



Universities Network for Children in Armed Conflict
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**UNIVERSITIES NETWORK FOR CHILDREN IN ARMED CONFLICT
ADVANCED TRAINING COURSE
INTERNATIONAL CRIMINAL JURISDICTION INVOLVING CHILDREN IN
ARMED CONFLICT
Procedural and deontological profiles concerning the role of lawyers
June 8th, 2022 - October 20th, 2022**

ANALYSIS OF CASE LAW

30 June 2022

Children in armed conflict: protection from PIL rules

Main instruments to consider:

- **1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children**

<https://www.hcch.net/en/instruments/conventions/specialised-sections/child-protection>

It is a multilateral treaty covering a broad range of civil measures to protect children in cross-border situations. The Convention provides uniform rules on the main issues of PIL (jurisdiction, applicable law, recognition and enforcement) and rules on cooperation in the field of parental responsibility and measures for the protection of children.

All EU Member States have ratified the convention. Ukraine also has ratified.

Please read the outline of the 1996 Hague Convention: <https://assets.hcch.net/docs/be4083a2-ed90-4dc2-bb97-13be22e6a5d8.pdf>

- **Regulation 2201/2003 on jurisdiction and recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility**

<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32003R2201>

It is the key EU instrument regulating cross-border family relationships within the EU judicial area.

It does not provide rules on the applicable law, but it regulates jurisdiction and recognition and execution of decisions. It also provides rules on child abduction as well as on judicial and administrative cooperation.

Please find here a summary of the Regulation: <https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=CELEX:32003R2201>



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First case: children in institutional care

One problematic situation is the one of the children placed in Ukrainian institutional care. It results that in 2020 Ukraine had 718 institutional care facilities where 102.570 children were living in residential care (see https://assets.website-files.com/5f02fe3bffd6de28dca82125/6232b55786e427776e9ba4b7_Ukraine%20Crisis%20Fact%20Sheet%20ISS.pdf).

The need to move away from the ongoing conflict may give rise to problems with regard to the regime of parental responsibility.

PIL rules provided by the 1996 Hague Convention have been conceived with a view to offer wide protection to children in difficult situations, including conflicts.

Two points for the debate:

A. A specific measure of protection may be applied in such cases: the so called “cross-placement” under art. 33.

Article 33 – 1996 Hague Convention

1. If an authority having jurisdiction under Articles 5 to 10 contemplates the **placement of the child in a foster family or institutional care, or the provision of care by kafala or an analogous institution, and if such placement or such provision of care is to take place in another Contracting State**, it shall first consult with the Central Authority or other competent authority of the latter State. To that effect it shall transmit a report on the child together with the reasons for the proposed placement or provision of care.
2. The decision on the placement or provision of care may be made in the requesting State only if the Central Authority or other competent authority of the requested State has consented to the placement or provision of care, taking into account the child's best interests.

Under your opinion:

- *Is this a suitable measure of protection?*
- *What kind of problems/obstacles may arise?*

B. A further issue is the one of children born by virtue of a surrogacy agreement.

It is not clear whether they might be under the responsibility of healthcare institutions.

In the affirmative, is art. 33 of the 1996 Hague Convention a suitable measure of protection?

In the negative, are there other solutions to be considered?



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Second case: the informal placement by virtue of agreement

Under Ukrainian law (see art. 7 of the Ukrainian family code http://www.jafbase.fr/docEstEurope/FAMILY_CODE_OF_UKRAINE.pdf), children are frequently placed directly by the parents in institutional care or with persons with the agreement that the staff of the institutional residential care or the persons shall take care of them.

For these children as well, the need to move away from the ongoing conflict may give rise to problems with regard to the regime of parental responsibility.

Two points for the debate:

Once the children have reached another country, it shall be considered:

A. Are these persons (adults) entitled to bring away the children from Ukraine? Is the placement by virtue of agreement acceptable in countries different from Ukraine?

See the following provision:

Art. 16 1996 Hague Convention - Applicable law

1. The attribution or extinction of parental responsibility by operation of law, without the intervention of a judicial or administrative authority, is governed by the law of the State of the HR of the child.

2. The attribution or extinction of parental responsibility by an agreement or a unilateral act, without intervention of a judicial or administrative authority, is governed by the law of the State of the child's HR at the time when the agreement or unilateral act takes effect.

3. Parental responsibility which exists under the law of the State of the child's HR subsists after a change of that habitual residence to another State.

4. If the child's HR changes, the attribution of parental responsibility by operation of law to a person who does not already have such responsibility is governed by the law of the State of the new HR.

B. Which court can exercise jurisdiction over the child? What kind of measures are to be taken?

See the following provision:

Art. 6 1996 Hague Convention - Jurisdiction

1. For refugee children and children who, due to disturbances occurring in their country, are internationally displaced, the authorities of the Contracting State on the territory of which these children are present as a result of their displacement have the jurisdiction provided for in paragraph 1 of Article 5.

2. The provisions of the preceding paragraph also apply to children whose habitual residence cannot be established.



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Further reading:

- ✓ M.A. Drumbl, Children in Armed Conflict, in (edited by) J. Todres e S.M. King, Oxford Handbook of Children's Rights Law, 2020
https://eeas.europa.eu/delegations/zimbabwe/74548/war-no-place-children_az

- ✓ W. Vandenhole and Y. Weyns, Child soldiers and the EU policy on children and armed conflict, Brussels, 2014, PE 433.845
[https://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/433845/EXPO-DROI_ET\(2014\)433845_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/433845/EXPO-DROI_ET(2014)433845_EN.pdf)

- ✓ Communication from the Commission, Welcoming those fleeing war in Ukraine: Readying Europe to meet the needs COM (2022) 131 final
https://ec.europa.eu/info/sites/default/files/communication_welcoming_those_fleeing_war_in_ukraine.pdf

- ✓ Children deprived of their family environment due to the armed conflict in Ukraine: Cross-border protection and intercountry adoption. Information Note from the Permanent Bureau of the HCCH
<https://assets.hcch.net/docs/0f9c08e9-75d0-4497-8ca0-12c595aa6845.pdf>

- ✓ Children from Ukraine – civil justice cooperation
https://e-justice.europa.eu/38593/EN/children_from_ukraine_civil_judicial_cooperation