

## PLACEMENT OF CHILDREN WITHOUT PARENTAL CARE IN WAR CONDITIONS: A COMPARATIVE ASPECT

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### INTRODUCTION

According to official data, at the beginning of September 2025, after the full-scale invasion of Russia into Ukraine, 653 children died, 1150 children were injured, 2191 children disappeared, 19546 children were forcibly displaced and deported.<sup>1</sup> At the same time, statistics on the increase in the number of separated families are quite alarming. The Office of the United Nations High Commissioner for Refugees (UNHCR) estimated that after February 24, 2022, more than 6.2 million Ukrainians left the country in search of asylum, of which 5.8 million went to European countries<sup>2</sup>. Only in the first six months of the war, Slovakia accepted almost 600,000. Ukrainians<sup>3</sup>. In addition, there were about 4.9 million internally displaced persons in Ukraine by the end of 2023<sup>4</sup>. These statistics reflect the huge scale of migration, and in combination with the ban on traveling abroad for men aged 18 to 60, mobilization, according to the indicated figures, more than one million families have been separated. As for the statistics on children who suffered from the war, about 2.5 million children were forcibly displaced in the middle of Ukraine (they left the Eastern, Southern and Central regions, where mostly active hostilities are taking place and moved to safer regions within the state) and left about 2.3 million children abroad<sup>5</sup>. At the same time, there are many cases when children move not with their parents, but with grandparents, aunts, brothers and sisters, other relatives.

Under such circumstances, the state should maximally fulfill its positive obligations within the framework of international treaties and conventions and create conditions for guaranteeing the safety and protection of children

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<sup>1</sup> Діти війни. URL: <https://childrenofwar.gov.ua/>

<sup>2</sup> Скільки українців не повернуться з-за кордону і чим це загрожує Україні. URL: <https://www.bbc.com/ukrainian/articles/c06e1y0lv80o>

<sup>3</sup> Štatistika z hraníc: Koľko utečencov prešlo na Slovensko? Takto je to s ich návratom späť. URL: <https://www.cas.sk/clanok/2696499/statistika-z-hranic-kolko-utecencov-preslo-na-slovensko-takto-je-to-s-ich-navratom-spat/>

<sup>4</sup> Стало відомо, скільки в Україні переселенців. URL: <https://tsn.ua/politika/stalo-vidomo-skilki-v-ukrayini-pereselenciv-2448718.html>

<sup>5</sup> Дмитро Лубінець. Щорічна доповідь про стан додержання та захисту прав і свобод людини і громадянина в Україні у 2022 році. Права дитини. URL: <https://ombudsman.gov.ua/report-2022/dity-viiny>

without parents, observing the principle of the best interests of the child in the process of their placement.

While the full-scale war is ongoing, Ukraine does not officially publish casualty statistics, but missile attacks on civilian infrastructure, residential buildings, educational institutions, casualties among military personnel and civilians are increasing every day. As a result, there is a rapid increase in children without parental care. In October of last year, the Ministry of Social Policy of Ukraine published data that after February 2022, 4,661 children found themselves without parental care precisely because of the war (parents died or went missing)<sup>6</sup>, at the same time, this indicator is far from real. In practice, there are many cases where children live without parents because of the war, but with grandparents or other relatives, but at the same time, the child does not officially have the status of being without parental care. This situation is quite often forced by the circumstances of the war. That is why changes were made to Ukrainian legislation and the institution of temporary placement of a child without parental care in a family (or relatives, acquaintances, or in foster families or family-type children's homes) was reformed. As part of our research, we will analyze how the principle of the best interests of the child works when placing an orphan or a child deprived of parental care (hereinafter – children without parental care).

### **1. The principle of the best interests of the child and placement of children without parental care in European countries**

Claire Fenton-Glynn's research has concluded that it is important to protect children that a child should not be adopted when it could have been left in the family. For this, the scientist notes that balance and flexibility should be considered, on the one hand, parents of children should be informed about the consequences, on the other hand, the child should be guaranteed the right to be placed in a safe and favorable environment as soon as possible, which will not be violated<sup>7</sup>. A similar approach can be applied to other forms of placement of children without parental care. That is, the transfer of a child to guardians, placement in a foster family or a family-type orphanage will be consistent with the principle of the best interests of the child, if the existing family is destructive or there is no family upbringing, and when the child is placed, proper, stable and favorable family upbringing will be ensured.

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<sup>6</sup> З початку війни понад 4 тисячі дітей залишилися без батьків. Мінсоцполітики розповіло про причини і порядок усиновлення. URL: <https://suspilne.media/357536-z-rostatku-vijni-ponad-4-tisaci-ditej-zalisilisa-bez-batkiv-minsocpolitiki-rozpovilo-pro-pricini-i-poradok-usinovlenna/>

<sup>7</sup> Fenton-Glynn C. Children's rights in intercountry adoption. A European perspective. Cambridge-Antwerp-Portland. 2014. P. 251.

The principle of the best interests of the child, as noted by Lucia Danišovičová, is not only complex, but its concept is internally dynamic, which led to the fact that for a long time the UN Committee on the Rights of the Child did not dare to give a definition<sup>8</sup>. Currently, due to the ratification of a number of international treaties and the practice of the ECtHR, no one has doubts about the thorough application of the principle of the best interests of the child.

Within the framework of the EU, the Brussels IIa Regulation (Council Regulation (EC) No. 2201/2003 of November 27, 2003 on Jurisdiction, Recognition and Enforcement of Judgments in Matrimonial Matters and Parental Responsibility Matters) is of great importance, which provides for the possibility of placing a child in a foster family in another EU member state, if it is in the best interests of the child<sup>9</sup>. This regulation regulates cases when citizens of one EU member state live in another EU member state and there may be a situation in which a child needs to be removed or the child is found and needs placement.

In European countries, there are also various forms of placement of children without parental care, only the universal approach is to ensure the best interests of the child.

In each EU country, the forms (their names) of placement of children may differ, as well as the authorities that have the power to establish them. Gabriela Kubíčková, highlighting vertical and horizontal family law, noted that in the Slovak Republic only the court makes a decision on any form of replacement of parental upbringing and care, no administrative body has such<sup>10</sup>. When analyzing the Law of the Slovak Republic "On the Family and on Amendments and Additions to Certain Laws" effective from February 11, 2005 (with the latest amendments still in effect), we found that paragraph 44, which defines the permissible forms of substitute care for children without of parental care contains a rule that the court must always take into account the interests of the child<sup>11</sup>. Moreover, the principle of the best interests of the child provides that the child's opinion should be taken into account when arranging

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<sup>8</sup> Danišovičová L. Právne postavenie maloletého dietáta vo vzťahu k jeho rodičom. Bratislava: C.H. Beck, 2023. 256.

<sup>9</sup> Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility. URL: <https://op.europa.eu/en/publication-detail/-/publication/c9cc74cc-91ac-11e5-983e-01aa75ed71a1/language-en/format-PDF/source-search>

<sup>10</sup> Kubíčková, G. Changing the concept of "family" and problems of family law in the Slovak Republic. European Family Law. The Changing Concept of "Family" and Challenges for Domestic Family Law / edited by Jens M. Scherpe. Cheltenham, UK-Northampton, USA. 2016. P. 378.

<sup>11</sup> Zákon z 19. januára 2005 o rodine a o zmene a doplnení niektorých zákonov. 2005. URL: <http://www.zakonypreludi.sk/zz/2005-36>

the child. The fact that the court takes into account the opinion and views of the child leads to a decrease in the influence of the opinions of other people<sup>12</sup>.

Thus, EU member states have different forms of placement of children without parental care and even different terminology. At the same time, from the point of view of protecting the best interests of the child and regulation of various forms of placement of children, the following can be noted:

1) in all EU member states, with the exception of Cyprus, the Czech Republic and France, it is allowed to place children in certain institutions or to provide parents with assistance in raising children, while the written consent of the parents is provided;

2) execution of consent in writing by the person who accepts the child for upbringing (in different countries there are different forms, but the adoptive family prevails – Bulgaria, Hetsia, Denmark, Ireland, Estonia, Cyprus, Latvia, Luxembourg, Malta, the Netherlands, Germany, Poland, Portugal, Romania, Slovakia, Slovenia, Hungary, the Czech Republic, Croatia, Finland and Sweden; forms similar to foster care – for example, in Sweden, a family home, temporary or permanent foster care in a family – in Lithuania, placement in a foreign home to the family – in Spain, alternative family guardianship – in Italy, guardianship – in Belgium);

3) obligatory consideration of the opinion of the child who can express it, as well as compliance with the principle of the best interests of the child.

Thus, the comparative legal analysis of the forms of placement of children in European countries and in Ukraine showed that in Ukraine the system of family forms of placement of a child without parental care is quite developed, and along with adoption, a child can be placed under guardianship (guardianship), foster care, foster care families and family-type children's homes. Considering that adoption has the same legal consequences both in Ukraine and in European countries and, as a result, equates the rights of children born to a couple and adopted by them, we will continue to consider other forms of family arrangement (guardianship, foster family, children's family-type house), as well as patronage.

## **2. Forms of arrangement of children without parental care in Ukraine**

Taking into account the increase in the number of children without parental care in Ukraine due to the war and their actual care by other relatives, the analysis should begin with the temporary placement of a child left without parental care.

The procedure for temporary placement of a child without parental care, determined by the Resolution of the Cabinet of Ministers of Ukraine "Issues

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<sup>12</sup> Löwy, A. a kol. Najlepší záujem o dietátá ako hodnotové kritérium pri rozhodovaní v konaniach vo veciach starostlivosti súdu o maloletých. Bratislava: C. H. Beck, 2022. 264.

of activities of guardianship and guardianship bodies related to the protection of children's rights" dated September 24, 2008 No. 866<sup>13</sup>. Clause 31 of the Decree of the Cabinet of Ministers of Ukraine No. 866 contains a list of persons and institutions to which a child without parental care can be temporarily placed, in particular: families of relatives and acquaintances, foster carers, as well as shelters for children, centers of social and psychological rehabilitation, social support, social rehabilitation centers, children's homes, orphanages-boarding homes of the system of social protection of the population, stationary services of social service centers. In May 2022, the specified resolution was supplemented by paragraphs 78-85, which regulated the specifics of actions of guardianship and guardianship bodies in connection with the need to protect children during martial law. In particular, the changes have expanded the above list to also include foster families and family-type children's homes, the only limitation being within the maximum permissible number of children.

Considering that the principle of the best interests of the child and protection of childhood are key principles of family law, part 3 of Art. 52 of the Constitution of Ukraine entrusts the state with the registration of temporary placement of a child without parental care, namely the service for children. For temporary placement of a child, the following are submitted:

a) the statement of the person in which he certifies his will to give consent for the temporary placement of the child in his family;

b) the child's application, written in his own hand, in which his consent to temporary placement with the family is certified (if the child cannot give consent, the corresponding act is drawn up by an official);

c) an application for consent from each adult member of the family who lives with the person who gave permission for the temporary placement of the child. Regardless of the fact that Clause 31 of the Resolution of the Cabinet of Ministers of Ukraine No. 866 provided for a clearly written form only for two of the three documents listed above, the consent to the temporary placement of a child in the family, expressed in the application by the person, is also made in writing. It is worth correcting all this omission and setting out the legal norm in the following wording: "a written statement of a person to give consent for the temporary placement of a child in his family."

In addition, there are general requirements regarding the legal capacity of a person, but there is a peculiarity regarding a child's application, since the age at which he must write it in his own hand is not clearly indicated. Of course, this can be done within the framework of partial civil legal capacity defined

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<sup>13</sup> Питання діяльності органів опіки та піклування, пов'язаної із захистом прав дитини: Постанова Кабінету Міністрів України від 24.09.2008 № 866. URL: <https://zakon.rada.gov.ua/laws/show/866-2008-%D0%BF#Text>

in Art. 31 of the Civil Code of Ukraine, which, on the one hand, does not contain such authority, but it is conditioned by the principle of the best interests of the child and the stipulated requirement to take into account the opinion of the child (Article 171 of the Family Code of Ukraine).

In the future, it is foreseen the need to establish the possibility of returning the child to the parents, and if this is not possible, then documents are collected, in accordance with clause 24 of the Resolution of the Cabinet of Ministers of Ukraine No. 866, to consider the issue of officially granting the child the status of a child deprived of parental care or an orphan with further placement to the family (adoption, foster care, foster family or family-type orphanage).

As for the positive practices implemented during the war in Ukraine, these are digital tools that allow you to initiate the procedure for placing a child online, for example, the chatbot "The child is not alone"<sup>14</sup>, as well as through the Diya portal<sup>15</sup>. They have simplified access to information about temporary accommodation, but the procedure has not changed, so the documents must be submitted to the competent authorities.

According to the general rule, a period of two months was determined, in order to, after finding a child, his temporary placement, either to find relatives and return him to the family, or to prepare documents for granting the child the status of an orphan child or a child deprived of parental care. After establishing the appropriate status, the competent authorities must take all measures to place the child in a family of Ukrainian citizens (in one of the forms – adoption, guardianship, care, foster family, family-type orphanage).

Let's start with foster care, since it is close to the temporary placement of a child. Article 252 of the Family Code of Ukraine defines guardianship over a child as "temporary care, upbringing and rehabilitation of a child in the family of a foster carer for the period when the child, his parents or other legal representatives overcome difficult life circumstances." The Family and Guardianship Code of Poland contains the institution of curatorship, which is close but not identical to patronage in Ukraine. According to Art. 178 of the Polish Family and Guardianship Code to the institution of guardianship, as far as possible, the guardianship provision is applied, established on a paid and fixed-term basis<sup>16</sup>. A year before the war (March 2021), 182 families of foster

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<sup>14</sup> Дитина не сама. URL: [https://t.me/dytyna\\_ne\\_sama\\_bot](https://t.me/dytyna_ne_sama_bot)

<sup>15</sup> Тимчасове влаштування дитини, яка залишилася без батьківського піклування. URL: <https://guide.diia.gov.ua/view/vydacha-rishennia-pro-tymchasove-vlashtuvannia-dytyny-iaka-zalyshylasia-bez-batkivskoho-pikluvannia-u-simiu-rodychiv-znaiomykh-d5126571-cb3a-4725-b6a9-7985d49c2d87>

<sup>16</sup> Менджул М.В. Порівняльне сімейне право: навчальний посібник. Ужгород: ПІК-У, 2021. С. 261.

carers were created in Ukraine, which provided services to more than 950 children<sup>17</sup>.

L.M. Tokarchuk notes that for a long time the legal norms on patronage in the Family Code of Ukraine have been "flabbergasted", but the legal regulation has improved relatively with the introduction of changes to the code in 2016 and with the adoption in 2017 of the special resolution of the Cabinet of Ministers of Ukraine No. 148<sup>18</sup>. We can agree with L.M. Tokarchuk that changes in the clear definition of the concept of "patronage" and "patronage teacher" have become important. In the future, the improvement of the institution of patronage continued and for now it is more carefully regulated by the new Resolution of the Cabinet of Ministers of Ukraine No. 893 of August 20, 2021<sup>19</sup>.

One of the key differences between foster care and other forms of placement of children is that it is temporary care that includes both rehabilitation and education, the foster care educator must have special training, and the child transferred to foster care does not necessarily have to have the status of a child— an orphan or a child deprived of parental care.

The conducted analysis allowed us to highlight the following features of patronage: a special subject structure (a natural person who must meet the requirements established by law, including taking a special training course); a child who found himself in difficult life circumstances is transferred; the purpose of patronage is to protect, educate and rehabilitate a child who finds himself in difficult life circumstances, to find out the possibility of returning him to the family or to conditions close to family; time limit (no more than three months, in exceptional circumstances – no more than six, the indicated terms are reasonable, because with a longer period of time the child begins to get used to it and separating him from the foster carer can cause psychological damage); rights and obligations are determined by the contract concluded between the foster carer and the body of guardianship.

After the full-scale invasion, the services of foster carers become even more relevant in view of the increase in violence against children, the finding of a significant share of families in difficult life circumstances, while foster care is used exclusively as a transitional stage before the permanent placement of a child in a family.

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<sup>17</sup> Звіт про результати дослідження практики здійснення патронату над дитиною, підготовленого в межах проекту „Супровід урядових реформ в Україні” (SURGe). URL: <https://www.msp.gov.ua/news/20745.html>

<sup>18</sup> Токарчук Л. М. Патронат над дітьми: постановка проблеми. Правова держава. 2017. № 28. С.91-92.

<sup>19</sup> Деякі питання захисту прав дитини та надання послуги патронату над дитиною: Постанова Кабінету Міністрів України від 20.08.2021 № 893. URL: <https://zakon.rada.gov.ua/laws/show/893-2021-%D0%BF#n15>

The next forms of family upbringing that should be considered are guardianship and care, foster family and family-type children's home. According to official statistics, more than 70% of children without parental care are under guardianship and care<sup>20</sup>. In the aspect of analyzing compliance with the principle of the best interests of the child, such forms of family upbringing of a child as guardianship, care, foster family and family-type orphanage should be considered systematically. When analyzing the legal basis and procedure for establishing custody and care, placing a child in a foster family and a family-type orphanage, the following features were revealed:

1) The application of a person who expresses the intention to adopt a child without parental care into a family (made out in writing, submitted to the children's affairs service at the place of residence with a list of clearly defined attachments. In addition to the paper form, it can be submitted in electronic form through the Unified State Web Portal of Electronic services), and if the couple wants to create a foster family or a family-type orphanage, then a joint application is submitted, which is signed by both<sup>21</sup>. There are also additional requirements for the subject, in particular, it must be an adult natural person who has full civil legal capacity and who: "is not registered and is not being treated in psychoneurological and drug addiction institutions, who is not deprived of parental rights, in respect of whom no a decision was made to terminate guardianship or guardianship, the interests of which do not conflict with the interests of a child who has not been convicted of a serious crime"<sup>22</sup>.

2) Written consent of each adult family member living with the applicant, while the signature on the specified consent must be notarized or the consent is written by hand in the presence of the official who accepts the documents and the specified person makes an appropriate mark on the application (indicates the surname, proper name, patronymic (if available), official's signature and date).

3) In the case of taking a child into custody and care, the written consent of the second spouse is submitted, the authenticity of the signature on which is notarized, if the applicant is in a registered marriage.

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<sup>20</sup> Понад 70 % сиріт і дітей, позбавлених батьківського піклування виховуються у сім'ях опікунів, піклувальників. URL: <https://www.msp.gov.ua/news/20647.html>

<sup>21</sup> Питання діяльності органів опіки та піклування, пов'язаної із захистом прав дитини: Постанова Кабінету Міністрів України від 24.09.2008 № 866. URL: <https://zakon.rada.gov.ua/laws/show/866-2008-%D0%BF#Text>

<sup>22</sup> Про затвердження Правил опіки та піклування: Наказ Державного комітету України у справах сім'ї та молоді, Міністерства освіти України, Міністерства охорони здоров'я України, Міністерства праці та соціальної політики України 26.05.1999 № 34/166/131/88. URL: <https://zakon.rada.gov.ua/laws/show/z0387-99#Text>

In contrast to the temporary placement of a child with a family and under foster care, the procedure for registering a child's consent is different when registering guardianship and care. Clause 43 of the Resolution of the Cabinet of Ministers of Ukraine "Issues of activities of guardianship and guardianship bodies related to the protection of children's rights" stipulates that the consent of the child must be taken into account and the child himself is not a unilateral act, and the official of the children's rights service conducts an interview taking into account the age and other features of the child and compiles based on the results of the certificate<sup>23</sup>.

In our opinion, this is not entirely true, and given the longer nature of the relationship between the guardian and the guardian and the child than those that arise, for example, between a foster carer and a child, it will be reasonable and proportionate to introduce amendments to clause 43 of the Resolution of the Cabinet of Ministers of Ukraine "Issues of activities of guardianship and guardianship bodies related to the protection of children's rights" and its wording as follows: "In the case of appointing a guardian, a guardian, the wishes of an orphan child and a child deprived of parental care shall be taken into account. The interview with the child is conducted by an employee of the children's affairs service, taking into account the child's age, the circumstances under which she lost parental care, without degrading the dignity of the child and the persons who expressed a desire to take her into custody. Based on the results of the interview, the child writes a statement of consent to placement under guardianship, care in his own hand. In the case when, due to age or other individual characteristics, the child cannot write a statement in his own hand, a certificate is drawn up by an official of the children's affairs service.

An important guarantee for the protection of the interests of children in the conditions of war was the introduction of changes in June 2023 and the provision that in the event that a child who was temporarily moved (evacuated) abroad needs placement in a foster family, a family-type orphanage, under care, the custody and transfer of the child takes place in the presence of an authorized official of a foreign diplomatic institution of Ukraine or with her participation through a video conference mode (with a corresponding video recording). It is also possible to find out the consent of the child in the mode of a video conference (with a corresponding video recording).

In addition, the child has the right to submit a request for return, which is the basis for the child's return to Ukraine, if he was temporarily moved outside

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<sup>23</sup> Питання діяльності органів опіки та піклування, пов'язаної із захистом прав дитини: Постанова Кабінету Міністрів України від 24.09.2008 № 866. URL: <https://zakon.rada.gov.ua/laws/show/866-2008-%D0%BF#Text>

the borders of our country with a guardian, custodian, foster parents, foster parents (one of them), a foster parent.

Separately, we should dwell on the importance of obtaining the child's consent for placement in any of the considered forms. According to L. V. Krasnytska, the child's consent should be understood as "a positive answer to a question or permission for certain actions." The scientist also notes that consent should be considered only as "a mutual agreement, the presence of a common opinion, mutual understanding about something, etc." One cannot but agree with Larisa Vasylyvna that opinions can be different, quite often the opinions of children do not coincide with the opinions of adults, including parents, which causes disputes to arise<sup>24</sup>. The European Court of Human Rights has repeatedly emphasized that there is a broad consensus, including in international law, in support of the idea that in all decisions concerning children their best interests should prevail (see Case No. 41615/07, No. 41615/07, § 135, 6 July 2010, and "X v. Latvia," Application No. 27853/09, § 96, ECHR 2013.). At the same time, there is already an established position that the interests of the child can prevail over the interests of the parents (for example, the decision in the case "Haase v. Germany" dated April 8, 2004<sup>25</sup>, the decision of "M.S. against Ukraine" dated July 11, 2017.<sup>26</sup> and other).

Regarding the importance of taking the child's opinion into account, the ECtHR in the case "Pini and Others v. Romania" came to the conclusion that it was in the interest of the children to take into account their opinion, because they have already reached the necessary age when such a child's opinion should be taken into account – according to Romanian legislation, this age is considered to be 10 years old. In this regard, the refusal, which they consistently declared after reaching this age, is a circumstance that has a certain weight<sup>27</sup>. Taking into account the experience of such foreign countries as Hungary and Bulgaria (consent for adoption is asked from the age of 14), Slovenia (from the age of 10) and France (from the age of 13), A.I. permission to adopt<sup>28</sup>. In our opinion, it is still worth leaving the construction that is already in the legislation, namely the reference to "the age and level of

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<sup>24</sup> Красицька Л. В. Проблеми здійснення та захисту особистих та майнових прав батьків і дітей : монографія. Київ : Видавництво Ліра-К, 2014. С. 330.

<sup>25</sup> Справа Хаас проти Німеччини (Haase v. Germany) від 8.04.2004. URL: [https://zakon.rada.gov.ua/laws/show/980\\_225/print](https://zakon.rada.gov.ua/laws/show/980_225/print)

<sup>26</sup> «М.С. проти України» 11 липня 2017 року. URL: <https://bh.cn.court.gov.ua/sud2501/pres-centr/news/405888/>

<sup>27</sup> Менджул М. В. Зміст принципу найкращих інтересів дитини та його практичне застосування. *Науковий вісник Ужгородського національного університету. Серія Право*. 2019. Випуск 56. Том 1. С. 89.

<sup>28</sup> Мосейчук А.І. Усиновлення іноземцем дитини за законодавством України та країн Європейського Союзу (порівняльно-правове дослідження): дис. на здобуття ступеня доктора філософії: 081 Право. Харків, 2021. С. 5.

development of the child, which allow him to be aware of the consequences and express his opinion", since in modern conditions there are no two children of the same age with identical level of development, a child at the age of ten and at the age of six may have a different level of development and perceive the legal consequences of adoption differently according to their level of development. In addition, there is an increase in the number of children with special needs, in whom there can also be a noticeable disproportion in terms of age and level of development.

In the judicial practice of Ukraine, there are quite a few cases when the need to recognize adoption as a special form of placement as invalid or to cancel it due to the lack of consent of the child (at the time of adoption he was already thirteen years old) is substantiated<sup>29</sup> or ten years<sup>30</sup> child). When considering such categories of cases, the courts take into account the best interests of the child, the duration of the child's stay in the adoptive family, and in view of such circumstances, they can make a decision on failure to meet the requirements based on errors in the notarized consent to adoption<sup>31</sup>.

Thus, the child's consent to placement in any form of placement is mandatory, without it, except for cases when the child cannot express it due to age or for other valid reasons, placement of the child in any form of family education is not possible.

## CONCLUSIONS

The conducted research made it possible to come to the conclusion that in the EU member states there are different forms of placement of children without parental care and even different terminology. At the same time, from the point of view of protecting the best interests of the child and the regulation of various forms of placement of children, the following can be noted: 1) in all EU member states, except for Cyprus, the Czech Republic and France, it is allowed to place children in certain institutions or provide assistance to parents in raising children, while written parental consent is provided; 2) execution of consent in writing by the person who accepts the child for upbringing (in different countries there are different forms, but the adoptive family prevails – Bulgaria, Hetsia, Denmark, Ireland, Estonia, Cyprus, Latvia, Luxembourg, Malta, the Netherlands, Germany, Poland, Portugal, Romania, Slovakia, Slovenia, Hungary, the Czech Republic, Croatia, Finland and Sweden; forms similar to foster care – for example, in Sweden, a family home, temporary or

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<sup>29</sup> Постанова Верховного суду від 29 січня 2020 року у справі № 387/1023/17. URL: <https://reyestr.court.gov.ua/Review/87243214>

<sup>30</sup> Постанова Верховного суду від 25 листопада 2019 року у справі № 552/5764/17-ц. URL: <https://reyestr.court.gov.ua/Review/85966529>

<sup>31</sup> Постанова Верховного Суду від 1 жовтня 2020 року у справі № 2-1297/2004. URL: <https://reyestr.court.gov.ua/Review/92065902>

permanent foster care in a family – in Lithuania, placement in a foreign home to the family – in Spain, alternative family guardianship – in Italy, guardianship – in Belgium); 3) taking into account the opinion of the child who can express it is mandatory; 4) when placing a child in any form of family education or institutional care, the principle of the best interests of the child must be observed.

A comparative legal analysis of the forms of placement of children in European countries and in Ukraine showed that in Ukraine there is a fairly developed system of family forms of placement of a child without parental care, and along with adoption, a child can be placed under guardianship (guardianship), foster care, foster families and children's family-type houses. At the same time, in the process of European integration, it is necessary to continue reducing the network of institutional institutions, and taking into account the principle of the best interests of the child, a clear priority of family forms of placement of children without parental care should be provided at the level of legislation. At the same time, an effective public mechanism for monitoring the observance of the rights and best interests of children without parental care should be ensured, regardless of the form of placement.

### **ABSTRACT**

In the conditions of the war in Ukraine, the number of children without parental care is increasing both in the middle of the country and in European countries where they received temporary protection. Over the past two years, Ukraine has shown its desire for European integration, and therefore it is extremely important to reform its domestic legislation, and at the same time, to affirm European values. The principle of the best interests of the child is such a principle that determines the state policy, the legal principles of regulation of all relations with the participation of children. That is why a detailed analysis of the legislation of Ukraine and individual European states was carried out regarding the definition of forms of placement of children without parents. Comparative-legal analysis and other applied methods made it possible to investigate how the principle of the best interests of the child works during the placement of children without parental care in European countries, as well as in Ukraine. The conducted analysis made it possible to reach a number of well-founded conclusions, including regarding the improvement of legislation in Ukraine, taking into account the principle of the best interests of the child.

**Key words:** child, legal protection, parental responsibility, best interests of the child, ECHR.

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