

CHILDREN'S KIDNAPPING: PROBLEMS OF CIVIL REGULATION IN EU AND UKRAINE

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Abstract. Nowadays the issue of children's kidnapping remains open. Statistics confirms that the phenomenon of children's kidnapping has an extraordinary nature: according to the data of the European Commission, 250 thousand children in the EU are lost annually, i.e. 1 child per each 2 minutes. The civil law aspect of children's kidnapping, in contrast to the criminal law, is very poorly regulated at the international level. There are no effective and urgent mechanisms for mutual cooperation between countries, which complicates the search and return of children; in many EU countries, including Ukraine, there are no special jurisdictional bodies responsible for the comprehensive regulation of this problem; there is no mechanism for supporting and rehabilitating the affected family and the returned child. The article considers the problems of an integrated approach to the issue of children's kidnapping and emphasizes the need to consider this problem in the field of several sciences – psychology, sociology and jurisprudence. The study contains the analysis of the legal regulation of the basic legislative acts of the EU and Ukraine, the problems of practical implementation in 1980, the mechanism of the Hague Convention, the most common concept of "children's kidnapping" was offered, children's kidnapping was classified in criminal and civil legal aspect. As one of the most important ways to implement the Hague Convention it was proposed enhancement process of cooperation between the special EU bodies and Ukraine, authorized to deal with issues of children's return, including the creation of special bodies dealing with the problem of returning children and their psychological rehabilitation.

Keywords: kidnapping, children's kidnapping, civil law, European Union, Ukraine

INTRODUCTION

It is inappropriate to consider the problem of children's kidnapping in today's realities of globalization in the context of only the legal regulation of one country. Also, it seems inappropriate to consider this issue only in the context of jurisprudence or legislative

To date, no study has not systematically considered conditions, which may contribute to the kidnapping epidemic. The results of the study show that the problem of the country was less safe than less peaceable and uneven developed by social and economic indexes”(Pires, 2016, 2019).

One should agree with such conclusions, and, unfortunately, attribute Ukraine to countries with such a risk group.

5. The list of types of kidnapping cannot be exhaustive, since the diversity of social relations is primary in relation to both statistics and law.

We should also distinguish between the legal regulation of the latter on the basis of the above classification of children’s kidnapping, as the only third group is subject to the civil-law regulation (Convention of October, 1961), all the rest are in the plane of the criminal law sphere.

The concept of children’s kidnapping in the criminal law and civil law aspects at the level of EU legislation

In order to correctly analyze and give the general concept of “children’s kidnapping”, which is one of the objectives of this article, it is necessary to analyze the key points associated with the presence of existing approaches at the international level to this concept.

Firstly, it should be noted that this article deals with the problems of child kidnapping in the EU countries and Ukraine. This clarification is important because in the EU there are already a number of legal acts that regulate certain aspects of the children’s kidnapping, and in case the countries do not adopt international acts – to apply the mechanism is not possible.

Secondly, taking into account the above classification, one should take into account the distinction between the criminal law sphere and the civil law sphere. So, if we are talking about kidnapping by one of the parents, then we face the effect of the 1980 Hague Convention “On Civil Law Aspects of the International Children’s Kidnapping”, in all other types of loss of children – the criminal law branch is applied.

Thus, under the Convention, i.e. the term “children’s kidnapping” in civil law aspect according to the art.3 means:

“the movement or retention of a child, if: a) they are carried out in violation of the custody rights vested in any person, institution or other organization, jointly or individually, in accordance with the laws of the state in which the child resided permanently until his transfer or retention; b) during the transfer or retention, these rights were effectively exercised, jointly or individually, or would have been exercised if the transfer or retention had not occurred. The custody rights referred to in paragraph “a” may arise, in particular, in accordance with the law either on the basis of a judicial or administrative decision, or on the basis of an agreement entailing legal consequences for the legislation of this state.”

High Specialized Court of Ukraine concerning civil and criminal cases indicate that the term “kidnapping” is used in a general sense, therefore, this term should be understood as unlawful removal or retention of the child. Thus, the Convention does not qualify acts of violations of its provisions as a criminal offense (Generalized Use of Courts, 2017).

As for other cases of children’s kidnapping, that is, when it does not happen to another of the parents, unfortunately international legal acts at the EU level do not directly regulate this issue. As for the specific mechanisms of searching and returning a child, it should be noted that this issue remains on the regulation of the state. It should be noted, this situation is a significant drawback.

regulation. It is necessary to solve the problems of children's kidnapping taking into account psychological, social and geopolitical aspects – this will allow not to miss the integrity of the phenomenon, which will lead to the effectiveness of solving key problems. The children's kidnapping is a special social phenomenon lying in the plane of several sciences and several branches of law of the entire international community.

This article is devoted to several hypotheses:

The children's kidnapping is an international problem, a separate institute that requires attention, knowledge and control in several areas: psychological, social, legal. Therefore, as the study proves, the need to point out a single concept of "children's kidnapping" has arisen, as well as to separate the concepts of children's kidnapping in criminal law and civil law aspects at the level of EU law, which leads to the creation of a structure for the institute of children's kidnapping. This is a way to structure existing divided international legal acts in the regulation of children's kidnapping, and therefore, is a way to increase the legislative mechanism for children's protection in a global scale.

Without strengthening cooperation between the special bodies of the EU and the countries participating in the Hague Convention (hereinafter – the Convention) authorized to deal with the issue of the return of children, in addition, without creating special bodies to deal with the problem of the return of children and their psychological rehabilitation after the return, it is impossible to resolve the existing problems in this phenomenon.

MATERIALS AND METHODS

Upon the definition of the basic concept – "children's kidnapping", as well as while theoretical analysis of the procedural order for considering cases of the return of children by jurisdictional authorities, the method of ascension from abstract to particular and vice versa was applied. The analysis and synthesis method provided an opportunity to study the patterns and disadvantages of the institution of children's kidnapping comprehensively. The system-structural method, which helped in substantiating the results of the article, was of great importance for determining the structure of children's kidnapping. The methodological basis of the study was also the dialectical method with a system-functional approach to the analysis of the phenomena under study. Using the hermeneutic method, the interpretation of the legislative norms governing the rights of children and families in the implementation of the return mechanism has been carried out. The comparative-critical method helped to establish similarities and differences between several objects of research, while the formal-logical method helped to study the norms and to generalize the results of the study.

Classification of types of children's kidnapping: psychological, social and legal aspects in the EU countries and in Ukraine

As evidenced by the scientific analysis of statistical data, children's kidnapping should be divided into several groups:

- 1) Escape;
- 2) Disappearance of homeless, minor children;
- 3) Children's kidnapping by other parents;
- 4) Children's kidnapping by criminals;
- 5) Other types, as the list is not exhaustive.

Analysis of statistical data makes it possible to make such observations as the fact that each type of kidnapping has different prerequisites. The need to study the kidnapping prerequisites makes it possible to differentiate the sources of problems and propose solutions based on its root cause.

1. When it comes to “escape”, it should be noted that according to the data of the National Police of Ukraine in 2016 there were about 6 thousand messages about children’s kidnapping. That is, 16 children disappear every day in Ukraine. As a rule, children are usually found within 24 hours after the loss. All these cases concern not only the kidnapping, children often leave home themselves due to unfavorable situations in the family, argues, friends’ influence or other reasons. According to statistics, in 75% of cases escapist are teenagers from 13 to 17 years old who have left home.

It should be noted that even in cases of a safe return to the family, at first, the child who escaped, was in a very big risk during the escape, and secondly, there is no mechanism for the rehabilitation of the child’s mind after his return, the psychological atmosphere of the family and control of avoid relapse.

2. Disappearance of homeless, minor children and migrant children. This category of children is in a special risk group. They are psychologically unprotected, vulnerable, possibly already with psychological deviations, a group of the population, and, among other things, socially unprotected. State registration of this category of children is a separate topic for research, but in the absence of registration of such children, this is the main contingent for human trafficking.

3. In recent years (this is especially true for Ukraine and countries that have recently become EU members (Lithuania, Latvia, Estonia), or are pursuing a European integration policy), the number of marriages with foreign citizens, both official and unofficial, has increased. As one of the negative phenomena of increases is the number of divorces. Divorce is a big problem, especially if the family has a child or several children. Unfortunately, in some cases, one of the parents believes that the best way out of the situation is to take the child abroad without the consent of the other parent.

According to the Ministry of Justice of Finland, the prerequisites for such a kidnapping are as follows: “the behavior of the other parent changes, for example, disputes about raising children are becoming more frequent; the divorce was difficult and there was disagreement regarding custody and the right to communicate with the child; the other parent has plans to move with the child; a direct threat is expressed” (Technical brochure of Finnish Ministry of Justice..., 2022).

4. Children’s kidnapping by criminals. The main objects of such crimes are children of the second group – homeless children, minor children, migrant children. However, one should not exclude the category of children that does not fall under the second group, and the prerequisites for kidnapping are deliberate targeted persecution, chance or another factor.

According to Stephen Pires “criminal groups around the world often rely on kidnapping for ransom money to finance and advance their goals. Some case studies show that kidnapping epidemics are the most common in war-torn, fragile and corrupt countries. Although such factors may be present in some countries experiencing epidemics of kidnapping, it is not yet known whether these factors of failed status can be extended to all countries.

Structure of the institute for children's kidnapping

Table 1

Children's kidnapping

Children's kidnapping					
TYPE	Escape	Disappearance of homeless children, minor children, migrants' children and migrant children	Children's kidnapping by other parents	Children's kidnapping by criminals	Other
PREREQUISITES	Psychological (unfavorable situation in family, conflicts, domestic violence, peers' influence, problems of psychological growth)	Psychological and social (the problem of illegal migration, lack of state support for children deprived of parental care, absence of registration of children deprived of parental care, etc.)	Geopolitical (an increase in the number of marriages between foreigners); psychological (difficult divorce, direct threat); legal (lack of an effective mechanism for cooperation between countries, a long period of consideration of return issues, the absence of a specially authorized body).		

Highlighting a clear structure of children's kidnapping delimits legal mechanisms for influencing a particular type of child's loss. That is, thanks to the primary understanding of the type of child's loss, the relevant authority will "not throw the case from side to side," but will clearly direct it along the allocated special action line.

This classification is useful when: 1) preparing security bodies staff authorized for an initial response to the disappearance of the child (in Ukraine National Police); 2) forming the job descriptions of departmental bodies authorized to consider the issue of initial response and subsequent return of the child to the family; 3) conducting preventive social work to avoid factors/prerequisites for the loss of children – social advertising on social networks, conducting special classes in preschool institutions, schools, colleges, other educational and medical institutions for children and adolescents, conducting psychological training for future parents and parents, educators, tutors, psychologists, teachers.

Problems of the implementation mechanism of the Convention in Ukraine

The Convention regulates the procedure for returning children in cases of children's kidnapping by a parent. According to this Convention, its main purpose is to return the child to his place of permanent residence, but it also should be understood that this definition is absolutely not identical to the citizenship of the child or his parents.

Two issues should be emphasized out of it. The first moment is that the Convention only regulates the civil law aspect of the institution of international children's kidnapping.

The second issue is as follows: the meaning of the Convention is that one of the parents

(or any other person who owns the right to care for the child or custody of the child) has no right to unilaterally make decisions about changing the place residence of the child and, in particular, remove it in another country.

In the context of the Convention, “kidnapping” means:

1. Movement of a child in violation of custody (guardianship) rights;
2. Do not return the child after lawfully moving across the border.

The conditions for the unlawful kidnapping or detention of a child, in accordance with art. 3 is:

1) this violates the rights of custody of the child, which belong to any other person, institution, organization or other body, collectively or individually, in accordance with the laws of the state in which the child constantly resided or was kept;

2) at the time of transfer or maintenance, these rights were effectively exercised, collectively or individually, or would be exercised if it were not for the transfer or retention.

For example, according to the Decision of the Higher Specialized Court of Ukraine for the consideration of civil and criminal cases of March 15, 2015 in case No. 6-42049cb14 (Decision of from, 2015), the court established precisely these facts, in particular:

– the child was permanently in the Contracting State immediately before moving or maintenance (paragraph “a”, part 1, article 3 of the Convention);

– removal or retention of the child was a breach of rights of custody or guardianship in accordance with the legislation of the country where the child lived (paragraph “b”, part 1, article 3 of the Convention);

– the applicant actually exercised custody before movement of the child or to exercise such rights, if not the displacement or retention (paragraph “b”, part 3, article 3 of the Convention).

In order to implement the provisions of the Convention in Ukraine, the following alternative jurisdictional forms of protection are provided – judicial, administrative and mixed.

Table 2

Forms of protection

Forms of protection		
Ministry of Justice	Court	Ministry of Justice addresses to court in the interests of the applicant

The subject who filed the application with the court, at his discretion, chooses the form of protection: judicial, by filing a claim, administrative by filing an application with the Ministry of Justice of Ukraine, or applying to the Ministry of Justice with a request to represent her interests in court. The legal basis for the activities of the Ministry of Justice in such categories of cases is the Decree of the Cabinet of Ministers of Ukraine dated July 10, 2006 No. 952, which approved the Procedure for the implementation on the territory of Ukraine of the Convention on Civil Law Aspects of International Children’s Kidnapping (hereinafter – the Procedure) (The order of execution on the territory of Ukraine..., 2006).

Cases on the return of children to their country of permanent residence in accordance with the Hague Convention are cases with a foreign element and are considered exclusively by the courts in the lawsuit established by the Civil Procedure Code of Ukraine (The Civil Procedural Code of Ukraine, 2004).

The persons on the claims of which the civil case of the abovementioned category can be

initiated by are: mother, father, guardian (trustee), that is, any person who is entitled to custody of the child, including Commissioner of a child institution, in which a child deprived of parental care lived.

The defendant in the case is the person who took the child out of Ukraine and/or maintains him and is one of the parents, a relative of descent from the side of the father or mother, stepmother or stepfather. They are involved in the case – the guardianship and trusteeship body at the actual location of the child who is preparing the report.

When considering this category of cases, the courts must definitely check for the exceptions provided for in Art.12 of the Convention.

But, you should also consider, according to Art. 13 of the Convention, notwithstanding the provisions of the preceding article, the judicial or administrative authorities of the requested state are not required to order the return of the child if a person, institution or other authority proves that:

- a) the person, institution or other body caring for the child did not actually exercise the right of guardianship at the time of displacement or seizure, or gave consent to the displacement or seizure, or subsequently tacitly recognized the displacement or seizure;
- b) there is a serious risk that return will put the child at risk of physical or psychological harm or otherwise create an intolerable environment for the child.

Judicial or administrative authorities may also refuse in order to return the child, if they believe that the child objects to return, and he has reached such an age and maturity level, in which one cannot but take into account his opinion. So, for example, in the case of the European Court of Human Rights “O.S.I. and others v. Romania”, the Romanian national courts, despite the father’s ill-treatment of children, decided to return them to him in accordance with the provisions of the Hague Convention on Civil Law Aspects of International Children’s Kidnapping. The applicant, a Romanian citizen, was married to an Italian citizen; two children were born in the marriage. In the summer of 2015, the family went to Romania, the husband returned to Italy earlier, and the applicant did not return home with her children because of her husband’s ill-treatment. The court presented evidence of systematic beating with heavy objects, insults and humiliations. However, the authorities failed to comply with the return decision because the children refused to return to Italy (“O.S.I. and others v. Romania”, 2019).

Considering the circumstances referred to in this article, the judicial and administrative authorities take into account the information on the social origin of the child provided by the Central Inspectorate of the country of permanent residence of the child. It should be noted that the jurisdiction of the Convention extends to children under 16 years of age permanently residing in a contracting state immediately before committing an act of violation of guardianship or access rights. What distinguishes it from the 1996 Hague Convention on the Protection of Children (Hague Convention, 1996), which aims to ensure protection, including the following categories of children:

- children in respect of whom there are international disputes between parents regarding custody issues or the right of access/contact;
- children who have been the subject of international kidnapping (including in those Countries that are not parties to the Convention);
- children placed abroad in alternative care conditions that do not fall within the definition

of adoption, to which the 1993 Hague Convention on Foreign Adoption does not apply;

- children who are victims of international trafficking in persons and other forms of exploitation, including sexual violence;
- refugee children and unaccompanied minors;
- children moved abroad with their families (Practical Guide to the Application, 1996).

Ukraine joined the Convention on January 11, 2006, when the Supreme Council adopted the relevant law. It entered into force on September 1, 2006 and is being applied today in relations with 49 Member Countries. That is, Ukraine, as a party to the Convention in accordance with Art. 1 and 2 has the obligation to take all necessary measures to ensure the immediate return of children illegally displaced or detained. For this, the fastest real procedures should be used.

It should be noted that the main problems in the implementation of the provisions of the Convention in Ukraine are – the lack of an operational review of this category of cases, since the review takes place according to the general rules of action; problems associated with the lack of a special procedure for the execution of such cases and mutual cooperation with similar bodies in the EU countries, since the Convention provides for an exception to the rules for returning after a year from the moment of transfer, and within these periods it is impossible to consider the case, make a court decision and execute it. And it turns out that the second of the parents, guardians, trustees may never see the child again.

Problems of implementing the Convention mechanism in EU countries.

The rapid ratification of the Convention by many Member Countries is an important confirmation of the potential value of the Convention for all Countries that have implemented it.

It should be said that in Ukraine, as well as in Russia, the problem of applying the Convention is similar, as it was described by E. Pato and N.V. Rostovtseva in their work: “No matter how successful the Convention is, it provides a set of solutions aimed at ensuring a precarious and threatened balance. In this regard, the difficulties arising from its application are not exactly the same in the EU and Russia. In the EU, problems are primarily associated with a large number of sources, while in Russia, which has recently joined the Convention, difficulties arise primarily in the application of its norms” (Pato & Rostovtseva, 2014).

That is, the main problem for the EU, and this is true, is the presence of numerous sources of regulation of one problem and the need to coordinate different legislative traditions and strata of the member countries. The multitude of sources creates difficulties in the interpretation of the concepts on which jurisdictional bodies rely when introducing the mechanism of children return.

It is known that the Convention is not the only child protection instrument in the EU countries. The 1996 Hague Convention on the Protection of Children is also applied to regulate issues related to the international children’s kidnapping (Convention of 5 October 1961). It states: “The 1996 Hague Convention does not replace or amend the mechanism established by the Hague Convention of 1980 for action in situations of international children’s kidnapping. In contrast, the 1996 Hague Convention supplements and strengthens the 1980 Hague Convention with respect to certain aspects. This means that a number of its provisions can be used as an addition to the 1980 Hague Convention, when the latter applies to a specific case. In addition, in Countries and situations where the 1980 Hague

Convention does not apply, the provisions of the 1996 Hague Convention can also be useful as the only source of protection in the international children's kidnapping" (Practical Guide to the Application, 1996).

As to Europe, the European Union has long recognized the benefits of the Convention on the Protection of Children's Rights for its member Countries (Practical Guide to the Application, 1996). The EU's own Regulation on Parental Responsibility is also largely based on the 1996 Hague Convention (Council of Europe Regulation No. 2201/2003, 2003).

An important issue in the existence of these two legal acts is the question of understanding the definition of "illegal movement or restraint", as this is the key in deciding whether to return the child.

The definition of unlawful movement or retention used in the 1996 Hague Convention is consistent with that given in the 1980 Hague Convention, which indicates the complementary nature of the two Conventions. The interpretation and application of the provisions of the 1980 Hague Convention relating to unlawful movement and retention may therefore assist in determining jurisdiction in accordance with the 1996 Hague Convention. The 1980 Hague Convention continues to apply to relations between Contracting Countries of the 1996 Hague Convention, which are also parties to the 1980 Hague Convention (Explanatory Report to the 1980..., 1980), as indicated in the Explanatory Report to the 1980 Hague Convention on the Children's kidnapping – that any discussion on the merits of custody rights should be carried out by the competent authorities in the Contracting State where the child resided until his unlawful transfer or detention.

Ways to solve the problems of the Convention mechanism in Ukraine and EU countries

The problems described in the article of introducing the mechanism of the Convention are some of the existing ones, but requiring close attention from both scientific research and discussion, and prompt response from competent jurisdictions.

Without claiming to be the final solution to the problems highlighted, in the course of the study, several options for solving them were proposed. It is not necessary to consider separately the ways of solving the problems discussed for the EU countries and Ukraine, since they are interconnected and solving the problem inside Ukraine will lead to a relief in the situation in the EU countries.

Regarding the lack of an operational review of this category of cases, the following should be noted. The Civil Procedural Code of Ukraine prescribes that the designated category of cases is considered in the proceedings.

For example, in case No. 2-4237/12, which issued a decision of the Supreme Court of Ukraine on August 29, 2018, which was published on September 11, 2018, the applicant, the Main Department of Justice of Kyiv, filed a lawsuit in December 2012 with a claim for securing a return a small child to the United Kingdom of Great Britain and Northern Ireland in the manner in which the state of Ukraine fulfills its obligations under the Convention (Decision of from 29.08.2018 in case No 2-4237/12.). That is, the actual review period was 6 years. In another case, No. 757/25106/16-II, the Main Department of Justice of Kyiv filed a lawsuit in May 2015 seeking recognition of the unlawful detention of a minor child in Ukraine, as well as his return to his place of permanent residence in the State of Israel, and the court ruling entered into force on November 22, 2018. The actual review period was 3

years (Decision of from 29.08.2018 in case No 757/25106/16-Ц.).

If you consider that the grounds excluding the return of the child, according to Art. 12 of the Convention, is the fact that the child is in a new place of residence, it is almost impossible to execute such a decision.

As a way to solve this problem, the following is proposed: to consolidate the consideration of cases on the return of a child on the grounds provided for by the Convention exclusively in a simplified procedure. This will reduce the time for consideration of this category of cases, and also will not allow excessive appeal in order to delay the consideration of the case.

Unified register of abducted children in the space of Ukraine and the countries participating in the Convention

One of the worst options for children who are considered abducted not only in the context of the Convention is to become a victim of trafficking. In order to organize the safe and, preferably, voluntary return of victims of trafficking in persons, cooperation between the returning and receiving Countries is necessary. The host state should facilitate the return of victims – for example, by conducting checks to identify the victim, conducting a preliminary assessment of the risks and opportunities for social rehabilitation, issuing the necessary personal, travel and other documents, as well as working with the returning state to determine whether a planned return of trafficking victims is safe (Guidelines on the observance, 2014). But, the same mechanism is desirable and necessary to ensure the return of children, in the case when they are not victims of trafficking.

The Council of Europe indicates that each state party to the Convention should “consider” the appointment of national reporters or the creation of other mechanisms to monitor the activities of state institutions aimed at combating trafficking in human beings and the implementation of national legislation (Council of Europe Convention..., 2022). A similar recommendation is contained in the OSCE Action Plan.

Therefore, it should be proposed to maintain a unified record on the territory of the Member Countries of the register of missing children, where information will be entered from the moment the fact of the disappearance of the child is discovered, the type of disappearance of the child, information from the competent authority whose jurisdiction includes the issue of consideration in the territory of the Member Country, and others data until the date of his return to the family.

Mediation as a tool for resolving cross-border family disputes in the context of the 1980 Hague Convention

In family conflicts, the provisions of the Hague Convention of 1980 relate specifically to family conflicts, the use of the mediation institution is an effective tool for coordinated resolution of contentious issues, especially when the interests of the child are affected, where the disputing parties usually need to constantly interact with each other. As enshrined in the UN Convention on the Rights of the Children: “In a dispute arising from the dissolution of a marriage between spouses, an agreed decision may be especially useful to ensure the right of “a child, to maintain on a regular basis ... personal relationships and direct contact with both parents” (UN Convention, 1989).

Compared to other methods of reaching agreed decisions in family disputes, the mediation procedure has several advantages. It creates the conditions for communication between

the parties in a comfortable, informal atmosphere, thereby facilitating the interaction of the disputants and allowing them to develop their own strategies for resolving the conflict. In cases of international children's kidnapping, the use of mediation in resolving conflicts between the abandoned parent and the parent who has taken the child can help the child voluntarily return and establish a mutually acceptable agreement on other contentious issues. Mediation can contribute to the return of the child, based on the consent of the parties reached in the mediation procedure or on the results of any other method of out-of-court dispute resolution (Practical Guide, 1980).

Unfortunately, in Ukraine, such an instrument as mediation neither at the legislative level, nor in an alternative form of protection of rights has yet to be applied, but is only at the preparatory stage. But, the study and borrowing of the experience of the Member Countries in the use of mediation in resolving issues related to the civil law aspects of children's kidnapping is appropriate.

Mediation in cases involving the children's kidnapping should be carried out quickly, regardless of the stage of development of the conflict at which it began. One of the main problems that a mediator may face is the desire of one of the parties to the dispute, contrary to the interests of the child, to circumvent the 1980 Hague Convention on the abduction of children. In this regard, during the procedure, he is obliged to take measures to ensure safety (Pérez-Vera, 1998).

CONCLUSIONS

In the process of scientific research, the goal was set to structurally present the problems of international children's kidnapping in the EU and Ukraine in the context of the 1980 Hague Convention through the creation of a solid theoretical foundation and holistic perception.

To achieve this goal, a classification of the types of abduction of children was proposed: the psychological, social and legal aspects in the EU countries and in Ukraine. As evidenced by the scientific analysis of statistics, children's kidnapping should be divided into several groups:

1. Escape;
2. Disappearance of homeless, minor migrants;
3. Children's kidnapping by other parents;
4. Children's kidnapping by criminals;
5. Other views, as the list is not exhaustive.

Also, the main problems of the implementation of the Convention in Ukraine and the EU member countries were significantly studied and analyzed, the relationships were investigated and it was determined that the main problem for Ukraine is the lengthy process of considering such cases in courts and the lack of alternative ways to solve them, in particular such an instrument like mediation. It is proposed to consolidate the consideration of this case category exclusively in the order of simplified proceedings at the legislative level.

As one of the necessary mechanisms for improving the coordination and monitoring system of the entire process from the loss of a child to his return at the EU level, the creation of a Unified Register of Missing Children is proposed.

REFERENCES

Technical brochure of Finnish Ministry of Justice " International Child Kidnapping " (2022). Ministry Justice

Finland. Retrieved from: <https://oikeusministerio.fi/en/daily-life>

Pires, S.F. (2016). Definition of kidnapping for global epidemic redemption. Retrieved from: https://www.researchgate.net/publication/299416413_Specifying_Kidnapping_for_Ransom_Epidemics_at_the_Global_Level_A_Matched-Case_Control_Design

Pires, S.F. (2019). Ransom Kidnapping: A Global Concern: International and Transnational Crime and Justice. Cambridge: Cambridge University Press, 456.

Convention of 5 October 1961. (1961). Abolishing the Requirement of Legalization for Foreign Public Documents. Retrieved from: https://zakon.rada.gov.ua/laws/show/995_188

Generalized Use of Courts (2017). Consideration of Civil Cases according to Conventions on the Civil Aspects of International Children's Kidnapping: The High Specialized Court of Ukraine for Civil and Criminal Intelligence. Retrieved from: http://search.ligazakon.ua/l_doc2.nsf/link1/VRR00216.html

Decision of from (2015). In case No 6-42049cb14, in Ukrainian. Retrieved from: <http://reyestr.court.gov.ua/Review/43203963>.

The order of execution on the territory of Ukraine of the Convention on Civil Law Aspects of International Children's Kidnapping (2006). Resolution of the Cabinet of Ministers of Ukraine of July 10, 2006 No. 952: Retrieved from: <https://rada.gov.ua>.

The Civil Procedural Code of Ukraine (2004). Law of Ukraine of March 18, 2004. Supreme Council of Ukraine, 40-42, Art. 492

Practical Guide to the Application (1996). Hague Convention on the Protection of Children: Hauge Conference on private international law. Retrieved from: <https://www.hcch.net/>

Council of Europe Regulation No. 2201/2003 (2003). Regarding jurisdiction and recognition and enforcement of decisions on marriage and family matters and parental responsibility.

Hague Convention (1996). For the Protection of Children: Access Mode Official Website of the Hague Conference on private international law. Retrieved from: <https://www.hcch.net/>.

Explanatory Report to the 1980 Hague Convention on the Children's kidnapping, compiled by E. Pérez-Vera, Proceedings of the Fourteenth Session (1980). Tome III, Child Abduction, The Hague, Imprimerie Nationale 1982 (Report of the Fourteenth Session (1980), Volume III, Children's kidnapping), p. 425-467.

Decision of from 29.08.2018 in case No 2-4237/12. Retrieved from: <http://reyestr.court.gov.ua/Review/76349812>.

Decision of from 29.08.2018 in case No 757/25106/16-II. Retrieved from: <http://reyestr.court.gov.ua/Review/78146376>

Guidelines on the observance (2014). Of human rights in the process of returning victims of trafficking to their country of origin: Workshop, Warsaw OSCE Office for Democratic Institutions and Human Rights : ODIHR, 120 p.

Council of Europe Convention on Action against Trafficking in Human Beings (2022). Retrieved from: https://zakon.rada.gov.ua/laws/show/994_858/ed20110301/find?text=%D2%EE%F0%E3%B3%E2%EB%FF+%EB%FE%E4%FC%EC%E8. – Art. 29 (4).

UN Convention (1989). of November 20, 1989 on the Rights of a Child. See Art. 10 (2). Retrieved from: <http://www2.ohchr.org/english/law/crc.htm>.

Practical Guide (1980). To the Application of the Hague Convention of October 25, 1980 On the Civil Aspects of International Children's Kidnapping. Retrieved from: https://mediacia.com/wp-content/uploads/2018/06/Practical-Guide_RUS.pdf.

Pérez-Vera, E. (1998). Explanatory Report on the Hague Convention 1980. In Quatorzième session, Child Abduction, The Hague, Imprimerie Nationale, 425–476. Hague: OOS.

“O.S.I. and others v. Romania” (2019). Retrieved from: https://jurliga.ligazakon.net/news/186661_novyy-obzor-resheniy-espch-ot-verkhovnego-suda

Pato, E., & Rostovtseva, N. (2014). Children's Kidnapping: European and Russian prospects. Law. Journal of the Higher School of Economics. 102-120.