

Expert Workshop on Guardianship and Care for Separated Children and Children from Ukrainian Institutions

30 May 2022, online

Report

Summary:

The Workshop was attended by 33 participants:

- 13 representatives of international NGOs with direct experience on reception and care for Ukrainian children,
- 6 representatives of national authorities (AT, BE, CZ, DE, FR, NL)
- 14 representatives of EU and UN organisations (COM, FRA, EUAA, UNICEF and UNHCR).

Taking into account the answers given by 19 Member States to a Questionnaire on UAMs and separated children run via the Solidarity Platform at the end of April 2022, DG HOME decided to focus the Workshop on guardianship and care forms for 'separated' children, including children arriving from Ukrainian institutions.

More specifically, the experts were invited to discuss the specific challenges that arise in terms of:

- procedures (e.g. recognition of guardianship acts originating from the Ukrainian authorities; appointment of adults accompanying the children in their travel as guardians / carers for the children; conditions to be met for being appointed as guardian under the national law of the receiving MS)
- mandate of the Ukrainian guardians (i.e. whether they have the ability and skills to perform on the same terms as local guardians)
- support to Ukrainian guardians and carers (taking into account that they are themselves refugees and do not know yet how to navigate the hosting society, need financial support, etc.)

The main points that emerged from the discussion were as follows:

1. The application of the 1996 Hague Convention is not uniform – in some Member States, the Ukrainian acts awarding guardianship are recognised as having direct legal effects in the host country, in others not. There are sometimes differences even between judiciary in the same MS (e.g. Italy).
2. Not sufficient awareness about the possibility to use Central Authorities (established to follow up on judicial cooperation) as a channel for obtaining evidence and clarifications from the Ukrainian authorities regarding the situation of separated children (localising and contacting parents in Ukraine, family tracing, documentation, etc.)

3. Member States are confronted with considerable workload for processing guardianship files (be it for recognition of acts originating from Ukraine, or for establishing guardianship for the Ukrainian adults accompanying the children in their travel). Related shortages of: local guardians available, interpreters/cultural mediators, financial resources to hire new staff in the administration processing the files, social assistants, new guardians, etc.
4. Some Member States have developed ad hoc modalities to support the Ukrainian guardians / carers – e.g.: Italian juvenile courts appointing local ‘protutori’ to support the Ukrainian guardian / carer; the Netherlands deciding to make the national guardianship authority Nidos responsible for balancing the need for guardianship together with the parents/legal guardians in Ukraine and the child; Belgium is considering passing legislation on ‘guardianship light’ – a system whereby the local guardian would support the Ukrainian guardian (and could therefore take on lighter tasks than full guardianship, and consequently also cover more children). Within the European Guardianship Network, there is ongoing exchange and discussion of issues, challenges and good practice experienced as regards guardianship within the EU.
5. All participants highly concerned about the dangers of keeping children arriving from Ukrainian institutions outside the national child protection system. Ukraine asks for large groups to be kept together, whereas many Member States no longer have institutional care, so the only solution to accommodate the request of Ukraine is to place the children in reception and care outside the national system. However, being outside the national child protection system is not good for the children, as they will not benefit from the same services, monitoring, etc.
6. Participants also strongly called for not re-introducing institutional care through the back door, but rather work together with Ukrainian authorities to explain the need to move away from institutionalisation in Ukraine itself, and for the children arriving in the EU, to accept care solutions that are in line with the best interests of the children, while making best efforts to preserve the unity of the group (e.g. residential care for smaller parts of the groups, and keeping the various sub-groups in close areas, so that contact can be maintained).

Detailed report

Panel 1: Guardianship and care for separated children

The representative of the Central Authority at the French Ministry of Justice explained how the **Central Authorities** can be used as a channel for requesting information from one jurisdiction to another - for example, French authorities would ask the Ukrainian authorities to confirm the identity of persons accompanying the children. Judiciaries and local authorities in the Member States are not always aware of this possibility.

Guardianship or care arrangements made under Ukrainian law may be recognised under the 1996 Hague Convention in line with the purpose and scope of those arrangements. It is also important to consider guardianship under the public law obligations arising in the receiving

State for the purposes of protection under the Temporary Protection Directive or other international or national protection instruments. This arises because of the need to ensure that children are able to access the protection regimes. (In current practice, it is not clear that registration for protection is occurring when needed for separated children or for groups of children who are evacuated.) These public law protection instruments become all the more important with time and in the context of finding durable solutions for separated and unaccompanied children. There is also a need to find ways through which actors in different countries can cooperate to find a pathway for children - for example, potentially through life projects.

Furthermore, given that the circumstances of children, their families, their caregivers and guardians may evolve and shift over time, Member States should find ways to ensure monitoring of their situation in order where needed to supplement guardianship and care and custodial arrangements.

Nidos informed that The Netherlands has recently decided to make the national guardianship authority Nidos responsible for balancing the need for guardianship for unaccompanied and separated children arriving from Ukraine. This will be done in close cooperation with the parents/legal guardian in Ukraine and the child.

SOS-Children's Village Germany underlined **practical difficulties for accompanying adults to access the labour market** and the social security system. Moreover, it is **difficult to find qualified social workers**, who also need to speak Ukraine.

Similarly, Missing Children Europe underlined that the availability of guardians is a key challenge.

UNICEF highlighted that **national guardianship systems are completely overburdened** given the unprecedented scale of arrivals.

Intersos Italy highlighted support capacity constraints, in view of overworked social workers. Another problem in Italy is that **financial support** in relation to the child is only available for those persons who have accompanied the child fleeing Ukraine after 24 February 2022, and not for Ukrainian persons / family members who have already been residing in Italy prior to the war. Intersos also highlighted the existence and importance of **the 1996 Hague Convention**, allowing for the direct recognition of guardianship acts issued in Ukraine, and which is not applied uniformly by the judiciary in different parts of Italy.

The Belgian Ministry of Justice highlighted that they need to **check the documentation of the accompanying adult**, whether it provides only for care giving or also legal guardianship. It would be useful to know what types of guardianship documents are issued in Ukraine. Moreover, it would be good to reflect on the **legal arrangements for allowing the child to travel** within the EU or the documents needed when organising the return to Ukraine.

Save the Children Romania highlighted the **lack of a network** of persons working in the field across the EU.

In order to ensure a procedure oriented towards the best interests of the child, the German Federal Government has implemented an orderly and structured procedure for the reception of children in care and orphans from Ukraine. For this purpose, the federal government has established a nationwide reporting and coordination office, which is based on two pillars. The

SOS Reporting Office at SOS Kinderdorf e.V. provides information to institutions, organizations and private individuals who organize the reception of evacuated children from homes and orphans from Ukraine in Germany. The second pillar is a central coordination office at the Federal Office of Administration. The coordination office at the Federal Office of Administration centrally registers the data of the arriving children and young people and organizes the reception between the federal states, thus ensuring joint accommodation, care and support of the groups with their accompanying persons. In addition to registration at the municipal or state level, Germany has thus assigned the task of central registration to a central federal agency.

The International Commission of Jurists emphasised the importance of **communicating procedural safeguards in a child friendly manner** and making sure that the child has access to all procedural safeguards and rights. If the accompanying person is not from the family the case has to be monitored more closely due to the potential risk of human trafficking.

Guardianship and care for children from Ukrainian institutions:

Ukrainian authorities ask the EU member States to keep the groups of children from institutions together, and this represents a challenge for the reception systems of the EU Member States, especially where institutional solutions are no longer applied.

UNICEF explained that before the war there were 91.000 children in institutional care. Currently only around 3.000 children remain in these facilities, with the caveat that these numbers may not be completely reliable. This suggests that a **very high number of children** has been moved out of Ukraine and/or returned to their families.

Save the Children Italy underlined that they do not want to re-institutionalise the old system but at the same time **careful consideration of the best interest of the child** is important. There may be ties among the children within a group. Each case is different and should be examined individually to **find a tailored solution**.

Similarly, Intersos Italy stressed the importance of **evaluating the best interest of the child in each case**. We should not go back to institutional care, however some children are terrified by the prospect of being separated from their institutional caregiver. Regarding good practices, Intersos Italy explained that in some cases the juvenile court has appointed a **special guardian** (*protutore*) to help the Ukrainian guardian. Another good practice reported was a case whereby the Juvenile Court of Bolzano recognized the director of the Ukrainian institution as the guardian and carer of the children and formally instructed the Bolzano Municipality social services to support her, refusing the request by the Public Prosecutor to appoint a new guardian and separate the children (<https://www.asgi.it/famiglia-minori/ucraina-minori-soli-convenzione-aja/>), whereas in another case the director of the Ukrainian institution has not been recognized as the guardian/carers, and the children have been separated from her: (<http://www.vita.it/it/story/2022/04/01/grazie-per-essere-venuti-a-prenderci-cosi-19-bimbi-ucraini-salutano-i-469/>; <https://www.catanianews.it/minori-ucraini-allontanati-dai-tutori-a-mascali-bellucci-e-drago-fdi-si-faccia-chiarezza/>).

The International Commission of Jurists also highlighted that it is good to determine the best interest of the child on a case-by-case basis. All children have **the right to be heard** and their

views to be taken into consideration, which can be challenging in case of children in institutional care.

NIDOS explained that if orphanages enter the Netherlands with their director or someone else who is the guardian, the **guardianship will be respected**. In these cases, NIDOS does not have a role but the Child Protection Board will examine the situation.

SOS-Children's Village Germany explained that if their **qualifications cannot be recognised** to some extent, it would not be possible to count these persons as caregivers and guardians. The **size of the groups of children** is often too large for the German system. They keep the groups together without labelling them institutions. There is a discussion about whether standards are lowered if groups are kept together, e.g. 10-15 children in a foster family. There are scientifically substantiated reasons why the ratio is usually lower.

Lumos' representative informed that institutionalized group of 45 children with severe disabilities had been transported to the Czech Republic and they need special attention since they are particularly vulnerable. The Ukrainian authorities have asked that these children have to stay together. In the views of Lumos, this may be a solution for a transitional period, it makes children feel more safe since they know each other and they know their carers who accompanied them from Ukraine. A challenge in this regard is ensuring that sufficient financial means are available to support these children, and in the long- term, the condition of the Ukrainian authorities to keep the group united will not allow to move children to more family-like environments.

UNICEF stressed that children who were evacuated from institutions **must be taken in charge in the national child protection systems**, because otherwise they will not benefit from the same services and safeguards. UNICEF strongly criticised that the governments in some Member States changed the law to allow again for institutional care in order to accommodate the request of the Ukrainian authorities. UNICEF underlined that good alternatives exist in national systems, e.g. small integrated residential care facilities in nearby geographical areas, so as to preserve the contact of the initial groups. UNICEF tries to convince the Ukrainian government to reform the institutional care system. Children have to be in good care facilities and **resources need to be invested**. The Commission should support governments in moving away from institutional care.

Similarly, UNHCR stressed that children should be fully under the national child protection system. They share the same **concern regarding institutional care**, which should be the last resort. The process of moving away from institutional care was started in Ukraine. Each child should be able to count on its best interest.

Hope and Homes for Children stressed that they have been raising concerns about the institutional care system for a long time. They advocate for an **individual assessment** to check whether carers are the best qualified persons to take care.

Save the Children Romania reported that some groups include very young children, and that the **language barrier** has been a problem.

UNICEF noted that some **Ukrainian guardians** are very motivated and feel responsible for keeping the group together and bringing the children back home. However, this may prevent them from allowing solutions that are in line with the best interests of the children. They may also resist allowing children to be taken care of in smaller units.

SOS-Children's Village Germany noted that if the Ukrainian guardian is not the best person to be appointed as guardian, then we have to act accordingly. Moreover, we need to **create a perspective for the children** from Ukraine rather than keeping them in a waiting position, e.g. those who are just about to finish school need to know whether they can access universities.

UNHCR added that the **return of children will not happen fast** since even the revocation of martial law in Ukraine would not mean it is safe for children to return. When examining Ukrainian acts rewarding guardianship to staff from institutions, there are certain safeguards and considerations that should be recognised by all, including the Ukrainian government.

Save the Children Italy underlined that there may be cases where the assessment of the best interests of the child may lead to a care and guardianship solution that is in contradiction with **recognising the guardianship act of the Ukrainian authorities**. The concerns of the Ukrainian authorities also need to be taken into account but they also have to accept that in some cases the best interest of the child can imply **staying in the host country**.

SOS-Children's Village Germany pointed out that it might be a good idea to **have two guardians, a local one and the Ukrainian one**. Moreover, it is key to have more **qualified social workers**. It is also important to have **voluntary workers** who might need supervision.

Save the Children noted that many persons might not be recorded in the system and hence it is important to **reach out to the Ukrainian authorities to identify children** and make sure they are integrated into the national child protection system.

Missing Children Europe underlined that institutionalisation is a risk factor for children going missing.

Follow-up:

The Commission informed the participants that the main issues identified during the discussion will be addressed through concise recommendations/clarifications/sharing of good practices, in the context of responding to questions on the application of the Temporary Protection Directive.