

## **PROTECTION OF CHILDREN'S RIGHTS DURING WAR IN THE PRACTICE OF THE EUROPEAN COURT OF HUMAN RIGHTS AND UKRAINIAN COURTS**

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### **INTRODUCTION**

The protection of children's rights in armed conflicts constitutes one of the most pressing issues in the field of law, as armed conflicts directly affect the rights, lives and development of the most vulnerable group of the civilian population – children. As highlighted in the 1996 United Nations report «The Impact of Armed Conflict on Children», virtually all rights of the child are infringed during wartime: the right to life, the right to family and community, the right to health, the right to personal development, as well as the right to care and protection<sup>1</sup>. Children, as a distinct age group, are particularly vulnerable to the adverse effects of armed conflict, as they belong to the category at highest risk of poverty, social exclusion, and systemic discrimination, which are exacerbated in conditions of armed conflict<sup>2</sup>. It is noteworthy that the consequences of war are most acutely felt by children, who find themselves in conflict zones not only as passive subjects of impact but also as active participants in humanitarian crises – including orphans, displaced persons and victims of violence, recruitment and human trafficking<sup>3</sup>.

UNICEF statistical data indicate that over one billion children worldwide live in countries or territories affected by armed conflicts, of whom approximately 300 million are under the age of five. In Ukraine, since the onset of Russia's full-scale invasion, more than 1,000 children have been affected, including both fatalities and injuries; additionally, the occupying forces have unlawfully deported over 300,000 children to Russia<sup>4</sup>. Systematic violations of children's rights generate long-term social and psychological

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<sup>1</sup> UN General Assembly. Impact of armed conflict on children : note / by the Secretary-General. A/51/306, 26 August 1996. URL: <https://www.refworld.org/reference/themreport/unga/1996/en/91739>

<sup>2</sup> Сімакова С. І., Малишко І. В. Міжнародно-правове регулювання соціального захисту безпритульних та бездоглядних дітей в умовах війни. *Науковий вісник Ужгородського університету. Серія Право*. Ужгород, 2023. Т.1. Вип. 76. С. 60-66.

<sup>3</sup> Чепкова К. О. Правове регулювання спеціального захисту дітей під час збройних конфліктів: міжнародне та національне законодавство. *Юридичний науковий електронний журнал*. 2022. № 7. С. 484-487. URL: [http://lsej.org.ua/7\\_2022/117.pdf](http://lsej.org.ua/7_2022/117.pdf)

<sup>4</sup> *ibid*.

challenges that affect the future development of society as a whole, thereby underscoring the necessity of specialized legal protection for children at both the international and national levels<sup>5</sup>.

Despite the formal existence of comprehensive international legal regulations, the practice of implementing norms for the protection of children's rights in conflict zones reveals significant challenges. Systemic difficulties arising in the coordination of state authorities' actions, ensuring access to humanitarian aid, as well as in preventing violence, deportations and violations of minors' rights, indicate the insufficient effectiveness of existing mechanisms. In this context, the need to analyze the practice of the European Court of Human Rights (hereinafter – the ECtHR) and the national courts of Ukraine is underscored, as they play a crucial role in implementing international standards for the protection of children and in shaping judicial practice regarding state obligations during wartime.

The war in Ukraine, ongoing since 2014 and escalating significantly after February 24, 2022, highlights the critical importance of the issue of protecting children's rights. Extensive human losses among minors, displacement and deportation of children, restrictions on access to education and healthcare services, as well as the increase in psychological trauma, underscore the high level of social and legal vulnerability of this population group. These circumstances confirm the necessity of analyzing the practice of the ECtHR to identify gaps in the implementation of children's rights, which is particularly important for the development of effective preventive and rehabilitative protection mechanisms.

## **I. The Dual Mechanism of International Protection of Children's Rights During Armed Conflicts**

As noted by Turchenko O. H., states should enhance coordination and cooperation to protect children and youth during and after armed conflicts, while parties to the conflict are obliged to comply with the norms of international humanitarian law and international law concerning the protection of civilians, in particular children<sup>67</sup>. Such obligations of states arise both from national legislation and from international law, which mandates the protection of the rights of children and the civilian population during armed

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<sup>5</sup> Артеменко І. Окремі питання захисту прав дітей у збройних конфліктах: нові виклики для України. *Вісник Вищої кваліфікаційної комісії суддів України*. К. : Піраміда. 2015. 52 с.

<sup>6</sup> Турченко О. Г., Пилипишина І. І. Забезпечення прав дітей в умовах збройного конфлікту в Україні. *Електронне наукове видання «Аналітично-порівняльне правознавство»*. 2022. Випуск 2. С. 64-69. URL: <http://journal-app.uzhnu.edu.ua/article/view/261617>

<sup>7</sup> Турченко О. Г. Право дитини на безпеку під час збройного конфлікту. *Політичне життя*. 2019. Випуск 2. С. 6-14. URL: <https://jpl.donnu.edu.ua/article/view/7303>

conflicts, including proactive measures to prevent harm, provide humanitarian assistance and ensure access to education, healthcare and social services, in accordance with the principles of humanity, proportionality and non-discrimination.

The fundamental legal mechanisms for the protection of children's rights at the international level are primarily established by the Convention on the Rights of the Child, which defines their status as a distinct category of persons requiring special attention and guarantees<sup>8</sup>. However, the practice of applying these norms in armed conflict zones demonstrates that standard legal regulation is often insufficient for the effective protection of minors. The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts clearly identifies the threats posed by military actions to children, emphasizing not only the immediate consequences, such as death, injury, loss of parents, and the destruction of infrastructure, including schools and medical facilities, but also those with long-term social and psychological effects<sup>9</sup>. Collectively, these factors limit the prospects for sustainable peace, development and social stability. The Protocol condemns any form of recruitment, training and use of children in hostilities by both state armed forces and non-state armed groups, establishing international accountability for such actions. Furthermore, it emphasizes the necessity of a comprehensive approach that integrates legal, humanitarian and socio-psychological measures to prevent the involvement of children in conflicts and to ensure their subsequent rehabilitation and reintegration into society<sup>10</sup>.

It is worth noting that Article 38 of the Convention on the Rights of the Child establishes the obligations of States Parties to protect minors in armed conflicts<sup>11</sup>. This article combines both prohibitive and active obligations of states. The former entail the prohibition of involving children in armed conflict and the abstention from recruiting minors, while the latter – such as

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<sup>8</sup> United Nations. (1989, November 20). Convention on the Rights of the Child. General Assembly Resolution 44/25. URL: [https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_RES\\_44\\_25.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_44_25.pdf)

<sup>9</sup> United Nations. (2000, May 25). Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (General Assembly Resolution A/RES/54/263). URL: <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-involvement-children>

<sup>10</sup> Чернобук В. В. Міжнародно-правові стандарти захисту прав дитини в умовах збройних конфліктів. *Електронне наукове видання «Аналітично-порівняльне правознавство»*. С. 437-440. URL: <http://journal-app.uzhnu.edu.ua/article/view/284828/278888>

<sup>11</sup> United Nations. (1989, November 20). Convention on the Rights of the Child. General Assembly Resolution 44/25. URL: [https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_RES\\_44\\_25.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_44_25.pdf)

protection, care, and the provision of education and development – require states to implement systemic preventive and rehabilitative measures. The proposed combination of guarantees reflects the integration of international humanitarian law and the rights of the child, establishing a legal standard aimed not only at prohibiting violence but also at ensuring conditions for the safe development of children in wartime.

The value of Article 38 of the Convention on the Rights of the Child also lies in its recognition of children not merely as objects of protection, but as subjects entitled to the right to safety, development and education. The implementation of these provisions contributes to the establishment of social stability and the support of future peace. Children who are protected even in the most challenging circumstances are afforded the opportunity for a normal life and full integration into society.

As noted by Manuilova K. V., a broader range of measures for the protection of children is provided by international humanitarian law, as children during international or non-international armed conflicts are entitled both to the general protection afforded to civilians and to guarantees of humane treatment<sup>12</sup>. According to the provisions of Article 24 of the Fourth Geneva Convention of 1949 on the Protection of Civilian Persons in Time of War, parties to an armed conflict are obliged to take all appropriate measures to ensure that children under the age of 15 who have lost their parents or become separated from their families as a result of hostilities are not left without supervision and support<sup>13</sup>. The Convention also establishes the obligation to ensure access to education for such children, reflecting the principle of humanitarian protection aimed at minimizing the adverse effects of war on minors, while simultaneously preserving their cultural identity<sup>14</sup>.

In accordance with Article 27 of the Convention, all persons under protection during an armed conflict have the inherent right to respect for their personal dignity, honor and family life, as well as for their religious beliefs, rituals, customs and traditions<sup>15</sup>. States Parties are obliged to treat such persons humanely, protecting them from any violence, intimidation,

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<sup>12</sup> Мануїлова К. В. Міжнародні стандарти захисту прав та свобод дітей під час збройних конфліктів як найбільш вразливої категорії осіб. С. 183-196. URL: <http://baltijapublishing.lv/omp/index.php/bp/catalog/download/287/7887/16465-1?inline=1>

<sup>13</sup> International Committee of the Red Cross. (1949). Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War. URL: <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949>

<sup>14</sup> Larsen K. M., Guldahl Cooper C., Nystuen G., eds. Searching for a ‘Principle of Humanity’ in International Humanitarian Law. In: Searching for a “Principle of Humanity” in International Humanitarian Law. Cambridge University Press; 2012:i-ii

<sup>15</sup> International Committee of the Red Cross. (1949). Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War. URL: <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949>

humiliation or other forms of psychological pressure. In the context of protecting the rights of children, who require heightened legal safeguards due to their age, these provisions are particularly relevant, as they combine security guarantees with the assurance of fundamental rights and freedoms<sup>16</sup>.

Thus, the international instruments reviewed establish fundamental universal standards for the protection of children in armed conflicts; however, their effective implementation largely depends on the functioning of national justice systems and the effectiveness of international monitoring mechanisms. In this context, contemporary practice underscores the need to improve existing oversight mechanisms to ensure more comprehensive realization of the provisions set forth<sup>17</sup>. Particular significance is attributed to the European Convention on Human Rights (hereinafter – the Convention), which establishes the obligations of Council of Europe member states to protect life, liberty, the right to education, the right to respect for private and family life, as well as the prohibition of torture and degrading treatment. While the Convention does not contain a specific provision dedicated exclusively to children, its articles are applied to protect minors, particularly in situations of armed conflict, occupation or military operations on national territory. The practice of the ECtHR demonstrates that the Court addresses cases involving the recruitment of children into hostilities, violence against them and restrictions on their rights within the broader framework of violations of the Convention. In particular, this concerns such provisions as the right to life (Article 2 of the Convention), the prohibition of torture and inhuman or degrading treatment (Article 3), the right to respect for private and family life (Article 8) and the right to an effective remedy (Article 13). Taken together, these legal provisions form the basis for the ECtHR's development of a comprehensive standard of enhanced protection for children in situations of armed confrontation, occupation or internal armed disturbances.

It is worth noting that the practice of the ECtHR has developed the doctrine of child protection in armed conflicts, establishing state responsibility for inaction, breaches of protective duties and disproportionate governmental measures. In a number of ECtHR judgments, it is also recognized that the right to protect children from violence and military recruitment forms an integral part of the state's obligation to uphold human rights in situations of

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<sup>16</sup> Denise Plattner. Protection of Children in International Humanitarian Law. Pp. 140-152. URL: <https://international-review.icrc.org/sites/default/files/S002086040006993Xa.pdf>

<sup>17</sup> Реньов Є. В. Актуальні питання міжнародно-правового захисту прав дитини під час збройного конфлікту. *Юридичний науковий електронний журнал*. 2025. № 2. С. 396-398. URL: [http://www.lsej.org.ua/2\\_2025/95.pdf](http://www.lsej.org.ua/2_2025/95.pdf)

extraordinary threat, even where the context formally involves armed hostilities or territories under temporary occupation<sup>18</sup>.

Nevertheless, in its practice the ECtHR operates on the principle that the application of the Convention in the context of armed conflicts should be conducted in conjunction with the norms of international humanitarian law and the provisions of the United Nations Convention on the Rights of the Child. This integrated approach ensures the coherence of the international human rights protection framework and provides an adequate level of guarantees for the most vulnerable categories of the civilian population, among which children occupy a particularly significant position<sup>19</sup>.

The ECtHR pays particular attention to the issue of positive obligations of states, which, in the context of armed conflicts, must go beyond the mere negative duty to refrain from violating rights<sup>20</sup>. National authorities must take all feasible measures to minimize risks to the life and health of children, prevent their separation from parents and ensure access to education and medical care, even under conditions of armed conflict<sup>21</sup>. In this regard, the ECtHR has repeatedly emphasized that children's rights are of a priority nature and require a heightened level of protection, which directly stems from their age and vulnerability.

At the same time, the ECtHR applies the doctrine of the «margin of appreciation»<sup>22</sup>, recognizing that states may have a certain discretion in determining specific security measures during armed conflict. However, this discretion is not unlimited, as any actions by authorities that result in the death or suffering of children must be assessed for proportionality and compliance with international standards. A state cannot justify excessive or indiscriminate use of force solely by invoking military necessity.

Thus, in the practice of the ECtHR, an approach has developed according to which children's rights in armed conflicts are afforded dual protection, encompassing safeguards under both the Convention and international

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<sup>18</sup> European Court of Human Rights. *Varnava and Others v. Turkey*, Applications Nos. 16064/90 and others, Grand Chamber, 18 September 2009. URL: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-94162%22%5D%7D>

<sup>19</sup> European Court of Human Rights. *Isayeva, Yusupova and Bazayeva v. Russia*, Applications Nos. 57950/00, 57951/00, 57952/00, Grand Chamber, 24 February 2005. URL: <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-68379%22%5D%7D>

<sup>20</sup> United Nations. Office of the High Commissioner for Human Rights. *International Legal Protection of Human Rights in Armed Conflict*. New York. Geneva: UN, Office of the High Commissioner for Human Rights. 2011. URL: [https://www.ohchr.org/sites/default/files/Documents/Publications/HR\\_in\\_armed\\_conflict.pdf](https://www.ohchr.org/sites/default/files/Documents/Publications/HR_in_armed_conflict.pdf)

<sup>21</sup> Guide on the case-law of the European Convention on Human Rights. *Rights of the child*. 2025. URL: [https://ks.echr.coe.int/documents/d/echr-ks/guide\\_rights\\_of\\_the\\_child\\_eng](https://ks.echr.coe.int/documents/d/echr-ks/guide_rights_of_the_child_eng)

<sup>22</sup> Greer S. *The Margin of Appreciation: Interpretation and Discretion under the European Convention on Human Rights*. *UCL Human Rights Review*. 2010. URL: <https://www.ucl.ac.uk/human-rights/sites/human-rights/files/greer.pdf>

humanitarian law, as well as specialized child protection law. In this context, the positive obligations of the state are to be interpreted as broadly as possible, taking into account the particular vulnerability of the child.

## **2. The European Court of Human Rights' Practice on the Protection of Children's Rights in Armed Conflicts**

For a better understanding of the specific features of child rights protection during armed conflicts in the practice of the ECtHR, it is useful to refer to specific cases examined by the Court.

For example, in its judgment in *Cyprus v. Turkey* (2001), the ECtHR examined in detail numerous human rights violations, including the rights of children, resulting from the Turkish military intervention in Cyprus in 1974. The Court found that Turkey failed to ensure effective protection of the rights of children residing in the occupied territory, particularly in the Karpas region, where Greek Cypriots and Maronites lived<sup>23</sup>.

The Court found that in the occupied territory only primary education was available for Greek Cypriot children, while secondary education was accessible only in the southwestern part of the island. Consequently, after completing secondary school, children were unable to return home, resulting in family separations. Moreover, such limitations violated the right to education and the right to family life as guaranteed by the Convention<sup>24</sup>.

The Court also found that restrictions on freedom of movement and visitation imposed on Greek Cypriots and Maronites resulted in family separations. Such restrictions lacked legal justification and were purely discriminatory. The Court emphasized that these actions violated the right to respect for family life as guaranteed by Article 8 of the Convention<sup>25</sup>. The ECtHR bases its position on the principle that any restriction of human rights must have a lawful basis and comply with the principles of necessity and proportionality. If a restriction is purely discriminatory, it automatically violates the provisions of the Convention, even if certain administrative or political motives formally exist. The ECtHR has referred to principles such as proportionality (any interference with family life must be justified and minimally intrusive) and non-intervention (discriminatory actions violate fundamental rights regardless of formal rules). In *Cyprus v. Turkey*, this served as a key argument for recognizing violations of the rights of children and families in the occupied territories of Cyprus.

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<sup>23</sup> European Court of Human Rights, *Cyprus v. Turkey*, Judgment of 10 May 2001. URL: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-59454%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-59454%22]})

<sup>24</sup> International Committee of the Red Cross. (2001, May 10). ECHR, *Cyprus v. Turkey*. URL: <https://casebook.icrc.org/case-study/echr-cyprus-v-turkey>

<sup>25</sup> International Committee of the Red Cross. (2001, May 10). ECHR, *Cyprus v. Turkey*. URL: <https://casebook.icrc.org/case-study/echr-cyprus-v-turkey>

The ECtHR also found that Turkey failed to provide effective protection against violence and deportation for children who were victims of hostilities during the conflict, thereby violating the right to life and the right to protection from inhuman or degrading treatment as guaranteed by Articles 2 and 3 of the Convention<sup>26</sup>.

Thus, in its judgment in *Cyprus v. Turkey*, the ECtHR emphasized the importance of effective protection of children's rights during armed conflicts. The Court found that Turkey had failed to fulfill its obligations to safeguard the rights of children, including the right to education, family life and protection from violence. It is noteworthy that this judgment has served as a foundation for the further development of international humanitarian law and human rights law, particularly concerning the protection of children's rights in armed conflicts.

Another illustrative case is *Varnava and Others v. Turkey* (2009), which concerns the protection of the rights of persons who went missing during an armed conflict, particularly in the context of the 1974 Cyprus tragedy. In its judgment, the ECtHR examined in detail the violations of human rights, including the right to life (Article 2 of the Convention), the prohibition of torture (Article 3), the right to liberty and security of person (Article 5), as well as the right to an effective remedy (Article 13)<sup>27</sup>. It is noteworthy that the applicants in the case were relatives of nine Cypriots who went missing during the Turkish military operations in Cyprus in July and August 1974. Eight of them were military personnel and one was a civilian. The missing individuals were last seen during or after the occupation of territories controlled by Cyprus by Turkish forces. The relatives contended that their loved ones had either been detained or killed and that Turkey had failed to conduct an effective investigation into their disappearances.

In its position regarding the case *Varnava and Others v. Turkey*, the ECtHR noted that the disappearance of individuals during a conflict constitutes a serious violation of the right to life, as it deprives relatives of the opportunity to learn the fate of their loved ones, even though the Court could not establish the fact of their death due to insufficient evidence. The Court recognized that the prolonged uncertainty regarding the whereabouts of the missing persons, coupled with the absence of an effective investigation,

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<sup>26</sup> European Court of Human Rights, *Cyprus v. Turkey*, Judgment of 10 May 2001. URL: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-59454%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-59454%22]})

<sup>27</sup> European Court of Human Rights. *Varnava and Others v. Turkey*, Applications Nos. 16064/90 and others, Grand Chamber, 18 September 2009. URL: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-94162%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-94162%22]})



causes significant psychological distress to their relatives, which qualifies as a violation of the prohibition of torture and inhuman or degrading treatment<sup>28</sup>.

The ECtHR also found that Turkey failed to ensure the protection of the right to liberty and security of the missing persons, as no effective investigation was conducted. Furthermore, the Court identified a violation of Article 13 of the Convention, since the relatives had no access to an effective domestic remedy<sup>29</sup>.

The analysis of this case indicates that states have an obligation to safeguard the rights of both missing persons and their relatives during armed conflicts. Effective investigation of disappearances is crucial, as only systematic and transparent state actions can mitigate the psychological and social pressure on the families of the affected. This ECtHR judgment also establishes the principle that a state's failure to fulfill its obligations to protect the rights of relatives may itself constitute a separate violation of the Convention. In turn, this underscores the necessity of establishing national-level mechanisms that provide access to information, justice, and compensation for affected families.

The case of *Varnava and Others v. Turkey* represents a significant development in international law concerning the protection of the rights of persons who go missing during armed conflicts, as it establishes the obligation of states to conduct effective investigations into such disappearances and to ensure the rights of relatives to obtain information about the fate of their loved ones.

The interaction between international humanitarian law and human rights law can also be observed in the case of *Isayeva, Yusupova and Bazayeva v. Russia* (2005). This case is particularly sensitive and underscores the importance of protecting the civilian population, especially children, during military operations<sup>30</sup>.

In the case of *Isayeva, Yusupova and Bazayeva v. Russia* (2005), the ECtHR examined the bombing of the village of Katyr-Yurt in Chechnya, which resulted in the deaths of civilians, including children. The Court found violations of the right to life (Article 2 of the Convention), the prohibition of

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<sup>28</sup> Kyriakou N. Enforced disappearances in Cyprus: problems and prospects of the practice of the European Court of Human Rights. CRIDHO Working 2011/01. URL: <https://cridho.uclouvain.be/documents/Working.Papers/CRIDHO%20WP%202011-01.pdf>

<sup>29</sup> European Court of Human Rights. *Varnava and Others v. Turkey*, Applications Nos. 16064/90 and others, Grand Chamber, 18 September 2009. URL: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-94162%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-94162%22]})

<sup>30</sup> *Kaye D. Khashiyev & Akayeva v. Russia*. App. nos. 57942/00 & 57945/00; *Isayeva, Yusupova & Bazayeva v. Russia*. App. Nos. 57947/00, 57948/00, & 57949/00; *Isayeva v. Russia*. App. no. 57950/00; European Court of Human Rights, February 24, 2005. *American Journal of International Law*. 2005;99(4):873-881. doi:10.2307/3396675

torture (Article 3), the right to liberty and security of person (Article 5) and the right to an effective remedy (Article 13)<sup>31</sup>.

The Court noted that the bombing of a civilian convoy without prior warning and without attempts to minimize harm constitutes a serious violation of the right to life and the absence of an effective investigation into these events also indicates a failure by the state to fulfill its obligations to protect the lives of its citizens. At the same time, the prolonged uncertainty regarding the fate of the deceased and the lack of a proper investigation create severe psychological distress for their relatives, which may be classified as a violation of Article 3 of the Convention.

As Sperotto Federico notes, recourse to the ECtHR is practically the only means of protecting fundamental human rights from gross violations by the state. Consequently, the Court actively adapts the 1950 Convention to new circumstances, promoting the realization of fundamental rights in complex situations. For instance, in the Chechen cases from 2005, the Court urged the state to provide compensation, conduct effective investigations and hold those responsible accountable, thereby curbing areas of lawlessness<sup>32</sup>.

In the context of *Isayeva, Yusupova and Bazayeva v. Russia* (2005), the ECtHR also found that Russian authorities failed to provide adequate protection to the civilian population during the bombing of the village of Katyr-Yurt, resulting in a violation of the right to liberty and security of the affected individuals. The Court further emphasized the absence of an effective domestic remedy for the relatives of the deceased, constituting a violation of Article 13 of the Convention, as the state authorities did not establish mechanisms capable of ensuring access to justice and the possibility of obtaining an effective remedy at the national level<sup>33</sup>.

Another case accompanied by numerous instances of violence against civilians, including children, is *Georgia v. Russia (II)* (2021). This case concerns the armed conflict between Georgia and Russia in August 2008, during which mass killings of civilians, forced deportations, destruction of residential and social infrastructure, restricted access to humanitarian aid and multiple human rights violations were documented. The ECtHR emphasized that among the victims were children, who suffered both direct and indirect

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<sup>31</sup> European Court of Human Rights. *Isayeva, Yusupova and Bazayeva v. Russia*, Applications Nos. 57950/00, 57951/00, 57952/00, Grand Chamber, 24 February 2005. URL: [https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22001-68379%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-68379%22]})

<sup>32</sup> Sperotto Federico. *Law in Times of War: the Case of Chechnya*. Human Rights & Human Welfare. 2007. Vol. 7: Iss. 1, Article 53. URL: <https://digitalcommons.du.edu/cgi/viewcontent.cgi?article=1300&context=hrhw>

<sup>33</sup> European Court of Human Rights. *Isayeva, Yusupova and Bazayeva v. Russia*, Applications Nos. 57950/00, 57951/00, 57952/00, Grand Chamber, 24 February 2005. URL: [https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22001-68379%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-68379%22]})

consequences of the hostilities, including the loss of parents, traumatic psychological effects and violations of their rights to education and a safe environment for development<sup>34</sup>.

The examination of this case by the ECtHR allowed for a clear determination of the responsibility of the Russian Federation for systematic violations of the rights of the civilian population during the conflict and emphasized the particular vulnerability of children in armed conflicts, which necessitates the implementation of special measures for their protection and rehabilitation. At the same time, the judgment highlighted the importance of having effective national mechanisms for legal protection of victims of human rights violations, as well as the necessity of conducting thorough investigations of incidents of violence to ensure justice and prevent similar violations in the future.

The Court found that Russian forces and the forces supported by them committed a series of violations of the right to life, including the killing of civilians, notably children, during and after the conflict. Such actions were part of a systematic practice, indicating official tolerance of these violations. Furthermore, the ECtHR identified numerous instances of torture, inhuman and degrading treatment by Russian forces and their affiliates, particularly affecting civilians, including children<sup>35</sup>.

The findings of the ECtHR were based on the premise that Russia must be held accountable for numerous human rights violations during the armed conflict with Georgia in August 2008. The violations included mass killings, deportations, unlawful arrests and detentions, torture, inhuman treatment, violations of the right to education, freedom of movement and other rights guaranteed by the Convention. The Court emphasized the necessity of effective investigations into such violations and the provision of effective legal remedies for the victims. Furthermore, the Court highlighted the particular vulnerability of children during conflicts and the need for special measures to ensure their protection.

As Isabella Risini notes, the Court emphasized the difficulties of establishing factual circumstances, the influence of international humanitarian law, and the need to consider the systemic nature of violations. The use of interim measures and the relationship between the Convention and the norms of international humanitarian law remained a subject of debate. Consequently, this judgment also illustrates the complexity of applying the Convention in

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<sup>34</sup> European Court of Human Rights. Georgia v. Russia (II). Application No. 38263/08, Grand Chamber, 21 January 2021. URL: [https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22001-207757%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-207757%22]})

<sup>35</sup> European Court of Human Rights. Georgia v. Russia (II). Application No. 38263/08, Grand Chamber, 21 January 2021. URL: [https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22001-207757%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-207757%22]})

armed conflicts and the necessity of integrating human rights law with international humanitarian law<sup>36</sup>. This view is further corroborated by the works of other scholars examining the jurisdictional activity of the ECtHR in situations of armed conflict. For instance, Sopio Asatiani, analyzing the ECtHR's judgment in *Georgia v. Russia (II)*, highlights the issue of the extraterritorial jurisdiction of the Convention, noting its increasing relevance due to the transnational activities of States Parties and the rise in interstate conflicts. The article critically assesses the Court's reasoning and the new standards it introduced, concluding that the Court's evaluation of law and facts regarding extraterritorial jurisdiction during the active phase of hostilities was flawed<sup>37</sup>. In turn, this underscores the fact that the application of international humanitarian law norms in the practice of the ECtHR requires further research and theoretical substantiation. Nonetheless, it should also be acknowledged that effectively protecting children's rights at the ECtHR level during armed conflict is impossible without the application of international humanitarian law norms.

For Ukraine, the ECtHR's judgment in the case of «Ukraine and the Netherlands v. Russia» (2023), delivered on 9 July 2023 under applications Nos. 8019/16, 43800/14, 28525/20, and 11055/22, holds significant importance<sup>38</sup>. This case represents the largest inter-state application against Russia in the ECtHR's practice, covering the period from the onset of aggression in 2014 to the full-scale invasion in 2022 and documenting extensive and systematic human rights violations. The Court confirmed Russia's responsibility for systematic human rights abuses in the occupied territories and during the 2022 full-scale invasion. The ECtHR emphasized the unprecedented nature of the violence and the scale of violations, which have no parallel in previous practice, and highlighted the importance of upholding the fundamental values of the Council of Europe – peace, life, dignity, and human rights.

In Application No. 8019/16 concerning the events in eastern Ukraine since 2014, the ECtHR found numerous violations of the Convention by Russia. The Court documented unlawful attacks by Russian forces on civilians and civilian objects, resulting in significant human casualties, extrajudicial killings, torture and the use of heavy weaponry, as well as cruel treatment, sexual violence and inhumane conditions of detention for Ukrainian prisoners

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<sup>36</sup> Isabella Risini. Human Rights in the Line of Fire. *Verfassungsblog*. 28 January 2021. URL: <https://verfassungsblog.de/human-rights-in-the-line-of-fire/>

<sup>37</sup> Asatiani S. *Georgia v Russia: Jurisdictional chaos at European Court of Human Rights*. Pp. 115-130. URL: <https://clr.iliauni.edu.ge/index.php/journal/article/view/154/281>

<sup>38</sup> European Court of Human Rights. *Case of Ukraine and the Netherlands v. Russia* (Applications nos. 8019/16, 43800/14, 28525/20, and 11055/22). Judgment of 9 July 2023. Grand Chamber. URL: [https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22002-14493%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22002-14493%22]})

of war. Russian authorities and affiliated formations carried out abductions, unlawful detentions and forced labor targeting both civilians and prisoners of war. Furthermore, the Court noted deliberate attacks on religious communities, obstruction of journalistic activities, destruction and expropriation of private property, destruction of schools and prohibition of education in the Ukrainian language. All these actions exhibited signs of ethnic or political discrimination and were part of Russia's broader strategy to undermine Ukraine's sovereignty and establish control over the occupied territories. The Court also emphasized that these violations persisted and intensified significantly during the full-scale invasion of 2022<sup>39</sup>.

In Application No. 11055/22, the ECtHR examined violations committed by Russia during the full-scale invasion of Ukraine from 24 February to 16 September 2022. The Court found that Russian forces engaged in organized and systematic actions, including attacks on residential areas and civilian infrastructure, the use of explosive weapons with wide-area effects, extrajudicial killings, torture and ill-treatment of civilians and prisoners of war, forced labor, abductions and unlawful detention of citizens, including children. The Court also documented deliberate violations of the rights to private and family life, freedom of religion, expression and peaceful assembly, property rights and education, as well as discriminatory actions against Ukrainian citizens based on ethnicity, language, religion or political opinion. The Court emphasized the systematic nature of these violations, in particular the unlawful abduction of children – including orphans and children with disabilities in Donbas since 2014 – which lacked any legal basis and violated international humanitarian law. All these actions demonstrate a large-scale, coordinated policy by Russia aimed at undermining Ukraine's sovereignty and exercising control over its population<sup>40</sup>.

The ECtHR decision also addressed the incident involving the downing of flight MH17 in July 2014 over Donbas, which was the subject of a separate application by Ukraine and the Netherlands. However, the further examination of the MH17 case will be separated from the main interstate application.

However, arguably the most perilous practice highlighted in this decision is the deportation of children. As Karina Odebrink (Special Rapporteur of the OSCE Parliamentary Support Group for Ukraine) notes, Ukrainian children deported to Russia, ranging in age from a few months to 17 years, include both those with parents or legal guardians and children under the care of state

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<sup>39</sup> European Court of Human Rights. Case of Ukraine and the Netherlands v. Russia (Applications nos. 8019/16, 43800/14, 28525/20, and 11055/22). Judgment of 9 July 2025. Grand Chamber. URL: [https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22002-14493%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22002-14493%22]})

<sup>40</sup> European Court of Human Rights. Case of Ukraine and the Netherlands v. Russia (Applications nos. 8019/16, 43800/14, 28525/20, and 11055/22). Judgment of 9 July 2025. Grand Chamber. URL: [https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22002-14493%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22002-14493%22]})

institutions. The Russian authorities justify these deportations with various reasons – ranging from evacuation from conflict zones and provision of medical care to participation in cultural, military-patriotic or recreational programs – but in practice, many children experience systematic Russification and militarization, loss of Ukrainian identity, as well as psychological and physical abuse. Russia employs widespread practices of forced adoption and naturalization of these children, falsifies their origins and simplifies changes of names, places and dates of birth, thereby preventing the restoration of their true identities and creating a serious risk of violations of the fundamental rights of children<sup>41</sup>.

On 17 March 2023, the International Criminal Court issued arrest warrants for the President of the Russian Federation V. Putin and the Presidential Commissioner for Children's Rights in Russia A. Lvova-Belova, in connection with their criminal responsibility for the organization of the unlawful deportation and transfer of Ukrainian children from the occupied territories to Russia. The International Criminal Court classified these actions as war crimes under Articles 8(2)(a)(vii) and 8(2)(b)(viii) of the Rome Statute, noting their systematic and premeditated nature, which indicates the state's intent to carry out such practices on a continuous basis<sup>42</sup>. This entails the possibility of life imprisonment and its significance lies in the fact that, for the first time in the ICC's practice, an arrest warrant was issued against the head of a state that is a permanent member of the United Nations Security Council.

Nevertheless, the process of returning deported and abducted children remains extremely complex, due to difficulties in establishing their identities, ongoing actions by the Russian Federation and the lack of effective legal mechanisms to investigate the unlawful transfer of children and hold perpetrators accountable. This situation necessitates the development of comprehensive international legal approaches and coordination between national and international bodies to ensure the restoration of children's rights and the implementation of the principle of accountability for violations of international humanitarian law.

The ECtHR recognizes that civil remedies have a supplementary character, even when it comes to the enforcement of the Court's own judgments. It emphasizes that a State's responsibility for violations of the Convention caused by the actions of its organs or representatives should not be conflated

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<sup>41</sup> Викрадення та депортація українських дітей Росією. Спеціальна доповідка Каріна Одебрінк. 2025. URL: <https://www.oscepa.org/en/documents/annual-sessions/2025-porto/reports-and-speeches-12/5295-russian-abductions-and-deportations-of-ukrainian-children-by-carina-oedebrink-ukr-1/file>

<sup>42</sup> Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova. URL: <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and>

with individual criminal liability, which is adjudicated by national courts. The Court stresses that even when a civil proceeding results in the award of compensation, this does not relieve the State of its obligation to conduct an effective criminal investigation. Without such an investigation and the proper punishment of those responsible, particularly in cases involving lethal violence, the State continues to breach its obligations under the Convention. In *Bazorkina v. Russia*, the Court noted that the obligations of a State under Article 2 of the Convention are not limited to the payment of compensation; rather, the investigation must aim to identify and hold the perpetrators accountable<sup>43</sup>.

Thus, the ECtHR emphasizes in its judgments that children constitute a particularly vulnerable group of the population, requiring States to assume enhanced positive obligations to ensure their protection in situations of armed conflict. The Court's practice demonstrates that States are obliged to implement comprehensive measures to prevent threats to the life and health of children, including by minimizing the risk of disproportionate use of force and ensuring the safety of the civilian population during hostilities. Furthermore, the Court underscores the duty of States to prevent the arbitrary separation of children from their parents or legal guardians, which corresponds to the fundamental right to family life and necessitates the establishment of effective mechanisms to safeguard family ties even in emergency conditions. Equally important is the obligation of States to ensure effective and transparent investigations into cases of death, injury or violence against children, which includes the prompt collection of evidence, involvement of competent authorities and access to legal remedies for victims. Collectively, these principles form a systematic approach to the protection of children's rights in armed conflicts, combining preventive, protective and restorative measures, thereby ensuring the implementation of international standards for the safeguarding of human rights.

### **3. ECtHR Practice as a Guideline for National Courts of Ukraine in the Protection of Children's Rights During Armed Conflict**

National courts of Ukraine play a crucial role in safeguarding children's rights during armed conflict, ensuring the implementation of both constitutional and international legal guarantees, including the provisions of the Convention on the Rights of the Child and relevant national legislation on the protection of minors. In the current context of war, courts primarily consider cases concerning the determination of children's place of residence, the assurance of their right to maintain contact with both parents, as well as

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<sup>43</sup> European Court of Human Rights. *Bazorkina v. Russia*, Applications No. 69481/01, 27 July 2006. URL: [https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22001-76493%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-76493%22]})

the assignment of special status to children affected by hostilities. Practice demonstrates that, when making decisions, courts take into account the heightened social and psychological vulnerability of children in conflict situations, seeking to minimize the negative consequences of family separation, loss of housing or restricted access to education and healthcare. Furthermore, national courts actively incorporate international humanitarian law standards governing the protection of civilians during armed hostilities into their rulings and apply the principle of the best interests of the child as a central criterion in assessing any measures affecting the lives and development of minors. The approach developed in judicial practice aims not only at the prompt resolution of specific disputes but also at establishing rules that strengthen the legal protection framework for children in situations of armed conflict.

Currently, a significant number of cases primarily concern the determination of children's place of residence and the protection of their right to maintain contact with both parents, as the war has caused the mass displacement of women and children to safer countries. For instance, in case No. 752/1253/22, the Supreme Court of Ukraine issued a ruling emphasizing the fundamental importance of ensuring uninterrupted and regular contact between a child and their mother throughout prolonged judicial proceedings, even in the absence of a final determination of the child's place of residence. The Court highlighted the necessity of maintaining a stable emotional and psychological bond between the child and the mother, noting that such contact is critically important for creating a safe developmental environment, supporting emotional stability and ensuring proper social development of the child<sup>44</sup>.

It is particularly noteworthy that the ruling was issued in the context of armed conflict, when the risks of violating a child's rights and their emotional vulnerability are significantly heightened. The Court emphasized that prolonged lack of contact with the mother may adversely affect the child's psychological well-being, potentially leading to the development of anxiety disorders and disruptions in socialization processes. Consequently, the judicial decision effectively prioritizes the principle of ensuring stable and secure family bonds over the formal resolution of the child's place of residence, demonstrating an approach to child rights protection that takes into account the child's best interests in complex socio-legal and crisis circumstances.

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<sup>44</sup> Постанова Верховного Суду у складі колегії суддів Першої судової палати Касаційного цивільного суду від 26.11. 2022 року № 752/1253/22. URL: <https://reyestr.court.gov.ua/Review/107354433>



A similar conclusion was reached by the Supreme Court in case No. 203/3174/22. In this instance, the Court obliged the father to ensure unrestricted contact between his minor son and the mother, emphasizing that even the child's temporary absence from Ukraine should not impede the realization of their right to maintain contact with both parents<sup>45</sup>.

In case No. 360/3668/18, the Supreme Court of Ukraine articulated an important legal approach to the protection of children affected by armed conflict. The Court recognized as unlawful the refusal of state authorities to grant the status of a child affected by hostilities to a minor who had suffered psychological harm as a result of armed actions<sup>46</sup>. The approach proposed by the Supreme Court broadens the understanding of the category of «child affected by hostilities», emphasizing not only physical injuries but also psychological trauma, which can have an equally destructive impact on the child's development and socialization.

By obliging local authorities to grant the child the appropriate legal status, the Court effectively established a doctrine of a comprehensive approach to the protection of children's rights in situations of armed conflict. Obtaining this status enables access to social support, state guarantees and rehabilitation programs, which are critically necessary to ensure the child's proper development and integration into society. The decision also has a systemic character, as it shapes a practice oriented toward the best interests of the child and compliance with international humanitarian law and international standards on the protection of children's rights.

In its rulings, the Supreme Court has repeatedly emphasized that a child cannot remain in conditions that pose a threat to their physical or mental health. Therefore, when resolving disputes concerning children, courts must necessarily take into account the security situation related to hostilities and their consequences. At the same time, the mere fact of the imposition of martial law in Ukraine cannot be considered a sufficient basis for determining the child's place of residence with one of the parents, particularly if that parent resides abroad.

State authorities are obliged to ensure the maximum possible conditions for maintaining a child's contact with the parent with whom they do not reside. In doing so, the interests, rights and freedoms of all participants in the legal relationship must be taken into account; however, priority must always be given to the best interests and rights of the child. Any delay in resolving such

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<sup>45</sup> Постанова Верховного Суду у складі колегії суддів Першої судової палати Касаційного цивільного суду від 17.04.2023 № 203/3174/22. URL: <https://reyestr.court.gov.ua/Review/110308527>

<sup>46</sup> Постанова Верховного Суду у складі колегії суддів Касаційного адміністративного суду від 24.01.2023 року № 360/3668/18. URL: <https://iplex.com.ua/doc.php?regnum=108594040&red=100003fe9cf9c7c00f7c313d8f3b7ec6ac353f&d=5>

matters may lead to irreparable consequences for the relationship between the child and the parent living separately.

These rulings demonstrate that the national courts of Ukraine actively apply international standards for the protection of children's rights, in particular the Convention on the Rights of the Child, and take into account the specific circumstances of martial law when issuing decisions. They confirm the primacy of the child's best interests, the protection of their right to maintain contact with both parents and the provision of necessary social safeguards in the context of armed conflict.

The practice of national courts of Ukraine in the protection of children's rights during armed conflict demonstrates a clear integration of ECtHR standards, which are crucial for establishing a coherent and effective system for safeguarding children's rights. The ECtHR has repeatedly emphasized that children belong to particularly vulnerable groups, which obliges states to ensure an enhanced level of legal guarantees for their safety, development and stable family environment. The influence of this jurisprudence is evident in the rulings of the Supreme Court of Ukraine, which, when resolving disputes concerning the determination of a child's place of residence or the protection of their right to maintain contact with parents, prioritizes the best interests of the child – an approach consistently affirmed in numerous ECtHR decisions. Furthermore, national courts refer to the ECtHR's position regarding the state's duty to conduct effective investigations in cases of children's death or injury in armed conflicts (*Isayeva v. Russia*, 2005; *Georgia v. Russia (II)*, 2021), as well as to ensure a child's right to family life and to prevent arbitrary separation from parents. Such ECtHR standards serve as a guiding framework for Ukrainian courts under the challenging circumstances of martial law, where it is necessary to balance security risks with the preservation of family bonds.

Existing judicial practice plays a crucial role in improving national legislation to establish effective mechanisms for guaranteeing children's rights during armed conflicts and ensuring their protection from violence, deportations and other forms of violations. It is particularly important to note that ECtHR standards serve as a reference point in the process of documenting crimes committed against children, as they define the criteria for the admissibility of evidence, principles for assessing facts and approaches to qualifying actions as violations of the Convention and international humanitarian law. Consequently, the Court's practice not only reinforces universal legal standards but also provides a practical toolkit for their implementation under the specific conditions of armed aggression against Ukraine.

## CONCLUSIONS

Analysis of international norms and ECtHR practice indicates that the protection of children's rights during armed conflicts is based on a dual system of guarantees, namely, the norms of international humanitarian law and international human rights law. In times of war, this comprehensive approach allows for the fullest possible protection of children, taking into account their particular vulnerability and the need for an enhanced level of care.

The ECtHR consistently develops standards for interpreting the Convention's provisions in light of the specificities of armed hostilities, placing both negative and positive obligations on states. These obligations include refraining from unlawful violence, ensuring effective investigations, providing humanitarian corridors, maintaining family ties and preventing deportations. The Court confirms that even in situations of armed conflict, states remain accountable under the Convention and are required to act in accordance with the «best interests of the child».

The existing mechanism of international protection, reinforced by the jurisdiction of the ECtHR, establishes a legal framework that allows for increasing state accountability and ensuring more effective restoration of children's rights during armed conflict. The practice of Ukrainian courts in cases involving children during periods of armed conflict demonstrates a systematic integration of international standards, including the Convention on the Rights of the Child and ECtHR approaches. The Supreme Court consistently emphasizes the primacy of the child's best interests, the necessity of maintaining stable family bonds and the consideration of minors' psychological vulnerability in wartime conditions. Equally important is the recognition that children affected by war experience not only physical but also psychological harm, which grants them access to social guarantees, psychological support and rehabilitation programs. At present, Ukrainian judicial practice is forming a legal foundation capable of minimizing the adverse effects of war on children and strengthening the national system for their protection in accordance with European standards.

## SUMMARY

The issue of protecting children's rights in armed conflicts is one of the most pressing in contemporary law, as wars directly threaten the life, health, development, and safety of the most vulnerable segment of the population – children. This study has established that children in such conditions are at heightened risk of poverty, social isolation, violence, and discrimination, and violations of their rights result in long-term psychological and social consequences. This is particularly evident in cases of deportation, loss of family and limited access to education and healthcare.

It has been established that international legal norms constitute a key mechanism for the protection of children in wartime, primarily through international humanitarian law and specific instruments for safeguarding children's rights. It has been determined that the Convention on the Rights of the Child and its Optional Protocols prohibit the recruitment of children into armed conflict, recognize them as individuals requiring special protection and provide for measures related to rehabilitation and access to education. Simultaneously, international humanitarian law establishes the obligation of states to care for children left without parental support and to ensure their safe development and preservation of family ties.

The practice of the European Court of Human Rights demonstrates that children's rights require special and systematic protection in conflict zones. The Court has repeatedly found violations of the rights to life, education, family life and the safety of children resulting from military actions and deportations, emphasizing the positive obligations of states to prevent violence and ensure justice. Contemporary conflicts, including the aggression against Ukraine, highlight the necessity of active international oversight and effective national mechanisms to protect children from war crimes and systemic violations of their rights.

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