

## Legislative Update

### on Evacuations and Returns of Care Institutions

On 10 September 2024, the Government of Ukraine adopted [Resolution #1026](#), which amends the procedures for the evacuation and return of institutions where children and persons with specific needs (PwSN) reside. The original procedures were established in June 2023 with [Resolution #546](#), as detailed in the [UNHCR Legislative Update for June](#).

The adopted Resolution brings important changes to the existing framework, while the general principle remains the same: Returns of residents of institutions evacuated abroad during the period of martial law are considered on an exceptional basis if suitable placements cannot be secured for them in facilities outside the country. If a return is considered justified, priority will be given to placing individuals under the care of parents, relatives, or legal representatives whenever possible.

The key amendments are as follows:

- **Individualised approach and individual needs assessment**

The Resolution now clarifies the obligation of Oblast Administrations together with the relevant authorities to **assess the individual needs of the relevant child or adult**<sup>1</sup>, along with a **risk, facility and technical assessment**.<sup>2</sup> While previously returns were considered for an entire institution, the Resolution now takes an individualized approach and specifies that the terms and conditions for the return of residents are determined individually, taking into account specific needs of a child or an adult in care and the time required to plan their return to placements that have been chosen and prepared specifically to host them. Information on the placement must be provided by the initiator of the return, along with other required documents, to the Oblast Administration.

- **Shift from Institutional to Small Group Returns**

The Resolution shifts from institutional returns to small group returns. The amended resolution specifies that the terms for collective returns of residents are now determined only for small groups of children or PwSN.<sup>3</sup> This process takes into account their specific needs and the time required to plan appropriate placements (as per above paragraph).

- **Post-return care arrangements**

The Resolution **prioritises placing returning children and PwSN into family-type care or small group homes** in alignment with the broader policy on deinstitutionalization. Group returns to institutions are considered only as a very exceptional measure in cases of serious human rights concerns or severe risks to the physical and mental integrity of children of PwSN while in care institutions abroad.

- **Personal responsibility**

The Resolution **establishes the personal responsibility** of the heads of Oblast (Kyiv city) Administrations. These officials may be held accountable for any failure to comply with the procedures outlined in the amended Resolution. Depending on the nature and severity of non-compliance, this accountability may result in disciplinary, administrative, or even criminal liability.<sup>4</sup>

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<sup>1</sup> Template to be adopted jointly by MoSP, MinRe and MinInterior

<sup>2</sup> **Risk assessment** is conducted to determine whether the building complies with safety standards, including its proximity to the borders of the Russian Federation, Belarus, and areas of hostilities, as well as verifying the presence of adequate shelter facilities. Additionally, the **technical assessment** includes a questionnaire to evaluate any damage sustained.

The **facility assessment**, conducted in collaboration with the National Social Service (NSS), ensures that the facility is equipped with the necessary resources to meet residents' needs, such as basic heating, water, and special accessibility features.

While the resolution presents these assessments as distinct responsibilities for the administration, in practice, they are part of a unified assessment process of filling in the "Act on the safety and appropriate conditions for care in institutions of different types and ownership" adopted jointly by MoSP, MinRe and MinInterior.

Return to small-size institutions is possible to hromadas with moderate or acceptable security risks as defined by the [Methodology of Risk Assessment in Educational Sphere](#) (adopted in August 2024).

<sup>3</sup> It is important to note that this provision specifically addresses **collective (group) returns**. There are separate guidelines for single returns.

<sup>4</sup> Criminal/administrative liability is only possible if the misdemeanour/crime is foreseen in the Code of Administrative Offences/ Criminal code.

The procedure for **collective returns**<sup>5</sup> is as follows:

<b>Initiation of the return</b>	<ul style="list-style-type: none"> <li>▪ The Head of the Institution (or relevant authority, depending on the management structure) initiates the return process. For example, if the orphanage falls under the jurisdiction of the Ministry of Social Policy (MoSP), the Department of Social Policy (DoSP) can initiate the return.</li> <li>▪ The initiator will be responsible for compiling a list of documents, including those that confirm the justification for the return and the future placement of individuals upon their return.</li> </ul>
<b>Assessment and decision-making</b>	<ul style="list-style-type: none"> <li>▪ The Oblast Administrations assess the justification for the return.</li> <li>▪ If return is deemed justified, the Oblast Administration proceeds with the assessments, including individual needs, risk, technical, and facility evaluations together with relevant authorities (<i>explained in footnote 2</i>).</li> <li>▪ The Head of the Oblast Administration prepares a Return Order, which includes a complete set of documents and instructions for the return process.</li> </ul>
<b>Authorisation</b>	<ul style="list-style-type: none"> <li>▪ The National Social Service (NSS) has to authorise the Return Order.</li> <li>▪ When the NSS declines a return, it informs the Coordination Center on Child Protection during Martial Law (at the MoSP).</li> </ul>
<b>Return</b>	<ul style="list-style-type: none"> <li>▪ After the authorization by the NSS, the Oblast Administration issues its Return Order.</li> <li>▪ Based on the Order of the Oblast Administration, the Head of the Institution issues its Return Order and prepares for the return process.</li> </ul>

<sup>5</sup> Children and PwSN may directly approach the designated decision-making official with an individual request for return. Upon receiving such a request, the head or staff of the institution is responsible for formally forwarding it to the relevant authority, (such as the DoSP, Child Protection, or the Department of Education). The authorities will assess the child's reasons for requesting a return and, if necessary, arrange for appropriate psychological support. They will also investigate any potential rights violations and thoroughly evaluate the justification for the return. This evaluation follows a procedure similar to, but distinct from, that of collective returns. The NSS in this process does not have the authority to issue approval, but rather reviews the case, providing analysis, suggestions, or objections, if any. If the authorities deem the return justified, the Oblast Administration will issue formal written approval to proceed with the return. The return process will prioritize ensuring that the individual is placed under the care of a legal representative.

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