

ADMINISTRATIVE AND LEGAL REGULATION OF HUMANITARIAN AID UNDER MARTIAL LAW

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Abstract.

Since 2014, humanitarian aid has been one of the factors that has helped to ensure the livelihoods of the civilian population in eastern Ukraine (Donetsk and Luhansk oblasts). However, since the end of February 2022, humanitarian aid has become an important element of support for the population of Ukraine, as many citizens have found themselves in an extremely vulnerable economic, social and psychological situation under martial law. Since the beginning of the full-scale invasion of Ukraine by the Russian Federation, the problem of providing humanitarian aid,

charitable donations and free assistance to military personnel and civilians, primarily internally displaced persons, has become urgent. Both Ukrainians and the international community, volunteers, NGOs and charitable foundations have united to help Ukraine. Responding to the challenges, the state began to rapidly restructure and diversify the existing system of providing humanitarian aid, charitable donations and free assistance to ensure that they are promptly delivered to those in need. The public became more active and joined forces in providing assistance to both internally displaced persons and military units, which led to the creation of a significant number of charitable organizations and intensified volunteerism. At the same time, cases of criminal offenses in the use of humanitarian aid and charitable donations, including fraud, misuse of aid, embezzlement, etc. have become more frequent.

Keywords: administrative and legal regulation, humanitarian aid, martial law, peculiarities, improvement.

Introduction. Everyone is born equal and expects to be treated similarly before the law in cases involving criminal activity and other obligations (Sokurenko, Morhunov, Ablamskyi, 2023). The effectiveness of ensuring the rights of citizens depends on the existence of an effective mechanism for their protection and defense, the elements of which are the regulatory framework, the system of authorized entities, legal instruments (forms and methods of their activities), guarantees, etc (Bezpalova, 2022). Historical events that have taken place since 2014 clearly demonstrate that the encroachment on the state unity and territorial integrity of Ukraine began with the annexation of Crimea by the Russian Federation and the occupation of parts of Donetsk and Luhansk regions. These events changed the lives of Ukrainians, as many of them lost their homes and income. On April 14, 2014, an anti-terrorist operation (since April 30, 2018, the Joint Forces Operation) involving the Armed Forces of Ukraine began in eastern Ukraine. Against the backdrop of these events, the public became more active and joined forces to provide assistance to both internally displaced persons and military formations, which led to the creation of a significant number of charitable organizations, foundations, intensification of the volunteer movement, etc. At the same time, unfortunately, cases of criminal offenses in the field of humanitarian aid and charitable donations have become more frequent, including fraud, misuse of aid, theft of humanitarian aid, etc.

Humanitarian aid is an important element of support for the population of Ukraine, which under martial law has found itself in an extremely vulnerable economic, social and psychological situation. In such circumstances, we can state the leading role of international support, which was made possible by the accumulation of efforts of the world's leading countries, international organizations and foundations. Thanks to this and the support of the United States and the EU, the population of Ukraine did not suffer a humanitarian catastrophe in the field of housing and food supply in the first months of military aggression (Avramova, Korniyenko, 2022, p. 11). However, the enormous humanitarian needs of the population, which was effectively deprived of basic living conditions, led to a number of challenges in the organizational, regulatory and legal spheres, and created a favourable environment for crime. This situation, in the context of spontaneity,

uncertainty, complications in the exercise of control and supervisory powers of public authorities, which were especially characteristic in the first days of martial law and laid the further vector of activities for receiving, providing, processing, distributing and controlling the targeted use of humanitarian aid, requires improvement of the mechanism of administrative and legal regulation of humanitarian aid. A number of scholars have devoted their research to the essence of the legal regulation of humanitarian aid and problematic aspects of this issue through the prism of its interdisciplinary understanding. However, this problem in the context of martial law arises in the light of fundamentally new challenges that significantly transform Ukrainian society, introducing a fundamentally new meaning into the issue of administrative and legal regulation of humanitarian aid. At the same time, this problem requires a comprehensive view, including taking into account the leading ideas of representatives of the international scientific community.

The purpose of the article is to determine the essence of the administrative and legal regulation of humanitarian aid under martial law. To achieve this goal, it is necessary to solve the following tasks: to reveal the essence of aid in the conditions of martial law, to determine its key features; to work out the views of domestic and foreign scientists regarding certain aspects of this issue; to analyse in detail the regulatory and legal basis of receiving, providing, registration, distribution and control over the targeted use of humanitarian aid; to determine existing shortcomings in the field of administrative and legal regulation of humanitarian aid; on the basis of understood problematic aspects and positions of foreign researchers, to propose ways of improving the procedure for receiving, providing, processing, distributing and controlling the targeted use of humanitarian aid.

Results and Discussion. The problem of effective protection of the aggrieved person's rights has always existed. However, as the historical events testify, the Second World War radically changed the views on the guarantees of world peace, because humanity understood the true value of human rights and freedoms, which led to a fundamental updating of the legal mechanism for their protection. Since that time, the protection of human rights has not been a purely internal competence of States, but has acquired international significance, embodied in the idea of creating a new international law and order based on respect for fundamental rights and freedoms (Ablamskyi et al., 2020; 2022; 2023). In the modern world, there has been a recent trend towards an increase in various threats and dangers to international peace and security, and their impact on States and the entire system of international legal order. Changes in the paradigm of collective security at the global and regional levels, degradation of socio-political and international legal approaches to the very essence of collective security, security of individual states and nations, thoughtless political "flirting" with the carriers of threats to international peace and security have given rise to a number of new risks which are countered (sometimes unsuccessfully) by specially created security international legal mechanisms (Voitsikhovkyi, Bakumov, 2023).

Russia's unleashing of an aggressive war against Ukraine, an unprovoked and definitely illegal initiation of an international armed conflict, naturally entailed a long criminal trail derived from

the crime of aggression itself. It is associated with a large-scale violation of the rights and freedoms of Ukrainian citizens, systematic attacks on the territorial integrity and sovereignty of the state, and violations of the laws and customs of war. The range of these violations and encroachments is very wide and affects both the national legal system and the international legal order (Orlov, 2023). February 24, 2022 divided the lives of all Ukrainians into "before the war" and "during the war. The aggressor country launched a so-called special military operation against Ukraine, which is de facto a conventional war. As you know, almost all modern wars are hybrid, where their military component (i.e., direct combat operations) is only one of the areas where actions are taken to defeat the enemy (Tkachenko, Diadin, 2022; Kalienichenko, Slynko, 2023). Due to Russia's armed aggression, Ukraine is going through a difficult period in all spheres of life. However, in order to support the country in such a difficult time, many individuals, organizations, and foundations, including those from abroad, provide various types of assistance. In particular, in addition to military and technical assistance, we are talking about humanitarian aid, charitable donations and gratuitous aid. Taking into account the scale of such aid, it is quite understandable to increase the legal level of responsibility for its illegal use in March 2022. Unfortunately, there are numerous cases of illegal use of humanitarian aid, charitable donations or free aid for profit every day. In this context, it is justified to develop a methodology for investigating the illegal use of humanitarian aid, charitable donations or free aid for profit.

We consider it appropriate to begin the scientific understanding of the problem of control powers of state authorities in the field of humanitarian aid under martial law by considering the essence of such a basic category in our research as "martial law". First of all, let's pay attention to the provisions of the Law of Ukraine No. 389-VIII (2015) "On the Legal Regime of Martial Law". Article 1 of the document stipulates that martial law is a special legal regime introduced in Ukraine or in some of its localities in the event of armed aggression or threat of attack, danger to the state independence of Ukraine, its territorial integrity, and provides for the provision to the relevant bodies of state power, the military command, to military administrations and local self-government bodies, the powers necessary to avert the threat, repulse armed aggression and ensure national security, eliminate the threat of danger to the state independence of Ukraine, its territorial integrity. From the first days of the introduction of martial law, in the context of Russia's full-scale invasion of Ukraine, constant artillery shelling and missile attacks on civilian infrastructure, including electricity, water and heat supply facilities, lack of basic necessities and inability to provide basic services, there has been a significant deterioration in the living conditions of the population. Thus, in this period, given the duration of the above conditions, a significant number of casualties among the military and civilians, and the massive phenomena of internal and external migration, the transformation of public consciousness is taking place. This process also includes rethinking such categories as "aid" and "social assistance," returning to the primary needs for food, drinking water, and a safe environment. And all this is happening against the backdrop of close relations with the global postmodern society with its information, digital, and "consumer" realities.

According to the Explanatory Dictionary of the Ukrainian Language, "aid" means assistance, support in something; help, protection, rescue in trouble; "help" means to assist someone; to help;

to have a certain impact, to produce the desired results (Yaremenko, Slipushko, 2008). The essence of aid at the level of daily interaction of individuals under martial law has undergone significant and key transformations in our study and covers a number of characteristic features. We consider it appropriate to include the following in the list of the latter:

- a) situational nature, i.e., dependence on martial law conditions and focus on mitigating their harmful effects;*
- b) closer nature of daily interaction between the population, primarily at the level of certain microsocial and medium-sized social groups (family, apartment building entrance, professional team, etc.) in the course of the need to jointly address basic issues of life support;*
- c) rethinking the personality of a volunteer as a person (organization) that can help in life- and health-critical situations in the context of complicated functioning of public authorities and local governments;*
- d) the need for self-organization to provide assistance. For example, there are issues of protecting a specific entrance of an apartment building from looters by the forces and capabilities of its residents, delivering food and water, and providing other assistance to those who cannot take care of themselves in such conditions.*

It is believed that a derivative of the category "assistance" is "social assistance", which can be understood as a system of measures aimed at returning a person to active life and work, restoring social status and forming qualities and attitudes to adapt to the conditions of normal life through legal and material protection of their existence, preparation for self-care with the formation of the ability to move and communicate, daily living needs, etc. In this context of social assistance, we consider it appropriate to highlight the focus of assistance as a key and fundamental category for our study. After all, we are deeply convinced that any material benefit provided even in critical, stressful, life-threatening conditions should be based on the internal social content, which in martial law is reduced to the provision of certain things, services, and work to the extent that is sufficient and necessary for active life and work, the realization of everyday needs in the course of the comprehensive development of both the individual and the whole society.

We believe it is appropriate to consider humanitarian aid in the context of social assistance through the prism of a deep understanding of the essence of the latter in the context of martial law. The Law of Ukraine "On Humanitarian Aid" is the basic legal act that lays down the basis for receiving, providing, processing, distributing and controlling the targeted use of humanitarian aid. In the context of martial law, certain measures were taken to regulate public relations related to humanitarian aid, aimed at improving the legal regulation of state control mechanisms in the field of humanitarian aid. Thus, on March 2, 2022, Decree of the President of Ukraine No. 93/2022 "On Coordination of Measures to Address Humanitarian and Social Issues" established the Coordination Headquarters for Humanitarian and Social Issues under the leadership of the Head of the Office of the President of Ukraine. The Resolution of the Cabinet of Ministers of Ukraine No. 224 of March 7, 2022 defines the categories of goods that are recognized as humanitarian aid without the procedure for recognizing such goods as humanitarian aid. At the same time, even in the context of the above-mentioned developments in the adoption of certain by-laws, the

legislation governing the provision of humanitarian aid has a number of problematic aspects in the field of administrative and legal regulation of the area under study. In the context of our study, we will pay special attention to the provisions of the Law of Ukraine No. 1192-XIV (2003) "On Humanitarian Aid" and their compliance with the realities of today and potential future challenges. Thus, this legal act in Article 1 refers to the grounds for a simplified procedure for the provision and distribution of humanitarian aid in cases of natural disasters, accidents, epidemics and epizootics, environmental, man-made and other disasters that pose a threat to the life and health of the population, or serious illness of specific individuals, as well as for preparation for the armed defense of the state and its protection in the event of armed aggression or armed conflict. As we can see, this legal act does not mention such a category as "protection of the population in the conditions of martial law" (aggression, armed conflict). The legislator focuses on the state and preparations for armed conflict at the level of state institutions, while a person as the main social value, who in such conditions is deprived of housing, work, social ties and whose rights are an absolute priority during all the above-mentioned disasters, is not separately mentioned. Thus, as noted by the author's team consisting of A. T. Komziuk, Yu. O. Zahumenna, A. L. Borko, S. M. Bortnyk, any existing and prospective strategy for ensuring national security in Ukraine should be primarily based on the importance of protecting the rights, freedoms and legitimate interests of Ukrainian citizens (Komziuk, Zahumenna, Borko, Bortnyk, 2023, p. 518). From the point of view of legal technique, it would be more appropriate to specify such a category as "ensuring the realization of the maximum possible range of humanitarian needs of the population affected by war, aggression, armed conflict". This category may include, in the newest sense, those acts directed against the civilian population, including accidents (damage to critical infrastructure as a result of artillery shelling and missile attacks), man-made disasters and ecocide (the undermining of Kakhovka hydroelectric power plant by the occupation forces of the Russian Federation with the subsequent flooding of vast areas of Ukraine). Aware of these new challenges, the author's team consisting of A. I. Denysov, H. Ye. Bershov, V. V. Krykun, and O. A. Zhydovtseva note that the protection of critical infrastructure is one of the key elements of the functioning of the national security of the state (Denysov, Bershov, Krykun, Zhydovtseva, 2021, p. 797).

Article 13 of the Law of Ukraine No. 1192-XIV (2003) "On Humanitarian Aid" stipulates that foreigners and stateless persons who deliver, accompany and organize humanitarian aid to Ukraine, as well as coordinators of international humanitarian programs, are entitled to priority, free visa services, as well as to hotel accommodation at the rates established for Ukrainian citizens. We believe it is appropriate to significantly expand the range of material incentives for such persons, in particular, to establish such benefits as:

- 1) *to receive residential premises in dormitories in accordance with the procedure and under the conditions determined by housing legislation;*
- 2) *to use all types of public transport of urban, suburban and local connections free of charge.*

It is also important to establish certain non-material incentives for such categories of persons, including awarding state and departmental awards, conferring honorary titles, etc. It is not for nothing that M. S. Ilnytskyi and Yu. M. Kret argue that in modern conditions the subject of

scientific study should be financial and legal protection as the State's activity covering legal relations in the field of financing social protection measures (Ilnytskyi, Kret, 2023, p. 133).

Article 11 of the Law of Ukraine No. 1192-XIV (2003) "On Humanitarian Aid" deals with accounting and control issues. At the same time, certain issues of reporting in the field of humanitarian aid remain unregulated and are beyond the control of the authorized bodies. The absence of a unified procedure and form of reporting by recipients and acquirers (legal entities) of humanitarian aid leads to selective reporting. Due to the lack of a unified regulatory approach to reporting, the latter is currently submitted to different government agencies: both the Ministry of Social Policy of Ukraine and regional military administrations. Such a reporting procedure does not allow for systematic processing and analysis of the intended use of humanitarian aid by recipients and recipients (legal entities). Today, the procedure for distributing humanitarian aid remains insufficiently regulated at the level of legal and regulatory frameworks, creating an environment conducive to corruption and other offenses. There is a question of publishing information about the contents of the cargo and its further distribution on relevant websites or digital state registers. The procedure for identifying, systematizing and analysing the real needs of the civilian population, determining the legal status of the donor, recipient, recipient, the Coordination Center for Humanitarian and Social Affairs, interaction (coordination of activities) of the latter with other actors in the field of humanitarian assistance, the methodology for distributing the received humanitarian assistance, as well as the procedure for interaction between different recipients, also need to be enshrined in law. Also, some problematic aspects in the studied topic can be understood based on the analysis of foreign sources. For example, some representatives of the international scientific community, including the American researcher Sébastien Mary (2022, p. 1466), believe that in third world countries, the provision of humanitarian aid can lead to an increase in violence. In this aspect, it is important to pay attention to the essence of humanitarian aid, which from a certain angle can be understood as a set of material benefits provided only to certain individuals, while others in the same situation may be deprived of such benefits due to their limited number, bureaucratization of the procedure for obtaining them, etc. Of course, in the realities of Ukrainian society, this situation leads to various manifestations of violence that take place in an environment of long waiting and emotional stress.

In his research, Canadian scholar Kurt Annen (2017, p. 38) formulates the theory that incumbent governments, by responding to humanitarian disasters, can increase voter support for their party. In our opinion, the sphere of humanitarian aid should be politically neutral, "impersonal", devoid of specific names and titles of recipient organizations.

Based on a detailed analysis of the above-mentioned legal acts, scholarly positions and problematic aspects, we can, through the prism of international experience, suggest the following ways to improve the procedure for receiving, providing, processing, distributing and controlling the targeted use of humanitarian aid. After all, as noted by the author's team consisting of M. V. Kostenko, R. Orlovskyi, V. O. Pankratova and O. V. Butakova (2020, p. 224), studying the experience of developed countries will make it possible to outline the vector for developing

relevant Ukrainian legislation and adapting it to the requirements of the world and European community.

1. A detailed analysis of the population's needs for humanitarian aid, taking into account the specifics of a particular region. For example, the team of German researchers consisting of Mogge L., McDonald M., Knoth C., Teickner H., Purevtseren M., Pebesma E., Kraehnert K. (2023) draw attention to the fact that in Mongolia, during the extremely cold snowy winter of 2015-2016, the government has defined clear criteria for needs in different areas based on forecasts of meteorological risk.
2. Promoting high standards of behavior of specific recipients of humanitarian aid in the society. For example, Friesen I. in this context suggests considering the personality of James Orbinski, who was directly involved in humanitarian activities in Somalia, Afghanistan, Rwanda and the then Zaire. The author uses the example of J. Orbinski to analyse the personal ethics of humanitarian aid workers and highlights the intersection of personal and professional in working with humanitarian aid (Friesen, 2023).
3. Development and implementation of digital technologies, electronic databases, software for receiving, providing, processing, distributing and monitoring the targeted use of humanitarian aid in the control and supervisory activities of public authorities. This direction is embodied in the article "Scenario-based XAI for Humanitarian Aid Forecasting", the authors of which Josh Andres, Christine T. Wolf, Sergio Cabrero Barros, Erick Oduor, Rahul Nair, Alexander Kjørnum, Anders Bech Tharsgaard, Bo Schwartz Madsen (2020), based on empirical data, identify current and future scenarios of humanitarian aid use, apply a scenario-based approach to planning the amount of humanitarian aid needed.

Conclusions. Summarizing the above, it can be noted that the issue of humanitarian aid is of strategic importance and fundamental importance. Humanitarian aid has become an important element of support for the population of Ukraine, which under martial law found itself in an extremely vulnerable economic, social and psychological situation.

Under martial law, such categories as "aid" and "social assistance" were redefined against the backdrop of a return to the primary needs for food, drinking water, and a safe environment.

The essence of aid at the level of daily interaction of individuals in the conditions of martial law has undergone significant and key transformations in our research, which include dependence on the conditions of martial law and the focus on leveling their harmful consequences, the closer nature of daily interaction between the population, first of all, at the level of certain microsocial and medium social groups, rethinking the personality of a volunteer as a person (organization) capable of helping in life- and health-critical situations, as well as actualizing the need for self-organization in order to provide assistance.

As for the existing shortcomings in the field of administrative and legal regulation, we state that the procedure for the distribution of humanitarian aid remains insufficiently regulated at the level of regulatory and legal regulation, creating an environment conducive to corruption and other offenses. There is a question of publishing information about the contents of the cargo and its

further distribution on relevant websites or digital state registers. The procedure for identifying, systematizing and analysing the real needs of the civilian population, determining the legal status of the donor, recipient, recipient, and the Coordination Center for Humanitarian and Social Affairs, interaction (coordination of activities) of the latter with other actors in the field of humanitarian assistance, the methodology for distributing the received humanitarian assistance, and the procedure for interaction between different recipients also needs to be regulated.

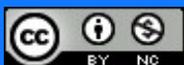
We propose the following ways to improve the procedure for receiving, providing, processing, distributing and controlling the targeted use of humanitarian aid, namely, a detailed analysis of the population's needs for humanitarian aid, taking into account the specifics of a particular region, popularization of high standards of behavior of specific recipients of humanitarian aid in society, development and implementation of digital technologies, electronic databases and software in the control and supervisory activities of public authorities.

Promising areas for further research include further scientific understanding of the views of foreign researchers on certain issues related to the administrative and legal regulation of humanitarian aid, conducting statistical research in the field of humanitarian aid, determining the place and features of volunteering in the context of the issues under study.

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