According to Articles 7 (1) (d), 8 (2) (a) (vii)-1 and 8 (2) (b) (viii) of the Rome Statute, unlawful deportations and forced transfers of civilians, including children, may be qualified as crimes against humanity and/or war crimes.

The Report on Violations of International Humanitarian and Human Rights Law, War Crimes and Crimes against Humanity Committed in Ukraine (1 April - 25 June 2022) by the panel of experts of the Moscow Mechanism of the OSCE states: "During the visit to Ukraine, the mission received confirmation of the existence of cases of deportations, although [...] could not obtain the exact number of affected children. Mass forced transfers of civilians during the conflict to the territory of the occupying power are prohibited by the Geneva Conventions of 1949. This practice is considered a war crime."[1]

The report of the Independent International Commission of Inquiry on Ukraine, among other things, includes information on the forced transfer and deportation of children, which "are tantamount to war crimes." The commission identified three main cases when the Russian authorities transferred Ukrainian children from some areas controlled by the Russian authorities in Ukraine to other such areas or to the Russian Federation. In particular, these are children who:

- lost parents or temporarily lost contact with them during military operations;

- are separated from parents, when one of the parents was detained at the so-called filtering points;

- and children who were at care institutions.

Experts suggested that "Russian government officials have taken legal and political measures against Ukrainian children transferred to the Russian Federation, in particular, granting Russian citizenship and placing children in foster families, which probably creates grounds for which some of the children will have to stay forever in the Russian Federation. In this regard, in May 2022, President Putin signed a decree on simplifying the procedure for obtaining citizenship of the Russian Federation for certain categories of children. In July 2022, Maria Lvova-Belova, the Commissioner for the Children's Rights under the President of the Russian Federation, stated in an interview with the media that "now that the children have become citizens of Russia, temporary guardianship can become permanent." In October 2022, the Commissioner stated that the Russians "will set up a normal procedure for placing children - all these children will enter the federal data bank, and all parents who have expressed a desire to adopt children in large numbers will be able to choose those who are close to them." According to Lvova-Belova, because of difficulties with the "new parents" visiting the territories, not far from the hostilities, the authorities of the Russian Federation will "help with the arrival" of the children in the Russian Federation. The publication containing the relevant statement of the Commissioner was removed from the official website of the Interfax news agency.

The commission found that *the transfer of children did not meet the requirements established by international humanitarian law and was not justified by security or health reasons.* In addition, according to experts, there was an opportunity to evacuate the children to the territory under the control of the government of Ukraine. The Report indicated that, probably, the Russian authorities did not try to establish contact with the children's relatives or with the Ukrainian authorities. Although the transfers were supposed to be temporary, for various reasons most of them became long-term, and parents or legal guardians and children faced a number of obstacles in establishing contact, family reunification and

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returning the children to Ukraine. According to Article 85(4)(b), "Unjustified delay in the repatriation of prisoners of war or civilians" is a serious violation of Protocol Additional I. The fact that the article was adopted by consensus is significant, indicating the customary nature of the rule and the universal recognition of its binding nature. Unjustified delay in repatriation as a serious violation of laws and customs applied in international armed conflicts within the established framework of international law is a war crime[2].

On March 17, 2023, the Pre-Trial Chamber of the II ICC issued warrants of arrest for Vladimir Putin and Maria Lvova-Belova in connection with war crimes in the form of illegal deportation of the population (children) and illegal transfer of the population (children) from the occupied territories of Ukraine to Russia (according to with Articles 8(2)(a)(vii) and 8(2)(b)(viii) of the Rome Statute). In his Statement, Prosecutor of the ICC Karim Khan emphasized that the incidents uncovered by his Office include the deportation of at least hundreds of children taken from orphanages and children's homes. Many of these children were given up for adoption in the Russian Federation. In order to speed up the granting of Russian citizenship, the legislation of the Russian Federation was changed by issuing presidential decrees. According to the Prosecutor's Office, such actions were aimed at facilitating the adoption of Ukrainian children by Russian families, and the suspects intended to permanently take the minors from their own country. Illegal deportations and forcible transfers of children were carried out in the context of acts of aggression committed by Russian military forces against the sovereignty and territorial integrity of Ukraine, which began in 2014[3].

The Russian Federation tries to justify illegal deportations and forced transfer on humanitarian grounds, in particular, portraying this process as evacuation. The decision of the Trial Chamber in the case "Prosecutor v. Blagojevich and Jokic"[4] emphasized that evacuation should be a voluntary decision of the affected party. In this context, coercion is not limited to physical force and also includes the threat of violence, harassment, detention, psychological oppression, abuse of power, deliberate creation of an environment of danger. Parties to the conflict have an obligation to prevent transfer caused by their own actions, including intimidation of the population and indiscriminate attacks. In addition, the evacuation rule has a protective element that is absent in the case of deportation.

The actions of the Russian Federation aimed at illegal deportations and forced transfer of Ukrainian children have been repeatedly condemned, both at the level of foreign parliaments and in regional and international organizations.

For example, on 15 September 2022, the European Parliament adopted the Resolution on human rights violations in the context of the forced deportation of Ukrainian civilians to Russia and the forced adoption of Ukrainian children in Russia (2022/2825(RSP)). The Resolution, among other things, strongly condemns the forced deportation of Ukrainian civilians, including children, to Russia, as well as Russia's disgusting practice in so-called filtration camps in which families are separated. In addition, the European Parliament called on Russia to fully comply with its obligations under international law and immediately stop the forced deportation and forced transfer of children to the territories occupied by Russia and to the Russian Federation, cancel any interstate adoptions of children taken from the entire internationally recognized territory of Ukraine, reverse all laws promoting the adoption of Ukrainian children[5].

On 5 April 2023, responding to the Russian Federation's desire to use the informal UN Security Council Arria-formula meeting as a platform for disinformation, 49 states and the EU unanimously condemned

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the actions of the Russian Federation in Ukraine, in particular, the forced deportation of Ukrainian children, as well as other serious violations against children. committed by the Russian military in Ukraine[6].

Article 2 (e) of the Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter - the Genocide Convention)[7], reproduced in Article 6 (e) of the Rome Statute of the International Criminal Court, provides for that "forcible transfer of children from one human group to another" is the crime of genocide if it is committed with the intent to destroy, in whole or in part, any national, ethnic, racial or religious group as such.

The abduction of children from the occupied territories of Eastern European states for the purpose of their Nazism during the Second World War was recognized as a particularly cruel and unacceptable act by the international community. In the judgment of the Nuremberg Military Tribunal in Greifelt et al. (the so-called RuSHA case) dated 10 March 1948, this practice was qualified as genocide[8]. Subsequently, this conclusion was repeated in decisions on cases of forcible transfer of children, which were considered by the Supreme National Tribunal of Poland and the Military Court of Great Britain[9].

The forcible transfer of children from one human group to another has been enshrined as one of the material elements of the crime of genocide since 28 March 1947. In the commentary to Article 3 (a) of the draft Convention on the Prohibition of Genocide, prepared by the Economic and Social Council, it is emphasized that "the separation of children from their parents leads to the imposition of a culture and mentality different from the parents' mentality on the children, who are at a vulnerable and receptive age. Such a process, as a rule, leads to the disappearance of the group as a cultural unit in a relatively short time."[10] The relevant considerations, among other things, testify to the universal vision of the members of the international community of children as a key component of the social and cultural well-being of the state and the survival of the nation.

The prohibition of genocide is a peremptory norm of international law (jus cogens), which makes any deviation from it impossible. It existed at the universal level even before the adoption of the relevant UN Convention, as evidenced, in particular, by UN General Assembly Resolution 96(1) "The Crime of Genocide" dated 11 December 1946[11]. In 1951, the UN International Court of Justice declared that the prohibition of genocide is binding on states even in the absence of a treaty obligation[12]. The problematic point in this case is that, usually, the state and individuals who commit genocide in the form of forcible transfer of children to another human group refer to humanitarian considerations in order to justify their actions. At the same time, the damage caused to forcibly transferred children and their rights makes appropriate references impossible, as reflected in the position of prosecutor Harold Nilly in the case "United States America v. Greifelt" (US Military Tribunal, Nuernberg, 10 October 1947 – 10 March 1948). The prosecutor insisted that the guilty person is not protected by the reference to the good treatment of the victim. Innocent children were abducted precisely for the purpose of teaching them Nazi ideology and raising them as "good" Germans. This is an aggravating, not a mitigating, circumstance."[13]

Among the arguments in favor of recognizing the forcible transfer of children to another human group as genocide, there are primarily two:

1) destructive consequences of such practice for the existence of the group, and

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2) children belong to vulnerable groups of victims who can be imposed the identity of the criminal.

During the development of the Convention on the Prohibition of Genocide, the delegate from the United States, John Maktos, as well as the delegate from Greece, Alexander Vallindas, argued that because of its harmful effect, the forcible transfer of children is not a form of cultural, but physical or biological genocide. It is interesting that the Soviet delegate Valery Morozov strongly opposed the inclusion of this material element in the text of the Convention on the Prohibition of Genocide. He argued that the forcible transfer of children "goes far beyond the established provisions" and in retrospect none of these acts constituted genocide because the target group was not exterminated. Morozov equated genocide with physical extermination, which was not supported by the international community even during the drafting of the Convention on Genocide[14].

In subsequent international judicial practice regarding the interpretation of the mentioned treaty, it was established that the purpose of criminalizing the forcible transfer of children as genocide is not only to sanction the direct act of forcible physical transfer, but also the threats or injuries that led to the implementation of such acts. In addition, since the Convention does not provide for either the form of transfer of minors (adoption, guardianship, placement in institutions), nor the length of stay of minors outside their group, provided there is a special intent, even temporary transfer may be qualified as genocide.

Russia has considerable experience in implementing a policy of eradicating the identity of minors from protected groups by separating them from their families and forcibly Russifying them. Thus, since the 1920s, children from among the indigenous peoples of Siberia were taken away without their parents and placed in remote closed institutions for "re-education". In the 1940s, during the civil war in Greece, the USSR forcibly deported about 30 thousand Greek minors under the pretext of evacuation. The children were placed in training camps in the territory of the countries of the socialist bloc, where their militarization and indoctrination took place. In November 1948, this practice was condemned in two resolutions of the UN General Assembly. These and subsequent resolutions demanding the return of minors were not implemented[15].

The relevant actions of the Russian Federation towards the children of Ukraine are not chaotic and sporadic, but have signs of a genocidal policy aimed at turning Ukrainian children into enemies of their own nation. The pace and scope of the implementation of the mentioned policy increased significantly in connection with the full-scale invasion of Ukraine by Russia on 24 February 2022.

According to the ICC Elements of Crimes, in order to prove the commission of genocide by forcible transfer of children from one protected group to another, the availability of the following elements must be demonstrated:

1. The perpetrator forcibly transferred one or more persons.

2. The transferred persons belonged to a separate national, ethnic, racial or religious group.

3. The perpetrator acted with the intent to destroy, in whole or in part, that national, ethnic, racial or religious group as such.

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4. The transfer took place from one group to another.

5. The transferred persons were younger than 18 years.

6. The perpetrator knew or should have known about the age of the transferred persons.

7. The conduct took place in the context of a clear pattern of similar conduct directed against that group which itself could have caused such destruction[16].

The elements of crimes provide for that the violent nature of the transfer must be interpreted broadly, not only as the use of physical force, but also as coercion, threat of force, detention, psychological pressure, abuse of power, creating an atmosphere of fear and lack of freedom. The most debatable under these circumstances is the voluntariness of the consent given by legal representatives for the transfer of children from the temporarily occupied territories to "re-education" camps. In favor of the forced nature of such a transfer of minors, the following facts testify:

- psychological pressure (each of the cases of transfer of children followed by indefinite detention was preceded by the return of several groups of minors, which created the illusion of safety and the feeling of a "bad mother (father)" in connection with the refusal to repeat a "positive" experience);
- abuse of power (representatives of the occupation administration, Russian military and/or local collaborators came to homes and insisted on making the "right decision");
- threats and intimidation (parents' refusal could be interpreted as a threat to the best interests of the child, and, therefore, a reason for deprivation of parental rights by the occupation authorities);
- the general atmosphere (armed conflict with a permanent threat of indiscriminate missile, air, and artillery strikes, limited access to information, misunderstanding when deoccupation will take place).

In addition, "consent" was given for the temporary relocation, rest and return of the child within the stipulated period depending on the institution (2-3 weeks). Therefore, the actions of the Russians regarding the arbitrary extension of the period of moving children, changing their place of stay (including without notifying the parents), refusing to centrally return minors are not covered by consent given under duress. Moreover, in one of the camps, about 200 Ukrainian children aged 14-17 were kept without the consent of their parents[17].

In the Report dated 4 May 2023, experts of the Moscow Mechanism emphasize that "involuntary transfer always involves an element of coercion, but this element does not necessarily involve the use of physical or other force. Rather, the emphasis is on "the absence of real choice /…/ in the process of /…/ transfer". At the same time, "it does not matter whether the transfer is permanent or temporary." The experts also concluded that even despite the initial consent of their legal representatives for their children to stay in the camps, the Russian occupation authorities' arbitrary extension of the terms of detention of minors constituted the transfer without consent and separation from their families, which equates the situation of such children to forcibly transferred or deported[18].

By manipulating the consciousness of legal representatives who are in a vulnerable situation, senior officials of the Russian Federation, as well as representatives of the administration of child care facilities,

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threaten them with criminal liability from Ukraine for collaborationist activities[19]. As of 9 May 2023, not a single case of criminal or administrative prosecution of legal representatives of minors, forcibly transferred and/or deported to the territory under the control of the Russian Federation in connection with "consent" given under duress has been recorded. Moreover, the Secretariat of the Ukrainian Parliament Commissioner for Human Rights emphasizes that there cannot be any criminal liability in this case, and legal representatives and minors are victims of the Russian policy aimed at forcibly changing the identity of children, separating them from their families, militarization and indoctrination of consciousness.

Intimidating the legal representatives, Russian agents seek to leave them and the children forever in the territories under the control of the Russian Federation. Such actions, together with several hours of "preventive talks" with the participation of representatives of the security forces, attempted bribery and threats to intensify hostilities, testify in favor of the presence in the actions of the responsible persons of the signs of a separate war crime, namely: the unjustified delay in the repatriation of minors[20].

In the Report dated 4 May 2023, the experts of the Moscow Mechanism note that the absence of a separate system for the repatriation of Ukrainian children taken from the theater of hostilities is a violation of the right to repatriation and the obligation to facilitate such return. The pattern efforts of the Russian authorities testify to the deliberate impossibility of further evacuation of minor children to third countries or back to safe areas of Ukraine. Experts of the Moscow Mechanism also emphasized that even in the case of the advance of the Ukrainian armed forces, the Russian Federation itself was obliged to look for alternative ways and methods of timely return of children[21].

In order to identify whether minors belong to one of the protected groups in accordance with the understanding of Article 2 of the Convention on Genocide, the criterion of citizenship is important. First of all, because a child's self-identification as a member of a protected group is not permanent and depends, in particular, but not exclusively, on age, upbringing and social environment. In addition, according to existing international jurisprudence, a "national group" is a set of people who have a common legal relationship, based on common citizenship, combined with mutual rights and obligations[22].

According to Article 7 of the Law of Ukraine On the Citizenship of Ukraine, a person whose parents or one of parents were citizens of Ukraine at the time of his/her birth, as well as persons who were born in the territory of Ukraine from stateless persons who legally reside in the territory of Ukraine, shall be citizens of Ukraine[23]. The imposition of Russian citizenship on minors from the temporarily occupied territories does not affect the children's affiliation to the Ukrainian national group. Such an act is a violation of international law and has been repeatedly condemned at the universal level in the resolutions of the UN General Assembly[24], and at the regional level - in EU statements[25]. According to paragraph 6 of part 2 of article 5 of the Law of Ukraine On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine, "Forcible automatic acquisition of citizenship of the Russian Federation by citizens of Ukraine living in the temporarily occupied territory is not be recognized by Ukraine and is not a reason for the loss of Ukrainian citizenship."[26]

Children who were deported from the temporarily occupied territories of Ukraine and transferred to Russian families may also be identified as members of the Ukrainian national group in connection with other objective criteria: connection with the territory and ethnic group, language, culture, traditions The existing practice of international court tribunals is in favor of this approach. In Judgement on case "Prosecutor v. Vidoje Blagojevic and Dragan Jokic" the Trial Chamber emphasized: "A group consists of

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individuals, as well as its history, traditions, connections between members and with other groups, relations with the land. [...] the physical or biological destruction of a group is the likely result of a violent transfer of a population, if this transfer is carried out in such a way that the group can no longer restore itself, especially when it involves the separation of its members."[27]

With its actions aimed at the illegal deportation and forcible transfer of Ukrainian children to the Russian national group, the aggressor state, among other things, seeks to implement the policy of demographic engineering. On 11 January 2023, during a meeting with members of the government, Putin called for special attention to be paid to acute problems in the field of demography of the Russian Federation[28]. He named 5 regions with low birth rates, which are the Penza, Leningrad and Ryazan oblasts, in which deported Ukrainian children were forcibly transferred to Russian families, as well as the Smolensk oblast and the Republic of Mordovia, where children were deported under the pretext of evacuation or re-education.

In favor of the existence of a policy regarding the forcible transfer of Ukrainian children to the Russian group, the statements of Russian officials testify. Thus, Maria Lvova-Belova calls the activity related to the "placement" of Ukrainian minors in Russian families as "jewellery" one[29]. The statements of high-ranking officials are supported by cpecific actions, and the process of forcible transfer of minor Ukrainians is well institutionalized.

Russia is trying to legitimize deportations and forcible transfer, referring to the need to take Ukrainian minors "for security and humanitarian reasons" (the so-called "evacuation"), for rest and recreation (placement in so-called "re-education camps"), to receive medical services (within "preventive medical examination"). For this purpose, propaganda mechanisms are actively used: interviews with competent high-ranking officials, information digests, videos with testimonies of deported children and the families that took them in for upbringing. At the same time, commenting on the forcible transfer of Ukrainian children to Russian families, the Commissioner Maria Lvova-Belova noted in April 2023: "It is important to understand that the territories of the DPR and LPR have been shelled by the Armed Forces for many years, and most of the orphans from social institutions of the republics are aware of this. Children do not perceive Russia as an enemy and expect protection and help from us, therefore staying in a safe territory in Russian foster families is not a traumatic circumstance for them." At the same time, the Commissioner's bulletin mentions at least 28 children deported from Mariupol who are staying in Russia in family forms of upbringing[30]. Back in July 2022, Maria Lvova-Belova testified that these minors showed a negative attitude towards the Russian Federation, hated President Putin, sang the Ukrainian national anthem and shouted "Glory to Ukraine". After being forcibly transferred to Russian families, the children, according to the Commissioner, "began to love" Russia[31].

The ultimate goal of the implementation of the policy of the Russian Federation is the eradication of Ukrainian national identity in minors, turning them into enemies of their own nation, absorbing them into the Russian national group and making the future existence of a part of the Ukrainian national group impossible by breaking the ties of kinship between generations. Such forcible transfer of children can lead to the physical disappearance of the group, as the group ceases to exist as it was.

The corresponding intention can be interpreted from the statements of Russian agents. The most demonstrative from this point of view is the thesis of Maria Lvova-Belova during a speech at a briefing in the Public Chamber of the Russian Federation. The Commissioner positively evaluates the experience of

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"re-education" of deported minors from Mariupol, who, despite the fact that at first, they were hostile to everything Russian, after a few months of stay in families in the territory of the occupying state, began to integrate into Russian society and love Russia[32]. Funds from the Presidential Grants Fund are allocated for the formation of favorable attitudes towards the Russian Federation. Thus, more than 299 million rubles (about 3,642,743 dollars) was received by Assistance to Orphans of Donbass project, one of the tasks of which is "organization of patriotic upbringing of orphans - pupils of orphanages of the so-called DPR/LPR and members of foster families using opportunities of Don Cossacks" in the process of "changing the Motherland"[33].

According to the testimony of the Commissioner for Children's Rights under the President of the Russian Federation, Maria Lvova-Belova, rest in the camps was aimed at familiarizing children with the Russian language, culture and prospects for a bright future in Russia[34]. The representatives of the occupation administrations define the goal even more pretentiously "to raise real patriots of the Motherland in the shortest possible time"[35]. Obviously, the Russian Federation is understood as the motherland. For example, the Deputy Prime Minister of the Republic of Tatarstan, Leyla Fazleeva, noted that "all camps... are aimed at patriotic education of youth, development of communication skills, and preservation of [Russian] cultural heritage."[36] Such statements indicate, at the very least, an attempt to "appropriate" Ukrainian children, weakening the Ukrainian national group and strengthening the Russian one.

Given that statements regarding the transfer of Ukrainian children to the Russian group and calls and incitements to do so are made publicly, as well as with the assistance, and often - at the initiative and on behalf of official representatives of the Russian Federation, they are another confirmation of the existence of a formed policy of the Russian side regarding the deliberate transfer of Ukrainian children in the Russian national group.

In addition, for the Russification of Ukrainian children, forced transfer to Russian families is not mandatory. Taking into account the testimony of minors who managed to be returned from "re-education" camps, it is possible to assert the desire of the Russians to eradicate the Ukrainian national identity also through temporary separation from legal representatives, placement under the round-the-clock control of Russian agents together with peers from among Russian citizens, restrictions on communication with family, prohibitions to communicate in the Ukrainian language and to show loyalty to Ukraine, transfer to study according to Russian educational programs, militarization, indoctrination, involving in Russian Orthodoxy[37].

The forcible transfer of Ukrainian children to the Russian national group takes place in the conditions of the aggression of the Russian Federation against Ukraine. The latter is accompanied by the commission of numerous war crimes and crimes against humanity. According to international court judge Volodymyr Vasylenko, a characteristic feature of the Russian genocide against the Ukrainian nation is precisely that its material elements are other international crimes united by a common intention - to destroy the Ukrainian national group as such, at least partially[38].

Taking into account all the above-mentioned aspects in their totality, namely, the existence of a state policy of the Russian Federation, which is also confirmed by the public promotion of this policy by official representatives of the state, regarding the deportation of Ukrainian children to the territory of Russia, cultural and educational activities aimed at changing their consciousness, as well as the promotion of service in the ranks of the Russian armed forces, the imposition of Russian citizenship on children and

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their parents, the placement of children in Russian families, the actions of the Russian Federation constitute the crime of genocide in terms of the forcible transfer of children from one protected group to another.

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