossible to go out for children with physical developmental disabilities; medical services are limited mainly to taking medicines, additional therapeutic measures are rather the exception.

Cases of sexual violence, in particular against children with disabilities in institutional care facilities, are also not uncommon. For example, in early

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<sup>42</sup> [https://helsinki.org.ua/wp-content/uploads/2018/03/2018-03-05\\_Prava-dytyny.pdf](https://helsinki.org.ua/wp-content/uploads/2018/03/2018-03-05_Prava-dytyny.pdf)

September 2020, it became known that 3 girls aged 5 to 7 years had been raped by the director of baby home<sup>43</sup>. Activists have doubts about a fair investigation into the case, as the director has many political and family ties in the region. Cases of sexual violence against children with disabilities were also reported in Mykolaiv<sup>44</sup>.

In addition, there are cases of child labour of children with disabilities, in particular in the Zhytomyr region<sup>45</sup> and in the city of Kyiv<sup>46</sup>. In the latter institution, at the end of September 2020, the fact of brutal beatings of children was established<sup>47</sup>.

Also disturbing is the fact that children in institutional care and upbringing facilities run by the Ministry of Social Policy are practically deprived of the right to education, as the provision of such services is not even provided for in the standard regulations on children's residential care facilities<sup>48</sup>, although the children themselves claim that they want to study<sup>49</sup>.

The observance of the rights of children with disabilities during the spread of Covid-19 is worth highlighting. Thus, in April 2020, 42,000 children receiving care and education in educational institutions, including children with disabilities, were returned home without prior verification of the families' ability to provide them with proper care, which resulted in some children having to be returned to residential institutions<sup>50</sup>. In 2020, with the support of international donors, the Ukrainian Child Rights Network (hereinafter referred to as UCRN) implemented the project "Assessment and Response to Child Protection Challenges during the COVID-19 Pandemic"<sup>51</sup>, which assessed the needs of 3,053 families to whom children were returned during quarantine. The results of the monitoring fully or partially confirm the following hypotheses about the reasons for the institutionalisation of children in the pilot regions:

- "Lack of services of adequate quality for families and children in the community" was confirmed in all regions: from 86 to 99 percent of families in the regions named the presence of special needs of the child in education, medicine, rehabilitation or social protection that could not be met in other

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<sup>43</sup> <https://zn.ua/ukr/UKRAINE/direktora-ditbudinku-na-odeshchini-pidozrjujut-u-rozbeschenni-vikhovanok.html>

<sup>44</sup> <https://mk.depo.ua/rus/nikolaev/u-mikolaevi-nareshti-pochali-rozsliduvannya-seksualnogo-24092016103700>

<sup>45</sup> <https://tsn.ua/ukrayina/na-zhitomirschini-direktor-internatu-zdavav-v-orendu-dlya-vikonannya-fizichnih-robot-ditey-iz-rozumovimi-vadami-1220706.html>

<sup>46</sup> <https://vechirniy.kyiv.ua/news/skandal-nyy-internat-na-svyatoshyno-klychko-initsiyuvav-sluzhbove-rozsliduvannya>

<sup>47</sup> [https://www.youtube.com/watch?v=4aKV\\_i-r-KE](https://www.youtube.com/watch?v=4aKV_i-r-KE)

<sup>48</sup> <https://zakon.rada.gov.ua/laws/show/978-2016-%D0%BF#Text>

<sup>49</sup> <https://www.radiosvoboda.org/a/28087813.html>

<sup>50</sup> <https://www.radiosvoboda.org/a/children-resident-schools-quarantine/30569807.html>

<sup>51</sup> <https://childrights.org.ua/projects/spilnyj-proekt-z-yunisef-dlya-zahystu-ditej-pid-chas-pandemiyi-covid-19/>

institutions or that they had not been offered alternative solutions. The community does not provide appropriate assistance and support.

- "Inclusion in kindergartens and general education institutions is formal or does not take place": from 44 to 66 percent of parents in different regions reported that the reason for placing their children in boarding schools was their child's special educational needs. Moreover, from 23 to 62.4 percent of families reported that it was educational institutions, including inclusive resource centres (formerly psychological, medical and pedagogical consultations), schools, kindergartens, etc. that recommended parents to seek educational services in boarding schools. Among the conditions under which families are able to take care of their children on their own and not send them to a boarding school was the school's assistance in the child's adaptation.
- "Families who intend to or have already sent their children to institutional care facilities do not receive timely and adequate support from children's services and social service centres": only from 4.6 to 9.4 percent of families in the regions reported receiving social support services before the monitoring. Most families did not receive any support. The share of family groups in institutions (more than one child per family in an institutional care facility) ranges from 12.7 to 30.4 percent across the regions, which mostly indicates that the choice of an institution is based on convenience rather than real need for the child.
- "Parents are interested in the existence of institutional care facilities": from 6.8 to 28 percent of families in the regions confirmed that they independently made the decision to place their child/children in an institutional care facility. In most cases, this is related to the desire to give their children better education, including profile and special educational institutions. The parents' interest in institutional care facilities is mostly manifested in the fact that there are no high-quality services according to needs at the place of residence.
- "Institutional care facilities recruit children": in dozens of families in the regions, it was the staff of institutions who recommended parents to place their children there.
- "Most children are placed in institutions for social reasons (unemployment, low income, difficult life circumstances, etc.)": in Volyn, Dnipro, Mykolaiv and Poltava Regions, from 57 to 67 percent of cases, parents are not officially employed and their main income is social assistance. From 12 to 37 percent of cases in these regions, interdisciplinary teams did not confirm adequate conditions for children's recreation and education. In addition, from 19.5 to 55.7 percent of families in these regions openly

stated that the reason for placing their children in institutions was social reasons (poverty, unemployment, low income, etc.).

In addition, the analysis conducted by the UCRN in 6 regions showed that in most of them the number of children receiving care and education in institutions has either not changed or is growing. For example, according to the results of the monitoring of institutional care and education institutions carried out by the Commissioner for Children's Rights, as of January 1, 2020, 34,947 children were enrolled in special schools and NRCs. If we compare this with the data from the Ministry of Education and Science presented above as of the 2020/2021 academic year, the number of children in such institutions increased by more than 4 percent, which indicates the failure of the deinstitutionalisation reform, as these institutions are equated to institutional care facilities according to the DI Strategy.

It can be confidently stated that before the full-scale invasion, the closure of residential institutions was mainly due to the lack of educational, medical, social, rehabilitation and other services for children with disabilities at the place of residence. Thus, until now the early intervention services has not been implemented at the state level, despite numerous international projects<sup>52</sup> and approved strategic and conceptual documents: there is no service standard and no budget support. With regard to social services, the state standards for their provision are based on the example of the functioning of institutional care facilities and do not take into account the needs of children, which actually makes it impossible for NGOs to provide them - those units that provide day care services for children with disabilities, for example, function at the expense of international donor assistance and charitable contributions from businesses and private benefactors, most of whom are parents of children with disabilities. This means that the guaranteed free basic social services for children with disabilities do not work.

The danger and lack of basic mechanisms for protecting children's rights in institutional care facilities in Ukraine was further exacerbated by the full-scale Russian invasion in February 2022. Thus, according to the UN Children's Fund UNICEF<sup>53</sup>, the location of children in institutional care facilities as of July 1, 2022, according to the monitoring data, is as follows:

- 38,882 children (80.9 percent of the total number of children who stayed in institutions around the clock) were returned to their parents or legal representatives. Most of these children were returned to their parents from educational institutions (37,929 children), 178 from baby homes (MoH),

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<sup>52</sup> <http://rvua.com.ua/>

<sup>53</sup> [https://www.unicef.org/ukraine/media/26731/file/UNICEF\\_CiAC-monitoring%20report.pdf?fbclid=IwAR2tw5xpsQ6ODMhLdHkuqSIZJPYLX8LII2cWqEEPOzO EZReCxP0AawZwrRk](https://www.unicef.org/ukraine/media/26731/file/UNICEF_CiAC-monitoring%20report.pdf?fbclid=IwAR2tw5xpsQ6ODMhLdHkuqSIZJPYLX8LII2cWqEEPOzO EZReCxP0AawZwrRk)

699 from institutions of the child social protection system and 76 from private institutions;

- 3,269 children did not change their region of residence due to the war in Ukraine: 44 educational institutions - 704 children; 18 healthcare baby homes - 1,059 children; 53 social protection institutions - 1,236 children, 10 private institutions - 214 children, and 59 children in hospitals;
- 784 children from 31 institutions are or have been in the area of active hostilities or under temporary occupation. The greatest risk is for children in the occupied territories: in Kherson Region - 3 facilities (138 children); in Kharkiv Region - 1 facility (53 children);
- 1,611 children from 64 institutions have been fully or partially evacuated within Ukraine: 25 educational institutions (334 children), 27 social protection institutions (726 children), 11 healthcare institutions (539 children) and 1 private institution (12 children). Most evacuated children were received in: Lviv, Zakarpattia, Chernivtsi, and Ivano-Frankivsk Regions;
- 4,296 children from 149 institutions were moved abroad, including 3,828 children who stayed in these institutions around the clock, including 2,568 children with the status of orphans or children deprived of parental care.

The Ministry<sup>54</sup> promised<sup>55</sup> that in the event of an escalation of the situation, particularly in Donetsk and Luhansk Regions, the first priority would be to organise the evacuation of residents of residential institutions for people with mental disorders and geriatric wards and residents of inpatient departments of territorial social service centres. However, after the beginning of the large-scale invasion, only residents of some institutional care facilities in Luhansk Region were taken out in time to other regions of the country. Until now, there are still institutions that have not been evacuated.

Since the beginning of the full-scale invasion of Ukraine by the Russian Federation, the Ukrainian Parliament Commissioner for Human Rights has been conducting weekly monitoring of the situation of temporary relocation (evacuation) and ensuring the conditions of stay in the territory of Ukraine, where hostilities are not taking place, or outside Ukraine of persons with disabilities and elderly people living or enrolled in residential social protection institutions.

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<sup>54</sup> This and the following information (to the end of the subsection "Rights of children in state care") is taken from the Alternative Report on Ukraine's compliance with the UN Convention on the Rights of the Child in August 2022:

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCRC%2FNGO%2FUKR%2F49758&Lang=ru&fbclid=IwAR1pGhvJyK5hKriB-pU-JkEi6a3OwvZlOpQOYjufXqNGUNMIY0WyRfLw700](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCRC%2FNGO%2FUKR%2F49758&Lang=ru&fbclid=IwAR1pGhvJyK5hKriB-pU-JkEi6a3OwvZlOpQOYjufXqNGUNMIY0WyRfLw700)

<sup>55</sup> [Ministry of Social Policy of Ukraine. \(msp.gov.ua\)](https://msp.gov.ua/)

According to the information received from the National Social Service of Ukraine, as of January 1, 2022, 245 residential social care institutions functioned, which housed 37,899 wards in the regions of Ukraine.

As of June 22, 2023, temporary relocation (evacuation) has been provided:

- 4,599 wards from 41 residential institutions (9.8 percent of the total number of all wards in residential institutions as of January 1, 2022), of whom:
- 3,719 people were moved to residential facilities in another region and 880 people were moved abroad.

According to a representative of the State Emergency Service, which were made public at the meeting of the Coordination Headquarters for the Protection of Children's Rights under Martial Law on April 1, 2022, "Evacuation plans were developed in advance, the military situation is changing, so it is impossible to rely on plans developed in peacetime. The military-civilian administration had to adjust the plans according to the situation and, by its decision, announce the general evacuation or evacuation of certain categories of the population."

Another problem is the poor arrangement of air-raid shelters on the territory of some institutions for children. In the event of air raid alerts, which are heard throughout almost all of Ukraine, children are placed in air-raid shelters that are not fully adapted to stay there for a certain period of time. This is especially true for children with disabilities who have physical and intellectual disabilities<sup>56</sup>.

Regarding the legal regulation of evacuation issues, only more than a month after the full-scale invasion, the Cabinet of Ministers of Ukraine adopted a Resolution "Some Issues of Temporary Displacement (Evacuation) of Children and Persons Residing or Enrolled in Institutions of Various Types, Forms of Ownership and Subordination for Round-the-clock Stay, Under Martial Law"<sup>57 58</sup>. In particular, this document:

- establishes a uniform procedure for the evacuation of children with disabilities and/or permanently residing in closed institutions;
- entrusts local authorities with accounting of closed institutions and the number of their residents, determination of the level of danger and the need for evacuation (and does not contain criteria for such an assessment);
- establishes a list of cooperation between state and local authorities to organise evacuation procedures within the country. However, it does not establish the procedure for interaction of state and local authorities with

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<sup>56</sup> [Children and War in Ukraine 24.02-24.03.2022 - Kharkiv Institute for Social Research \(khisr.kharkov.ua\)](https://zakon.rada.gov.ua/laws/show/385-2022-%D0%BF#Text)

<sup>57</sup> <https://zakon.rada.gov.ua/laws/show/385-2022-%D0%BF#Text>

<sup>58</sup> The document expired on June 1, 2023 due to the adoption of the Resolution of the Cabinet of Ministers of Ukraine "On Temporary Relocation (Evacuation) of Children and Persons Residing or Enrolled in Institutions of Different Types, Forms of Ownership and Subordination for Round-the-Clock Stay and Their Return" (<https://zakon.rada.gov.ua/laws/show/546-2023-%D0%BF#n340>).

foreign partners, only the obligation of consular registration of children and adults abroad;

- does not contain requirements for the organisation of accessible evacuation and, accordingly, requirements for the organisation of an accessible place of stay for children and adults with disabilities and/or those with accessibility and constant care needs;
- the amendments to the Resolution of June 24, 2022 established the procedure for the removal abroad of incapacitated persons under the care of an institution;
- does not contain a procedure for the formation of the state or local budget for such evacuations.

At the beginning of June 2022, the Ukrainian Helsinki Human Rights Union published a report "Preliminary review: places of detention in Ukraine during the war"<sup>59</sup>, which, in particular, identified issues that were not regulated either in the period 2014-2022 or after February 2022:

- assessment of the state of provision and development of safe air-raid shelters in case of artillery or missile attacks in places of detention (institutional care facilities);
- evacuation plans for each place of detention, and an assessment of the feasibility of their implementation in 2022;
- lack of specialised or at least minimally adapted transport for evacuation;
- lack of funding to organise and conduct evacuations;
- lack of funding to organise the reception of evacuees in safe regions and institutions;
- budgeting for institutions that receive people from evacuated places of detention;
- action plans in case of actual capture or encirclement of institutions.

Due to the lack of regulatory support and general unpreparedness for evacuation, thousands of children from institutions have gained experience of staying in bomb shelters, under artillery fire and living under occupation.

Under shelling, 71 children from the Sumy specialised baby home<sup>60</sup>, 20 children from Kharkiv specialised baby home No. 3<sup>61</sup>, 50 children from the Kyiv regional specialised baby home in Vorzel<sup>62</sup> (which was hit by a shell on February 25, 2022<sup>63</sup>, but fortunately, the children were in another facility and no one was

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<sup>59</sup> [Preview: places of detention in Ukraine during the war - Ukrainian Helsinki Human Rights Union \(helsinki.org.ua\)](https://helsinki.org.ua/)

<sup>60</sup> [Children evacuated from Sumy specialised orphanage - photos and videos - Ukrainian news, Politics - LIGA.net](#)

<sup>61</sup> [Children thought it was a game. How the Kharkiv infant orphanage was evacuated to Lithuania \(2day.kh.ua\)](#)

<sup>62</sup> [The day after the evacuation, 'Kadyrov's men' broke into our institution - the head of the Orphanage in Vorzel | Hromadske Radio \(hromadske.radio\)](#)

<sup>63</sup> [During the war... - Irina Venediktova | Facebook](#)



injured) were in bomb shelters for 2 weeks. During their stay in the area of hostilities and during the occupation, the institutions were disconnected from heating and electricity, and children were cooked on a fire outside from food brought by employees and local residents.

The outbreak of the full-scale invasion disrupted normal supply chains, leaving many institutions without the most basic goods and products. This has made them dependent on humanitarian aid provided by local administrations and NGOs. These needs and their urgency also directly depend on the status of the territory where the institution is located, the outbreak of hostilities, transport links, the possibility of resuming supplies, etc.<sup>64</sup> .

"We have withstood the first psychological blow. If necessary, psychologists work with children and staff. We bake bread ourselves for ourselves, for neighbouring orphanages, and for community members who need it. We help the community, and the community helps us. At the beginning of the war, people gave away milk and sausage for free. Now they sell more." - From an interview with employees of institutional care facilities<sup>65</sup> .

However, the evacuation itself cannot be considered safe and in the best interests of the child. Children were travelling in unsuitable buses, with several children in one seat and with insufficient escort. Thus, according to the information made public at a meeting of the Coordination Headquarters, as of April 30, 2022, 1 person out of 187 employees of the Kyiv City baby home "Berizka" was evacuated to the Ternopil Regional Centre for Rehabilitation and Child Development together with 57 children, including 3 palliative care children. 75 children from the Kramatorsk baby home "Antoshka", out of 278 staff members, 9 people were evacuated. On March 15, 2022, 100 children aged from birth to 5 years old were evacuated from the Zaporizhzhia Regional Specialised baby home "Sonechko", accompanied by only 19 adults. But the ordeal for the children did not end there - they were placed in a former tuberculosis sanatorium in Lviv Region, where there was no hot water and shower, and the first days were so cold that everyone slept in their outerwear, and volunteers without the appropriate experience and education helped to look after the children<sup>66</sup> .

In most cases, the institutions of the Ministry of Health of Ukraine were not evacuated due to the refusal of the heads of the institutions that perform the functions of guardians of children. For example, the situation was illustrative with the Odesa baby homes, which were moved in the second half of May following a protocol instruction from the Cabinet of Ministers of Ukraine through the Odesa Military Administration. At the same time, several months earlier, at meetings of

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<sup>64</sup> [Preview: places of detention in Ukraine during the war - Ukrainian Helsinki Human Rights Union \(helsinki.org.ua\)](https://helsinki.org.ua)

<sup>65</sup> [Syuatyvnyy-zvit-24.05-24.06.pdf \(khiskharkov.ua\)](https://khiskharkov.ua)

<sup>66</sup> [Without hot water and heating: how live evacuated children from the infant orphanage "Sonechko" \(womo.ua\)](https://womo.ua)

the Coordination Headquarters, there were disputes between the Ministry of Health of Ukraine and the Odesa Military Administration about who was responsible for this decision. According to information from activists, there were no bomb shelters in the baby homes in Odesa and children were placed in schools that had such facilities, but they were located near military facilities.

The Minister of Social Policy of Ukraine, Maryna Lazebna, also called for immediate evacuation: "Some heads of institutions where children stay around the clock refuse to move them to safe places, do not coordinate their actions with regional military administrations and central executive authorities. This is not an issue that can be debated. Children need to be protected. Following discussions on this issue with all the key government officials responsible for protecting children's rights, I have today sent a letter to the Prime Minister with proposals to resolve this situation."<sup>67</sup>

Problems with evacuation also arose in institutions subordinate to the Ministry of Social Policy of Ukraine, where children with disabilities receive care and education. For example, at a meeting of the Coordination Headquarters on May 6, 2022, it was announced that the Shevchenko children's home in Kupiansk District, Kharkiv Region, which had been under occupation since the first day of the war, had 99 residents, including 54 children, 45 youth and 91 staff. At that time, the institution had been without electricity for 3 weeks, with problems with water supply and other household services. However, the evacuation could not be carried out, in particular, because none of the staff wanted to accompany the children. The same situation occurred in the Dnipro baby home, where as of May 3, 2022 there were 23 severely ill (probe) children, in the Verkhniodniprovskiyi children's home No. 2, where there were 31 children, in the Bilopil children's home in Sumy Region, where there were 16 children, in the Konotop children's home in Sumy Region, where there were 8 children, and in the Nizhyn children's home in Chernihiv Region, where there were 39 children.

According to the speakers at the Coordination Headquarters, in many cases, evacuations did not take place due to the lack of parental permission. This problem was quite significant, as more than 80 percent of children in institutions have parents who are not deprived of parental rights, and who, on the one hand, do not have the desire or ability to provide care and education in the family, and on the other hand, do not allow children to be taken out of dangerous living conditions.

"Someone is simply afraid to move. I communicate with my colleagues in another institution similar to ours, and I understand them in some ways. We were approached by volunteers, then the local authorities got involved, and we were able to work together to organise the departure of the children, although they are not easy, they need special care and attention. And if I had to do everything

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<sup>67</sup> [Ministry of Social Policy of Ukraine \(msp.gov.ua\)](https://msp.gov.ua)

myself, I'm not sure I would have managed." - from a conversation with staff of institutional care facilities<sup>68</sup> .

The issue of life support for children, who receive care and education in institutions were also threatened by the termination of funding, in particular in the occupied territories of Kherson and Sumy Regions. The centres of social and psychological rehabilitation received assistance from NGOs, as reported at the Coordination Headquarters on April 14, 2022.

As of June 23, 2022, 4 months after the start of the full-scale invasion, institutional care facilities under the Ministry of Social Policy have not been evacuated:

- Odesa Region (shelled by Russians from the first day of the full-scale invasion, with civilian casualties) - 2 children's homes and 4 centres for social and psychological rehabilitation;
- Sumy Region (as a border region with the Russian Federation, it was invaded on the first day of the full-scale invasion, and was heavy shelled with hundreds of civilian casualties) - 2 children's homes and 3 centres for social and psychological rehabilitation;
- Chernihiv Region (as a border region with the Russian Federation, it was invaded on the first day of the full-scale invasion, and was heavy shelled with hundreds of civilian casualties) - 1 children's home;
- Dnipro Region (a frontline area which was repeatedly shelled) - 3 children's homes;
- Zaporizhzhia Region (partially occupied and where active hostilities are taking place) - 1 children's home;
- Kharkiv Region (as a border region with the Russian Federation, it was invaded on the first day of the full-scale invasion, and was heavy shelled with hundreds of civilian casualties) - 1 children's home;
- Kherson Region (temporarily occupied territory and where active hostilities are taking place) – 1 centre for social and psychological rehabilitation and 1 children's home.

Such facilities are maintained, in particular, by volunteers and NGOs, which provide them with food and hygiene products<sup>69</sup> .

Based on the above, it can be concluded that children with disabilities and children with significant health problems have not been evacuated from institutional care facilities. First of all, these are specialised baby homes of the Ministry of Health and children's homes of the Ministry of Social Policy. The most frequent reason for the inability to evacuate these children in a timely manner was the lack of special transport and professional accompanying persons.

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<sup>68</sup> [Children and War in Ukraine 24.02-24.03.2022 - Kharkiv Institute for Social Research \(khisr.kharkov.ua\)](#)

<sup>69</sup> [Syuatyvnyy-zvit-24.05-24.06.pdf \(khisr.kharkov.ua\)](#)

On June 1, 2023, the Cabinet of Ministers of Ukraine adopted Resolution No. 545 "On the Temporary Relocation (Evacuation) of Children and Persons Residing or Enrolled in Institutions of Various Types, Forms of Ownership and Subordination for Round-the-Clock Stay and Their Return," which provides, in particular, for the evacuation of children from institutions located in the combat zone less than 50 km from the border with Russia and less than 100 km from the temporarily occupied territory.<sup>70</sup>

### **Children's rights in conflict with the law<sup>71</sup>**

Data on issues of ensuring the right of children and young people (minors) to a fair trial, namely in the context of access to justice in criminal cases, cases of administrative offences, civil cases, as well as access to legal aid, are not fully reflected in official statistics. Thus, if we analyse court practice in criminal cases, it is quite complete regarding the involvement of minors in criminal proceedings, mainly in the status of accused, but not fully monitored in relation to persons, for example, in the status of witnesses; in cases of administrative offences, minors are not allocated to a separate category; in the context of civil cases, official data is mostly provided on the participation of children in disputes related to family legal relations.

It is also worth noting that complex statistical and analytical studies on these issues are not conducted, as each state bodies carries out certain work in this area in accordance with the competence and issues included in their functional responsibilities.

The National Strategy for Reforming the Justice System for Children until 2023 was approved by order of the Cabinet of Ministers of Ukraine<sup>72</sup>.

The specified Strategy defines general tasks in the following key areas: 1) prevention of offences among children; 2) protection of the rights of minors, who are prosecuted for committing administrative offences; 3) pre-trial investigation; 4) court proceedings; 5) sentencing of punishment on minors and its execution; 6) re-socialisation of minors.

Thus, with the goal of ensuring the rights of children and minors, mainly in the field of criminal justice, in accordance with international standards, the Government has identified key obstacles and shortcomings in the legislative sphere, as well as in the implementation of regulatory requirements.

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<sup>70</sup> <https://zakon.rada.gov.ua/laws/show/546-2023-%D0%BF#n340>

<sup>71</sup> This section draws on the work done to prepare the Council of Europe study "Ensuring Children's Rights in Ukraine. Needs Assessment Report on Policy and Regulatory Review": <https://rm.coe.int/needs-assessment-ua/1680a85a60>

<sup>72</sup> <https://zakon.rada.gov.ua/laws/show/1027-2018-%D1%80#Text>

In particular, a number of shortcomings have been identified in the area of prevention of juvenile delinquency, such as: the lack of a mechanism for coordinating and monitoring the activities of state bodies, institutions and establishments, and non-governmental organisations involved in the prevention of juvenile delinquency; the lack of disaggregated statistics by gender, which negatively affects the implementation of crime prevention and the rehabilitation of children; the lack of effective practice in developing and approving prevention programmes that provide for general requirements for prevention, the content of such work, monitoring of effectiveness; the lack of effective mechanisms for working with vulnerable groups of children who are in the scope of justice for children for various reasons; inconsistency between the authorized subjects of a common set of principles and goals for the prevention of delinquency among children, the role of everyone in its implementation and the degree of involvement, understanding of approaches aimed at helping to reduce the number of offenses based on available experience, including international.

In the area of protection of the rights of minors held liable for administrative offences, the Strategy draws attention to the need to overcome the following gaps: legislative regulation of social relations does not correspond to the current situation and does not contain adequate guarantees of protection of the rights of individuals as provided for by international standards; procedures for proceedings in cases of administrative offences are simplified compared to criminal ones, and the list of means of protect a person is brought to administrative responsibility is quite limited; consideration of administrative offence cases is often formal, and the presence of protocol on an administrative offence is perceived as indisputable evidence of a person's guilt.

The group of issues related to ensuring the rights of the child in relation to pre-trial investigation includes: the lack of clear provisions on the procedural rights of children who have not reached the age of criminal responsibility, which does not meet not only international standards of criminal justice for children, but also general standards that apply to adults; the lack of mandatory special training for investigators and prosecutors in proceedings concerning minors; the low level of development of alternative mechanisms to court proceedings; the lack of clearly defined rights of the child's legal representative in the criminal procedural legislation; insufficient level of legal certainty of the status of a teacher, psychologist, doctor, representative of the children's affairs service, lack of criteria for their selection and involvement; insufficient effectiveness of the participation of the defense attorney of a minor suspect accused in the pre-trial investigation due to the lack of uniform standards of specialized training of defense attorneys who are engaged to provide legal assistance.

In the area of judicial proceedings, there is a need to improve certain aspects, in particular: the actual prosecution of children who have not reached the age of criminal responsibility, including with their referral for correction to a special

educational institution for children and adolescents; the lack of mandatory special training for judges, prosecutors and defence counsels in proceedings involving children; the lack of proper conditions for holding court hearings in a child-friendly environment.

With regard to the imposition of punishment on minors and its enforcement, a number of problems are noted that need to be addressed, in particular: a high percentage of punishments involving isolation from society are imposed on minors; when imposing punishment, the psychological and age-related characteristics of minors, their perception of the offences committed and the time required to achieve positive changes in behaviour are not always taken into account; the subordination of schools and vocational schools of social activity to the Ministry of Education and Science, for which work with the specified category of children is not a specialized activity, lack of special programs for work with such children.

Finally, one of the areas most in need of improvement is the resocialization of minors, as existing approaches seriously lag behind international progressive practices. In particular, there is currently no comprehensive approach, including psychological and practical training for minors to learn new social roles, restoration of socially useful connections and legal status, elimination or neutralization of negative factors that prevent integration into society, lack of effective support programmes and social services, etc.

In order to implement the tasks set out in the Strategy, the Cabinet of Ministers of Ukraine approved the Action Plan for the Implementation of the National Strategy for Reforming the Justice System for Children for the period up to 2023<sup>73</sup>.

It is worth noting that this action plan has a number of peculiarities that do not contribute to the rapid and effective achievement of the set goals.

Firstly, the issue of regulating of a significant number of proposals and innovations, especially in terms of timeframes for implementation, is a significant challenge in achieving the goals defined by the Strategy.

For example, as already noted, the issue of bringing minors to administrative responsibility and the specifics of procedural rules are the least progressive in the entire system of legal regulation of minors (for example, compared to criminal procedure), which is primarily due to the fact that the Code of Administrative Offences<sup>74</sup>, despite numerous amendments and additions, is the normative act of the Soviet time and generally corresponds to the approaches of the 1980s of the last century.

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<sup>73</sup> <https://zakon.rada.gov.ua/laws/show/1335-2019-%D1%80#Text>

<sup>74</sup> <https://zakon.rada.gov.ua/laws/show/80731-10#Text>

However, the section of the Action Plan "Improvement of the justice system in terms of bringing minors to justice for committing administrative offences" provides for an analysis of the feasibility/possibility of amending the legislation, which are defined as the main tasks of the Strategy in this part, mainly in 2020. Instead, the development and submission of relevant draft laws to the Cabinet of Ministers of Ukraine (if the preliminary analysis concludes that such amendments are appropriate) is planned mainly for 2023.

Thus, the significant gap of about two years between the analysis and the drafting of the law is not sufficiently justified, as the changes are more of a point response than comprehensive changes.

Secondly, the regulatory settlement of gaps or provisions that need improvement is planned to a large extent for the last year of the Action Plan implementation. Thus, it seems that it is doubtful that we will see any amendments to the legislation in the next 2-3 years, also because the indicator is not the amendment of the law itself, but only the preparation of a draft of such amendments.

In addition, even if the Cabinet of Ministers of Ukraine develops such draft laws and subsequently approves them by the Parliament, it is obvious that practical implementation can begin no earlier than three years later, i.e. in 2024 or later. From the above, it can also be concluded that the positive/negative impact of amendments to the legislation aimed at bringing it into line with international norms and standards of ensuring the best interests of the child can be assessed no earlier than in 4-5 years.

Thirdly, the postponement of amendments to the legislation to a later date, as mentioned above, is directly related to the deadlines of other implementation measures.

For example, in the same section of the Action Plan, the implementation of such tasks as the development of standards for training of justice system professionals in relation to children (judges, prosecutors, lawyers, social workers, teachers, psychologists, police officers, probation officers, etc.) based on international experience is envisaged for the third quarter of 2022, and the alignment of existing training courses/programmes for judges with the standards for training of justice system professionals in relation to children or the development of new ones - for the third quarter of 2023. From the above, it can be concluded that the actual process of training judges, prosecutors, lawyers, teachers, social workers and others in accordance with the new approaches can also begin no earlier than 2023-2024, and the impact of their application can be assessed no earlier than in 2-3 years (with the most positive forecasts) and only if such training is comprehensive, systematic and covers at least half of these categories of officials, judicial and law enforcement officers.

According to court statistics for 2020, there were 6,377 criminal proceedings against minors in the courts of first instance, which is almost 3 percent of the total

number of criminal proceedings. Slightly more than half of them (3,420) were submitted to the courts in 2020. The courts considered 3,094 criminal proceedings against minors. 1,846 criminal proceedings against minors in courts of first instance resulted in a verdict. 2,208 people were convicted (including 198 girls) and only 11 were acquitted. More than half were convicted of grave (1,038) and especially grave crimes (20). In the overwhelming majority of cases, persons who committed crimes as minors were convicted of property crimes - in 1,561 cases, including 1,229 cases of theft.

Most often, convicted children were released from serving their sentence - in 1,198 cases. The actual punishment was mostly imposed in the form of a fine - 347 cases, less often in the form of imprisonment for a certain period - 259 cases, or public works - 116 cases. Quite often, courts applied compulsory educational measures to children (420 children)<sup>75</sup>.

These statistics are generally consistent with those for previous years. For example, the Strategy for Reforming the Justice System for Children until 2023, approved in 2018, provides data on: more than 6.5 thousand juvenile criminal offences committed annually, resulting in more than 3 thousand sentences; a significant proportion of which are grave and especially grave crimes, for which more than half of all minors are convicted; a constant tendency for minors to commit repeated crimes (in 2016, this share was 2.6 percent of the total number of crimes committed by minors in the reporting period, and in 2017 - 2.3 percent); a high percentage of repeated crimes committed by minors, which indicates the low effectiveness of the work aimed at the resocialisation of convicts (as of May 1, 2018 68 percent of the total number of minors serving their sentences in educational colonies had previously been prosecuted and served non-custodial sentences).

However, the response to key issues and implementation of child-friendly justice approaches in line with international standards is largely in a similar state to that described in relation to the situation of minors who have committed administrative offences, namely: most amendments to legislation are to be introduced in 2022-2023, and their implementation and evaluation of effectiveness will be possible no earlier than in 3-5 years.

An important step towards preventing the desocialisation of offenders is the gradual introduction of restorative justice in Ukrainian criminal procedure. However, it cannot be stated that the approaches used in Ukrainian legislation fully comply with international standards due to the limited scope of application (the conciliation procedure is applied only to a certain category of crimes).

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<sup>75</sup> From the study "Child-friendly justice standards and their implementation in Ukraine (criminal aspect)", conducted by the OSCE Project Co-ordinator in Ukraine at the request of the Secretariat of the Ukrainian Parliament Commissioner for Human Rights in cooperation with the NGOs "Centre of Policy and Legal Reform" and "Human Rights Vector", June 1, 2021



According to the provisions of the Criminal Procedure Code of Ukraine<sup>76</sup>, the victim has the right to reconcile with the suspect or the accused. In this case, the conclusion of corresponding conciliation agreement is possible only in proceedings regarding criminal offences, non-grave crimes and criminal proceedings in the form of private prosecution (part 3 of Article 469). At the same time, the legislation does not establish any special features of reconciliation in cases involving minors.

In 2019, a pilot project was launched with the support of the United Nations Children's Fund (UNICEF) in Donetsk, Lviv, Luhansk, Mykolaiv, Odesa and Kharkiv Regions to introduce the reconciliation procedure and develop such practice. The main goal of the restorative justice programme for minors is to remove children from the criminal process as early as possible and re-socialise them into society. The project is implemented jointly by the prosecutor's office and the system of free secondary legal aid. During the first year, 137 adolescents were involved in the programme, who together with the victims, agreed to participate in the programme. The court made positive decisions to release 60 children from criminal responsibility. In 2020, the practice of the pilot project "Recovery Programme for Juveniles Suspected of Committing a Crime" was extended to the entire territory of Ukraine. During the two years of the project's operation, by the end of 2020, juvenile prosecutors have already involved 176 adolescents who committed minor offences for the first time in the restorative justice programme, 98 of them were released from criminal responsibility by the court. According to some estimates, the implementation of such project throughout Ukraine will provide an opportunity to remove more than 1,500 children from criminal prosecution.

Comprehensive measures for the re-socialisation of juveniles and the prevention of offences should play a key role in bringing the criminal justice system in conformity with international standards. It cannot be claimed that the state bodies implementing educational and social services and law enforcement agencies are not working in this direction.

In particular, in the summary carried out by the Ministry of Justice "The status of Implementation of the Plan of Measures for the National Strategy for Reforming the Justice System for Children until 2023 in 2020" provides information on a large number of measures that have been carried out (usually carried out annually and on a regular basis) in all regions of Ukraine. Instead, the measures being implemented and provided in the Plan of Measures for the implementation of the National Strategy for Reforming the Juvenile Justice System for the period up to 2023 are not comprehensive. In addition, the Plan of Measures defines performance indicators, as a rule, as quantitative indicators, but does not provide for research and impact analysis. Thus, this approach is based rather on outdated

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<sup>76</sup> <https://zakon.rada.gov.ua/laws/show/4651-17#Text>

approaches and does not allow to assess whether there is a positive effect from the measures taken, which ones have the highest effect, and how to organize the process to achieve maximum positive impact.

### **Rights of child victims of war<sup>77</sup>**

As a result of the war that has been going on in eastern Ukraine since 2014, a large part of the territory of Donbas, on both sides of the contact line, was contaminated by landmines and explosive remnants of war. In fulfilment of its obligations under the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (Ottawa Convention)<sup>78</sup>, the Government of Ukraine should ensure that the public is clearly informed about the impact of mines and explosive remnants of war on civilians and make every effort to compensate civilians for damage caused by contamination. In addition, the Government of Ukraine is obliged to provide appropriate assistance to child and their families affected by mine.

The main problem before the full-scale invasion was the lack of a comprehensive programme of assistance to child affected, leaving them and their families alone with the consequences of the mine-explosive incident. Also, there is no current special information system and database for recording incidents and people affected by mines and explosive remnants of the armed conflict. The data on children affected by mines and explosive remnants of war which collected and recorded by the relevant bodies of the central executive power, differ significantly from each other. Collecting reliable data is of great importance for shaping public policy and understanding the scale of the problem, as well as for budgeting for the measures necessary for the assistance and rehabilitation of affected children – behind each number there is a child and his or her family.

Children who have become hostages of Russian aggression continue to die. Between April 14, 2014 and May 15, 2018, according to the UN Human Rights Monitoring Mission, 98 boys and 49 girls were killed. In addition, 80 children were killed in the plane crash of flight MH17 on July 17, 2014. As of October 1, 2018, UNICEF also estimates that at least 140 children have been killed or injured by mines<sup>79 80</sup>.

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<sup>77</sup> This section, in particular, uses materials from the Alternative Report on Ukraine's compliance with the UN Convention on the Rights of the Child for the period from 2011 to 2018

<sup>78</sup> [https://zakon.rada.gov.ua/laws/show/995\\_379#Text](https://zakon.rada.gov.ua/laws/show/995_379#Text)

<sup>79</sup> "Report on the human rights situation in Ukraine 16 February – 15 May 2018", OHCHR, available at: [https://www.ohchr.org/Documents/Countries/UA/ReportUkraineFev-May2018\\_UKRAINIAN.pdf](https://www.ohchr.org/Documents/Countries/UA/ReportUkraineFev-May2018_UKRAINIAN.pdf)

<sup>80</sup> "Report on the human rights situation in Ukraine 16 May to 15 August 2019" access address: [https://www.ohchr.org/Documents/Countries/UA/ReportUkraine16May-15Aug2019\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/ReportUkraine16May-15Aug2019_EN.pdf)

According to the United Nations Children's Fund UNICEF<sup>81</sup> since the entry into force of the ceasefire regime on July 27, 2020, the number of security incidents has decreased by 32 percent compared to the previous twelve months. However, the first nine months of 2021 have seen a marked increase: the UN recorded 84 civilian casualties in the conflict zone, including four children killed and six injured.

Human rights defenders managed to identify the involvement of about 200 children from the uncontrolled territories of Donetsk and Luhansk Regions to participate in military training camps on the territory of Russia or in the territory actually controlled by Russia (Abkhazia, Crimea). Some of these camps were held on the basis of military units of the Armed Forces of the Russian Federation (camps 'Combat Brotherhood' and 'Guardsmen') or with the involvement of security forces. Experts note that such actions with children of the occupied territories, combined with military-patriotic rhetoric, create a real risk of concealing the recruitment and training of young men and women to participate in illegal paramilitary formations<sup>82 83</sup>.

Several attempts have been made at the legislative level to provide rehabilitation services for children affected by armed conflict. However, none of the solutions currently effectively addresses the needs of affected children, and there is a lack of systematic efforts to protect children affected by armed conflict. The following categories of children have been neglected: children - family members of veterans – participants in hostilities, children - family members of active military personnel, children - family members of persons with war related disabilities.

After the outbreak of the war in 2014, the Law of Ukraine "On Rehabilitation of Persons with Disabilities in Ukraine"<sup>84</sup> was amended and formalised the provision of technical and other rehabilitation equipment and medical supplies for persons affected by the armed conflict, whose disability has not been established. However, there is still no centralised collection of data on the number of people who have acquired health impairments as a result of wounds, contusions or mutilations, which does not allow for effective planning of policies for their rehabilitation. For example, according to official information, 48 children were

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<sup>81</sup><https://reliefweb.int/report/ukraine/unicef-ukraine-humanitarian-situation-report-july-september-2021>

<sup>82</sup> "Human Rights in the Occupied Territories and the Conflict Zone - 2017", UHHRU, accessed at: <https://helsinki.org.ua/prava-lyudyny-na-okupovanyh-terytoriyah-ta-v-zoni-konfliktu-2017/>

<sup>83</sup> "Universal Periodic Review: An Alternative Dimension", compilation of alternative reports by civil society organisations, available at: [wp-content/uploads/2017/04/UPR\\_3rd-cycle\\_CSOs\\_ua.pdf](wp-content/uploads/2017/04/UPR_3rd-cycle_CSOs_ua.pdf)

<sup>84</sup> <https://zakon.rada.gov.ua/laws/show/2961-15#Text>

injured in Donetsk region between 2014 and 2018, however no child was disabled as a result of a mine-explosive injury<sup>85</sup>.

The law provides for the status of a child affected by hostilities and armed conflicts. On April 5, 2017, the Government of Ukraine adopted a resolution "On Approval of the Procedure for Granting the Status of a Child Affected by Military Operations and Armed Conflicts"<sup>86</sup>, but with significant shortcomings, as a result of which only 9 children received the status during the year. Only after the amendments were made to this resolution in April 2018, which simplified the procedure, the process became systematic, and as of October 1, 2019, 33 thousand 175 children received the status. However, children who have been received this status are still unable to receive the services they need due to the lack of relevant legislation and allocations for the services.

Also, children who have acquired a disability as a result of wounds, contusion or mutilation can receive legislative guarantees provided for persons with disabilities as a result of war under the Law of Ukraine "On the Status of War Veterans and Guarantees of their Social Protection"<sup>87</sup>. In May 2018, the status of persons was regulated, including children under the age of 18, who have acquired a disability as a result of wounds or damages caused by military weapons. However, proving the link of disability may be difficult due to the need to provide an extract of the opening of criminal proceeding regarding the fact that the victim was injured or otherwise health damaged by ammunition.

In addition, this status did not apply to children whose disability was caused by diseases not directly related to injuries from ammunition. Example: a shell hit an apartment in an apartment building in Debaltseve (Donetsk region), killing the father, seriously injuring the mother and leaving the child unharmed. After some time, as a result of the stress, the child acquired complex health disorders that led to severe disability<sup>88</sup>. This example demonstrates that children whose illnesses are acquired as a result of the conflict will not be able to claim the guarantees provided by the latest law.

However, on June 1, 2023, a number of amendments were made to the legislation of Ukraine, which regulated a number of problematic issues. In particular, previously only children who lived in the territories of the anti-terrorist operation or left there had the right to receive this status of a child affected by hostilities and armed conflict. Now this restriction has been lifted and obtaining the status

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<sup>85</sup> Rehabilitation of victims of the conflict. Does the state offer something other than disability and crutches?" / B. Moisa, edited by O. Pavlichenko, O. Martynenko / Ukrainian Helsinki Human Rights Union, accessed at <https://helsinki.org.ua/wp-content/uploads/2018/12/Reabilitatsiya-zhertv-vijny.pdf>.

<sup>86</sup> <https://zakon.rada.gov.ua/laws/show/268-2017-%D0%BF#Text>

<sup>87</sup> <https://zakon.rada.gov.ua/laws/show/3551-12#Text>

<sup>88</sup> Ibid.

no longer depends on the place of residence. This right is eligible for all children who have been injured, contused, disabled or have subjected to physical, sexual or psychological violence as a result of the war.

## **Article 27**

### **The right of workers with family responsibilities to equal opportunities and equal treatment**

In February 2021, a citizen appealed to the Commissioner for Human Rights regarding the discriminatory nature of the provisions of Article 19 of the Law of Ukraine "On Leaves"<sup>89</sup>, which violate his right, as a father of two children under the age of 15, to receive additional leave of 10 calendar days, unlike women.

The Commissioner for Human Rights appealed to the Ministry of Social Policy of Ukraine as a specially authorized central body of the executive power in matters of ensuring equal rights and opportunities for women and men regarding consideration of the specified issue and the possibility of amending the Law of Ukraine "On Leaves" in order to provide equal rights to use an additional 10 calendar days of leave to both parents with two children under the age of 15.

The Ministry of Social Policy of Ukraine reported that a group of People's Deputies of Ukraine submitted to the Verkhovna Rada of Ukraine the draft Law of Ukraine "On Amendments to Certain Legislative Acts on Ensuring Equal Opportunities for Mothers and Fathers to Care for a Child" (Reg. No. 3695 of June 19, 2020). The draft Law, in particular, proposed to amend Article 19 of the Law of Ukraine "On Leaves" in terms of entitling the right to additional leave to workers of both sexes who have children or an adult child - a person with a disability from childhood of subgroup A of group 1. The Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Ensuring Equal Opportunities for Mothers and Fathers in Childcare" was adopted on April 15, 2021<sup>90</sup>, which settled the specified issue.

The Verkhovna Rada of Ukraine has registered the draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on the Regulation of the Granting and Use of Leaves, as well as Other Issues"<sup>91</sup>, which amends the Labour Code of Ukraine and the Law of Ukraine "On Leaves". The amendments provide to the father of a child for a one-time paid paternity leave of up to 14 calendar days (excluding holidays and non-working days) no later than three months after the child's birth. The draft law was adopted as a basis with amendments to provisions in accordance with part one of Article 116 of the Rules of Procedure of the Verkhovna Rada of Ukraine.

The Verkhovna Rada of Ukraine has registered the Draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine in the Field of Social

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<sup>89</sup> <https://zakon.rada.gov.ua/laws/show/504/96-%D0%B2%D1%80#Text>

<sup>90</sup> <https://zakon.rada.gov.ua/laws/show/1401-20#Text>

<sup>91</sup> [https://itd.rada.gov.ua/billInfo/Bills/CardByRn?regNum=8313&conv=9&\\_gl=1\\*1r4gfrg\\*\\_ga\\*MTM4NTU4NzUxNS4xNjgzMzEwNTQ1\\*\\_ga\\_G9VY19PRSD\\*MTY4NzgwNDg5NS4yMy4xLjE2ODc4MDk1MDMuNTMuMC4w](https://itd.rada.gov.ua/billInfo/Bills/CardByRn?regNum=8313&conv=9&_gl=1*1r4gfrg*_ga*MTM4NTU4NzUxNS4xNjgzMzEwNTQ1*_ga_G9VY19PRSD*MTY4NzgwNDg5NS4yMy4xLjE2ODc4MDk1MDMuNTMuMC4w)

Leaves"<sup>92</sup>, which amends the Labour Code and the Law of Ukraine "On Leaves". The amendments provide that "at the request of the child's mother or father, the leave to care for the child is granted until the child reaches the age of three. Such leave may be used by parents at the same time, and the duration of the simultaneous stay on leave of both parents may not exceed 4 months out of the total three-year period."

Unfortunately, in practice, in society, as well as in public authorities, there is no awareness of the equal rights and obligations of both parents towards their children. For example, in May 2021, the official Facebook page of the Police of Ukraine posted a post<sup>93</sup> stating that a mother had left her two young children with their father and went away on business. Their 8-year-old son left home and was found by a police officer at a metro station. Here is the quote: "Juvenile police officers held a preventive conversation with the boy's mother and warned her to be careful and keep an eye on her children. An administrative report was drawn up against her under Part 1 of Article 184 of the Code of Ukraine on Administrative Offences." Unfortunately, this is the predominant practice of police officers, when the responsibility for failure to fulfil parental responsibilities is placed only on the mother. It is also important to add that in 2014-2015, a sociological study "Care as Work"<sup>94</sup> was conducted in which mothers in two-parent families were interviewed. The results of the study showed that only mothers: in 81 percent of cases take sick leave when a child is ill; in 86 percent of cases take care of the child's appearance; in 62 percent of cases take care of the child's intellectual development; in 73 percent of cases control the child's diet and sleep. In other words, the inequality of parents in relation to their children is manifested both at the household level and at the level of practice in relation to responsibility.

It should be added that in 2022, in the conditions of a full-scale invasion of the Russian Federation into Ukraine, military parents were granted equal rights and opportunities to care for their children, upbringing and combining military service with family responsibilities. In particular, the issue of granting parental leave to military parents to care for a child until the child reaches the age of three and in case the child needs home care, if both parents are military personnel, has been regulated: such leave will be granted to one of them by their joint decision (Law of Ukraine "On Amendments to Article 10-1 of the Law of Ukraine "On Social and Legal Protection of Military Personnel and Members of Their Families"<sup>95</sup> regarding equal opportunities for mothers and fathers who are military personnel to care for a child during a special period").

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<sup>92</sup> <https://itd.rada.gov.ua/billInfo/Bills/Card/41367>

<sup>93</sup> [https://m.facebook.com/story.php?story\\_fbid=3978095602246181&id=321428301246281](https://m.facebook.com/story.php?story_fbid=3978095602246181&id=321428301246281)

<sup>94</sup> <https://life.pravda.com.ua/society/2017/06/17/224736/>

<sup>95</sup> <https://zakon.rada.gov.ua/laws/show/2822-20#Text>

## **Article 31**

### **The right to housing**

#### **The rights of homeless people**

In January 2021, the Commissioner for Human Rights monitored the measures that carried out by local executive authorities and local self-government bodies to provide social support to homeless persons. The monitoring covered 51 local executive authorities and local self-government bodies in 24 regions and the city of Kyiv, and monitoring visits were made to 100 heating centres.

There were numerous cases of the absence of institutions and facilities providing temporary shelter for homeless persons (in 11 monitored objects); social patrols (in 7 objects); food distribution points (in 9 objects); and sanitary and hygienic rooms (in 50 objects).

It was found that there was no registration of homeless persons (in 6 objects); no document recovery services were provided (in 11 objects); no medical examinations/examination of homeless persons were conducted (in 6 objects); and no personal protective equipment (masks) were provided to homeless persons (in 70 objects).

During the monitoring visits, it was found that most of them work only during the day. Only half of the warming centres visited (50) are equipped with a sanitary and hygienic room. Almost all heating centres need to be equipped (updated) with first aid supplies (first aid kits).

The Commissioner for Human Rights provided recommendations to the management of the monitored objects to eliminate the identified violations, as well as to the Ministry of Social Policy to address the identified systemic issues of providing social services to homeless persons.

In 2021, the Ministry of Social Policy developed a draft resolution of the Cabinet of Ministers of Ukraine "On Approval of the Main Directions for Preventing Homelessness until 2026"<sup>96</sup>, which is a comprehensive document that defines the tasks of executive authorities and local self-government bodies to prevent and reduce homelessness, implementation of rights and freedoms by homeless persons provided for by the Constitution and laws of Ukraine, ways and means of solving the problem of homelessness. However, it has not been accepted until now.

Thus, according to the results of media monitoring in January 2021, it became known that a homeless citizen N. (staying in Kyiv) did not have an identity document, had been living on the street for the past few years, had health problems due to an injury to his lower limb and was unable to move

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<sup>96</sup> <https://www.msp.gov.ua/projects/726/>



independently. With the intervention of the Ombudsman, N. received necessary medical care in a medical institution in Kyiv. The Department of Social Policy of the Executive Committee of the Kyiv City Council resolved the issue of settling him in the Kyiv City Centre for Complex Services for Homeless Persons in the village of Yasnohorodka and provided assistance in restoring documents.

### **State support for vulnerable consumers of housing and communal services**

For vulnerable consumers of housing and communal services, citizens who cannot pay for them on their own, Ukrainian legislation provides for the right to receive a housing subsidy.

The amendments were made to the Regulation on the Procedure for Granting Housing Subsidies, approved by a resolution of the Cabinet of Ministers of Ukraine<sup>97</sup> in April 2021, which significantly revised the conditions for assigning housing subsidies to citizens.

In particular, the conditions for receiving a subsidy have been simplified for households that include military personnel, persons who are considered to be missing by a court decision or have the legal status of missing persons, and persons in respect of whom there are employer owes a single contribution to the mandatory state social security insurance.

At the same time, the commissions were eliminated, that established by local authorities, which in some cases, depending on the family's life situation, could decide on the appointment of a housing subsidy. As a result, citizens have lost the only opportunity to receive a housing subsidy, while they cannot pay for housing and communal services on their own.

In June 2021, the Commissioner for Human Rights monitoring revealed violations of the rights of citizens to random withholding of housing subsidies from May 1, 2021 due to the fact that the structural units for social protection of the population did not have the technical ability to appoint them taking in accordance with the amendments to the Regulations.

As a result of the measures taken, the issue was resolved by the Commissioner for Human Rights: from May 25, 2021, the Ministry of Finance and the Ministry of Social Policy transferred verification data and the necessary software to the regions, which ensured the restoration of the right of citizens to receive housing subsidies in a timely manner.

The Commissioner's for Human Rights monitoring established that the lack of proper organizational and technical training also occurred during the transfer from December 1, 2022, of the functions regarding the appointment and payment of benefits of housing and communal services and housing subsidies from the

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<sup>97</sup> <https://zakon.rada.gov.ua/laws/show/848-95-%D0%BF#Text>

structural bodies of social protection of the population to the bodies of the Pension Fund of Ukraine. This led to a violation of the rights of citizens to receive benefits and housing subsidies in a timely manner. The facts of non-receipt of benefits and housing subsidies by citizens for 6 months have been revealed.

In December 2022, a resident of Kharkiv Region applied to the Commissioner for Human Rights, who had submitted an application and documents in September 2022 to the body of social protection of the population at her place of residence for the appointment of a housing subsidy due to changes in the composition of the family (death of her husband), but had received neither the subsidy nor a refusal to grant it. The Commissioner's proceedings, opened at the applicant's request, it was established that the applicant's documents were not processed by the social protection body within the period specified by the current legislation and were transferred to the Main Department of the Pension Fund of Ukraine in Kharkiv Region without making any decision. At the same time, the documents were transferred only in January 2023, after the request of the Commissioner. As a result of such actions, the applicant's right to receive a housing subsidy in a timely manner was violated. Due to the response of the Commissioner's for Human Rights response, the Main Department of the Pension Fund of Ukraine in Kharkiv Region processed the applicant's documents and at the end of March 2023 the decision was made to assign her a housing subsidy from the month of application (September 2022). The funds accrued for the entire period were included in the payment information of April 2023.

Under martial law, the conditions for assigning housing subsidies have been revised in terms of providing the opportunity for any category of citizens to receive them at the declared place of residence, and not only at their place of registration. In addition, taking into account the challenges of martial law, the conditions for assigning housing subsidies to households that include persons who are registered (declared) in a residential building (house) but do not actually live there due to conscription for military service.

At the same time, there is still need to review the provisions of the legislation on housing subsidies in such way as to ensure the right to it for those persons, who for reasons beyond their control lost their jobs or had their employment contract temporarily suspended during martial law.

### **Eviction from housing**

There were no significant changes to the legislation on eviction from occupied housing. In 2022, regulations were implemented to guarantee for officers, warrant officers and midshipmen, military personnel of the overtime service of the Armed Forces of Ukraine and persons equated to them, discharged from active military service for retirement or in reserve, as well as persons living with them, provision

of other well-equipped residential premises in case of eviction from the residential premises occupied by them in military towns<sup>98</sup>.

The following was established by monitoring of the implementation of legislation regarding eviction based on citizen's appeals. Ms Z. claims that the city council is trying to deprive her family of housing through the court. In the course of consideration of the appeal, it was found out that citizen Z. had purchased an apartment in Kherson from a person who illegally owned this apartment, since the apartment belongs to communal property. In this regard, in 2017, the city council filed a lawsuit to reclaim the apartment from someone else's illegal possession and eviction without providing another living space and deregistration place of residence of her family. The decision of the first instance in 2018 upheld the lawsuit of the city council, and the cassation instance in 2020 left the decision unchanged. As a result, citizen Z. was deprived of her home. The Civil Code of Ukraine defines the criteria under which the concept of a "bona fide purchaser" is applied. In its decision, the court of first instance concluded that the status of such a purchaser did not apply to citizen Z. The seller misled the buyer, citizen Z. In 2018, law enforcement agencies informed the Commissioner for Human Rights about the opening of a pre-trial investigation on the grounds of the criminal offence of «Fraud».

The Housing Code of Ukraine<sup>99</sup> currently contains an exclusive list of grounds for eviction of citizens with the provision of other housing. However, in the specified list there is no grounds for providing other housing to persons who acquired housing on the grounds of a purchase and sale contract from a person who did not have the right to dispose of the property, and this property was later confiscated by court decision because it belongs to communal or state property.

In order to prevent homelessness, a citizen should also be given the right to use the disputed housing until it is provided to others.

Taking into account the case of eviction as a result of fraudulent actions, there is a need to supplement the Housing Code of Ukraine with a provision on providing other housing for persons who acquired ownership of it on the basis of a contract from a person who had no right to dispose of this property and it belongs to communal or state property.

In general, the issue of protecting people from eviction should be resolved by expanding the financial and material potential of the state and local communities.

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<sup>98</sup> <https://zakon.rada.gov.ua/laws/show/2215-20#n275>

<sup>99</sup> <https://zakon.rada.gov.ua/laws/show/5464-10#Text>