

The procedure for the return of children enrolled in institutions (facilities) to Ukraine

The mechanism for returning children who reside or are enrolled in institutions of various types, forms of ownership and subordination for a 24-hour stay (round-the-clock), to Ukraine is regulated by the Procedure of temporary displacement (evacuation) of children and persons, who reside or are enrolled in institutions of various types, forms of ownership and subordination for a 24-hour stay, and their return to the place of habitual residence (stay), and in case of their travel outside Ukraine – to Ukraine, approved by the Resolution of the Cabinet of Ministers of Ukraine of 01.06.2023 № 546 (hereinafter – the Procedure).

In accordance with para 21 of the Procedure the decision on return of the children delivers by the State (Military) Administration in Oblast, the Kyivska City State (Military) Administration at the place of habitual location of an institution in the form of Resolution of its Head.

Pursuant to para 22 of the Procedure the return of certain children is allowed in case of:

the adoption of a child in accordance with the Procedure for Adoption and Supervision of Compliance with the Rights of Adopted Children, approved by the Resolution of the Cabinet of Ministers of Ukraine on 08.10.2008 № 905 (hereinafter – Adoption Procedure);

the transfer of a child to the parents, other legal representatives;

the receipt of an application of a child about his/her wish to be returned;

the admission of a child aged 16 or older to study at educational institutions in Ukraine in order to obtain professional (professional and technical) or higher education;

other situations that make it impossible for a child to stay outside Ukraine, as confirmed by the conclusion of the Service on Children's Issues;

The decision to return groups of children (two or more children) to the institution at the place of their habitual stay (residence) or another institution before the termination or cancellation of martial law, as an exception, may be delivered after all comprehensive measures have been taken to continue the stay of children in the institutions to which they are displaced (evacuated) by the military administration in oblast, the Kyiv city military administration at the place of habitual location of the institution, in case:

- the institution to which the children are temporarily displaced (evacuated) or the organization that hosts the children cannot continue to maintain them;

- the institution to which the children are temporarily displaced (evacuated) or the organization that hosts the children does not ensure the creation of appropriate conditions for their stay;
- Accompanying persons are unable to exercise their duties, in particular, due to decisions made by the administrative or judicial authorities of the State of temporary stay of children that make it impossible for accompanying persons to exercise their duties;
- employees of foreign diplomatic missions of Ukraine have limited access to children and are unable to contact them in order to protect their rights and interests;
- there are other circumstances that have a negative impact on children at the place of temporary displacement (evacuation).

According to para 25 of the Procedure in order to make decisions on the return of children and persons, the State (Military) administration in oblast, the Kyiv City State (Military) administration examine the issue of the advisability of the return of children.

In case a decision on the advisability of returning children is made, the State (Military) administration in oblast, the Kyiv City State (Military) administration draws up a plan for the return of children, specifying the responsible executors and the timeframe for execution.

When planning the placement of children after their return, the issue of the possibility of transferring children to their parents or other legal representatives is first and foremost examined.

In case of impossibility to transfer the children to their parents, other legal representatives the issue of returning children to the institution at the place of their habitual stay or residence is decided with a view to further returning the children to their parents, other legal representatives or placing them into the forms of family care.

If it is impossible to return children to the institution at the place of their habitual stay or residence, the State (Military) administration in oblast, the Kyiv City State (Military) administration at the place of habitual location of the institution shall decide the issue of transferring children to other institutions, taking into account the individual needs of children, as well as the opinion of parents, other legal representatives of children, or, if it is impossible, to arrange another building for the placement of children, taking into account their needs, requirements of the State building and sanitary standards.

The resolution of the Head of the State (Military) administration in oblast, the Kyiv City State (Military) administration on the return of children before the termination or

cancellation of martial law is issued only after the receipt the approval from the National Social Service of Ukraine for the return of children.

In accordance with para 27 of the Procedure upon the resolution of the Head of the State (Military) administration in oblast, the Kyiv City State (Military) administration on the return of children, the Head of the institution issues an Order to organize the return of children.

According to para 31 of the Procedure the issue of temporary extension of stay of a child outside Ukraine is considered by the State (Military) administration in oblast, the Kyiv City State (Military) administration upon submission of the Head of the institution simultaneously with the issue of returning children if there is a written confirmation of the competent authority of the State, where the child stays, for ensuring:

- appropriate care, upbringing and maintain of a child;
- the possibility for employees of a foreign diplomatic mission of Ukraine to communicate with the child and supervise of his/her living conditions and upbringing.

Pursuant to para 34 of the Procedure the approval for the transfer of a child to parents or other legal representatives is granted by the guardianship authority at the place of residence (stay) of the parents, other legal representatives of the child, or, if the guardianship authority is not technically able to provide such approval, by the relevant State (Military) administration in oblast, the Kyiv City State (Military) administration upon the results of a comprehensive examination of the situation of the family and the child.

After the child is transferred to the parents, other legal representatives, or to persons acting under a power of attorney (authorization), an act is drawn up, which is signed by the persons who have taken the child (person), by the Head of the institution or his/her authorized representative, and by an employee of a foreign diplomatic mission of Ukraine.

The child may also be transferred to the adoptive parents in the presence of an employee of a foreign diplomatic mission of Ukraine in accordance with the manner prescribed by para 82² of the Adoption Procedure.

Pursuant to para 13 of the Procedure temporary replacement (evacuation) of children and persons from one State to another without the consent of the National Social Service of Ukraine is not allowed.

Rights and obligations of accompanying persons

According to para 17 of the Procedure the children may be accompanied during temporary displacement (evacuation) by employees of the institution, and in the absence of such a possibility - by employees of another municipal educational,

healthcare, social service provider, executive bodies of village, town, city councils, military administrations of settlements (by agreement with them), services on children's issues, structural subdivision on social protection of the population, healthcare, education and science of the State (Military) administration in oblast, the Kyiv City State (Military) administration, depending on their subordination.

The accompanying person is at the place of temporary replacement (evacuation) of children and persons on the basis of the relevant order of the Head of the institution or the authority, whose employee is the accompanying person.

In case the Head of the institution (facility) cannot directly accompany children and persons, he/she is obliged to authorize one of the accompanying persons to exercise the powers specified in para 18 of this Procedure.

In accordance with para 18 of the Procedure the Head of the institution or an accompanying person authorized by him/her for the period of execution of their duties during the temporary displacement (evacuation) of children at the place of their temporary displacement (evacuation):

- are responsible for the life and health of children;
- exercise the powers of legal representatives of children (except for transactions related to housing and property rights on behalf and in the interests of the child, giving consent to adoption of a child and change of citizenship);
- take measures to prevent any attempts to violate children's rights;
- inform parents who are not limited in their rights in relation to children or other legal representatives of children about their temporary displacement (evacuation), health conditions, conditions of stay, upbringing and development;
- participate in the transfer of children to their parents or other legal representatives;
- immediately inform the State (Military) administration in oblast, the Kyiv City State (Military) administration at the place of habitual location of the institution, and in the absence of such a possibility - the National Social Service of Ukraine about problematic issues that arise on the way or at the place of temporary displacement (evacuation) of children;
- inform the State (Military) administration in oblast, the Kyiv City State (Military) administration at the place of habitual location of the institution and the foreign diplomatic mission of Ukraine about the change (rotation) of accompanying persons;

- take measures to obtain a passport of a citizen of Ukraine for a child who has reached the age of 14, as well as, if necessary, a passport of a citizen of Ukraine for traveling abroad or an identity card for returning to Ukraine;
- keep in constant contact with a foreign diplomatic mission of Ukraine to promptly inform, if necessary, about violations of children's rights, obtain the necessary assistance in restoring violated children's rights, and resolve other issues in the interests of children;
- ensure the return of children to Ukraine, except for children who have been reunited with their parents or other legal representatives, left the group of temporarily displaced (evacuated) children during the period of stay at the place of temporary displacement (evacuation) due to adoption, placement in families of Ukrainian citizens, transfer to another institution, reaching the age of majority, admission to a professional (professional and technical), professional pre-higher, higher education institution and other cases when the return of the child as part of the group is impossible, as confirmed by the relevant documents.

Pursuant to para 19 of the Procedure the Order of the Head of the institution entrusts accompanying persons with the following responsibilities:

- child care, upbringing and development of children;
- taking measures to ensure that children receive educational services in accordance with their age and level of development, rehabilitation, medical, psychological and other assistance in accordance with their needs;
- taking measures to return children to Ukraine, except for children who have been reunited with their parents or other legal representatives, or who have left the group of temporarily displaced (evacuated) children during their stay at the place of temporary displacement (evacuation) in connection with adoption, placement in the families of Ukrainian citizens, transfer to another institution, reaching the age of majority, admission to a professional (professional and technical), professional pre-higher, higher education institution and in other cases when the child's return as part of the group is impossible, as confirmed by relevant documents;
- assistance in communication between children and their parents or other legal representatives, if such communication does not contradict the interests of the child;
- immediately informing the Head of the institution or person authorized by him/her about problematic issues that have arisen on the way or at the place of temporary displacement (evacuation) of children;
- preventing any attempts to violate children's rights;

- providing (if necessary) the administrative or judicial authorities of the State of temporary stay of children with information and documents necessary for them to make decisions on the appointment of accompanying persons as temporary guardians of children (other decisions necessary for them to fulfil their duties in relation to children in the State of temporary stay), with translation certified in accordance with the procedure established by law.