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Children from Ukraine – civil judicial cooperation

Children deprived of their family environment due to Russia's military aggression against Ukraine - applicable European and international instruments in cross-border civil cases.

This factsheet was prepared by the European Judicial Network in civil and commercial matters.

Russia's military aggression against Ukraine raises questions about the situation of refugee children who are displaced in the European Union from Ukraine. The issue becomes even more complex when these children are separated from their families, either because they have remained in Ukraine or because they are refugees in another Member State.

It is now urgent to be able to ensure that these children are protected against the risk of violence, exploitation, illegal adoption, abduction, sale or child trafficking. For this reason, it is essential to use the instruments that protect the rights of these children.

There are instruments in European and international law to ensure the protection of children, with special provisions for the protection of and assistance to children temporarily or permanently deprived of their family environment, including in emergency situations, such as an armed conflict.

Jurisdiction

In matters of parental responsibility, **Article 8 of the Brussels Ia Regulation** (which will be replaced by the **Brussels IIb Regulation** as from 1 August 2022) provides that the courts [1] of a Member State [2] have jurisdiction in matters of parental responsibility over a child who is habitually resident in that Member State at the time the court is seised. However, the Ukrainian courts continue to retain jurisdiction if the child was habitually resident in Ukraine before the displacement. As a general rule, the change of habitual residence would require some time and the court needs to ascertain that certain requirements are fulfilled [3]. Accordingly, a Ukrainian child entering the EU will probably lack a habitual residence within the EU for some time, rendering Article 8 not applicable in many cases.

Article 13(2) of the Brussels Ia Regulation provides for jurisdiction based on the presence of the child in cases of refugee children or children internationally displaced because of disturbances occurring in their country. However Article 52(2) of the **1996 Hague Convention on the Protection of Children** (to be read in conjunction with Recital 25 of the Brussels IIb Regulation) clarifies that this jurisdiction rule should only apply to children who had their habitual residence in a Member State before the displacement. Where the habitual residence of the child before the displacement was in a third State, such as Ukraine, the jurisdiction rule of the 1996 Hague Convention on refugee children and internationally displaced children should apply. Ukraine and all EU Member States are Contracting Parties to the 1996 Hague Convention (**HCCH | #34 - Status table**).

Article 6(1) of the 1996 Hague Convention provides that "[f]or refugee children and children who, due to disturbances occurring in their country, are internationally displaced, the authorities of the Contracting State on the territory of which these children are present as a result of their displacement have the jurisdiction provided for in paragraph 1 of Article 5".

More information on the application of the 1996 Hague Child Protection Convention to unaccompanied and separated children is available [here](#) and [here](#).

Articles 8 and 9 of the 1996 Hague Convention as well as **Article 15 of the Brussels Ia Regulation** provide that jurisdiction may be transferred to a court better placed to hear the case. In the current situation, this could concern the protection of a child from Ukraine (for example, arriving in the EU unaccompanied) in case the competent authority becomes aware that the child has family members in another Member State. In such a situation, the first Member State may request the transfer of jurisdiction if the child has a particular connection with the second Member State and if the transfer would be in the best interests of the child.

Applicable law

In the event of military aggression, the **1996 Hague Convention on the Protection of Children** constitutes an important instrument relating to the protection of children, including those dealing with unaccompanied, separated migrant and asylum-seeking children. Ukraine and all EU Member States are Contracting Parties to the 1996 Hague Child Protection Convention (**HCCH | #34 - Status table**).

It should be noted that Article 16(1) of the 1996 Hague Convention provides that the question **who has parental responsibility** for a child by operation of law is governed by the law of the habitual residence of the child, that is by Ukrainian law for children having their habitual residence there. The same is true for the attribution of parental responsibility by agreement or unilateral act (Article 16(2) of the 1996 Hague Convention). In addition, parental responsibility that exists under the law of the State of habitual residence subsists in the event that a child changes their habitual residence to another State (Article 16(3) of the 1996 Hague Convention). The exercise of parental responsibility is governed by the law of the child's habitual residence as well (Article 17 of the 1996 Hague Convention).

In addition, Article 23 of the 1996 Hague Convention provides for formal **recognition** by operation of law of any measures issued in another Contracting State. Accordingly, a Ukrainian measure within the scope of the Convention will be automatically recognised in other Contracting States without the need of formal recognition. Therefore, **Ukrainian measures will remain valid within the EU**.

As further clarified in Article 18 of the 1996 Hague Convention, parental responsibility referred to in Article 16 of the 1996 Hague Convention may be terminated, or the conditions of its exercise may be modified, by measures taken under this Convention. Article 15(1) of the 1996 Hague Convention provides that "[i]n exercising their jurisdiction under the provisions of Chapter II, the authorities of the Contracting States shall apply their own law", and therefore it follows that Contracting Parties apply their national laws in these cases.

More information on the application of the 1996 Hague Child Protection Convention to unaccompanied and separated children is available [here](#) and [here](#).

Cooperation between Central Authorities

Please be informed that the functioning of the Ukrainian Central Authority appointed under the **1996 Hague Convention on the Protection of Children** is affected and may be temporarily limited due to the current crises.

In situations concerning cooperation between Central Authorities of Member States (for example, a child who has been placed in one Member State has siblings in another Member State), Articles 55 and 56 of the Brussels Ia Regulation could apply.

Regarding foster care, the information published on the e-Justice Portal provided by Member States on how the procedure for cross-border placement including foster families is done could also be useful and can be consulted [here](#).

For a better understanding on how to apply the Brussels Ia Regulation, [the Practice Guide on the application of the Brussels II a Regulation](#)  (2985 Kb)

[en](#) is a useful tool.

How can the European Judicial Network in civil and commercial matters (EJN-civil) help?

The EJN-civil provides support for the implementation of EU civil justice instruments in daily legal practice. In addition to the Central Authority, the EJN contact point in your Member State may be contacted to help you if you have a specific problem in a cross border case. Your contact point may, for instance, enquire about the current status of a request, help bring two courts in touch or find the contact details of a competent authority in another EU Member State.

[More information on the EJN and how it can help.](#)

[How do I find my national contact point?](#)

Useful links

Information on Ukrainian law

[Information on Ukrainian law in relation to child protection and unaccompanied minors](#)  (217 Kb) 

[Call from the Prime Minister of Ukraine about the prohibition of interstate adoption of Ukrainian children](#)  (92 Kb) 

Central Authorities:

[Brussels IIa Regulation](#)

[1996 Hague Child Protection Convention](#)

[Information note from the HCCH on children deprived of their family environment due to the armed conflict in Ukraine](#)

[Child protection section of the HCCH webpage](#)

[The application of the 1996 Hague Child Protection Convention to unaccompanied and separated children](#)

[Explanatory Report on the 1996 Hague Child Protection Convention](#)

[The Practice Guide on the application of the Brussels II a Regulation](#)  (2985 Kb) 

Communications from the European Commission:

[Welcoming those fleeing war in Ukraine - readying Europe to meet the needs](#)

[The protection of children in migration](#)

[1] According to Article 2(1) of the Brussels IIa Regulation the term 'court' covers all the authorities in the Member States with jurisdiction in the matters falling within the scope of the two Regulations.

[2] These two Regulations do not apply to Denmark which applies the similar jurisdiction rules in the 1996 Hague Convention on the Protection of Children.

[3] For the interpretation of "habitual residence" see for example CJEU judgments in case [C-523/07](#), [C-497/10 PPU](#), [C-376/14 PPU](#), [C-111/17 PPU](#), [C-512/17](#) and [C393/18 PPU](#).

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