PROTECTION OF THE RIGHT TO HEALTH DURING THE PERIOD OF ARMED CONFLICT: THE EXPERIENCE OF UKRAINE

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on 2 June 2022, the President of Ukraine told the International Security Forum in Bratislava that every day in Donbas, about 100 soldiers died and another 450-500 were injured. There are also numerous victims among the civilian population. As of 25 July 2022, 12,272 civilian casualties were recorded, with a reported 5,237 killed and 7,035 injured.

In general, this trend confirms the statement of A. Khorram-Manesh – since the turn of the century, we have seen a transition from conventional wars that follow international rules and regulations to hybrid wars and terrorism, which do not follow traditional rules.

As a result of non-compliance by the RF with rules and customs of warfare, the most important values of humanity are violated, which include, in particular, the right to life and health. Ensuring the right to health of the civilian population is especially important in this situation. First of all, due to active fighting and shelling, a significant number of civilians suffer injuries, fractures, and burns every day. All of them require emergency medical care, a sufficient amount of medication, and sometimes quite complex surgical operations. This causes a significant burden on medical institutions located not only on the front line but also in the so-called ‘rear’, especially in conditions where some of them are completely destroyed, and others have suffered damage due to targeted shelling by the RF army. So, as of 24 July 2022, more than 746 health care facilities are in need of restoration, and more than 123 were destroyed, since the beginning of the war. WHOs/Health Cluster's Attacks on Health Care Team has verified 414 attacks on health care, including 350 reports of attacks affecting health facilities, as of 27 July. Medical workers are killed and wounded, and ambulances are fired upon. A heavy load on health care facilities is observed in the rear, where civilians have moved from under the occupation or due to hostilities near their settlements. According to official data, the number of internally displaced persons in Ukraine currently totals 6.6 million. It is predicted that this number will increase due to the recently announced mandatory evacuation from the Donetsk region. Evacuation announcements from other

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Keywords: right to health, protection of human rights, international humanitarian law, armed conflict, civilian persons, medical staff

ABSTRACT

This article deals with the protection of the right of the civilian population and medical workers to health. The issue of rights violations arises in connection with the armed conflict between the Russian Federation and Ukraine, which has been ongoing since 2014. On 24 February 2022, its second phase began, which has been characterised by a large-scale offensive by the Russian army. The hostilities are still ongoing, and some areas are temporarily occupied.

The aim of the present paper is to reveal the essence of the main international legal, and national means of protecting the right to health in a period of armed conflict.

Methods. A combination of general scientific and special scientific approaches was used, as well as a number of methods, namely: dialectical, comparative, analytical, synthetic, and complex methods and the method of generalisation.

The results of the study have proved that the existing system of regulatory and institutional means of protection of human rights to health, both at the international and national level, is not able to do this successfully.

Conclusions. The right to health in the current period of the armed conflict is limited legally and forcibly for those who stay in the rear by the state on whose territory the armed conflict continues. It is illegal when one of the parties to the conflict violates IHL norms. Despite the normative means of ensuring and protecting the right to health and a wide range of institutional protections established by the parties to the armed conflict – Ukraine and the Russian Federation – the existing system is unable to protect the right of civilians to health. First of all, this is due to the Russian Federation’s violation of the established IHL rules. At the same time, the lack of a quick and effective protection mechanism leads to the fact that civilians, and sometimes medical workers, increasingly feel defenceless against aggressors. Therefore, it seems that the world community should review the existing approaches and establish more effective means of protecting human rights, including the right to health.

1 INTRODUCTION

Since February 2014, an armed conflict has been taking place on the territory of Ukraine, one of the parties of which is the Russian Federation (hereafter – RF). Its new active phase began on 24 February 2022, with the large-scale invasion of the Russian army into the territory of Ukraine. On the same day, the decree of the President of Ukraine of 24 February 2022 No. 64/2022 introduced martial law which has now been extended until 21 November 2022. Hundreds of people die and are injured every day in Ukraine, including civilians. Official data on the number of dead and wounded among the military in Ukraine is not disclosed, but
regions of Ukraine are expected. Once in a safe place, these people will also look for opportunities to receive medical care and services. It should not be forgotten that during a war, the epidemic situation is quite unfavourable. Unsanitary conditions, a significant number of wounded and sick people, the presence of a humanitarian crisis in all regions of Ukraine, and the lack of an opportunity for the relevant state bodies to carry out sanitary and epidemiological surveillance throughout the country create a favourable environment for the spread of the so-called 'diseases of war', such as cholera, dysentery, tetanus, etc. It is also worth noting the continuation of the COVID-19 pandemic in Ukraine, which is gaining momentum again. The disruption of the continuity of treatment for tuberculosis, HIV/AIDS, diabetes, etc., in the temporarily occupied territories will lead to the spread of these diseases among the population, which will pose a threat not only to Ukraine but also to other countries. The rapid spread of HIV/AIDS, viral hepatitis, and other sexually transmitted diseases is expected due to the mass rape of women in the occupied territories, as well as the commission of other sexual criminal offenses against our citizens.

The above determines the expediency of conducting a study on ensuring the right to health during an armed conflict at two levels:

1) international, which concerns the protection of the right to health of prisoners of war, wounded, and sick both among the military and among the civilian population, and

2) national, which should show how the state, on whose territory there is an armed conflict under martial law, ensures the right to health of ordinary citizens who are in the rear.

2 INTERNATIONAL LEGAL MEANS OF PROTECTION OF THE RIGHT TO HEALTH DURING THE PERIOD OF AN ARMED CONFLICT

The World Health Organization (hereafter – WHO) constitution states, 'Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.' The world community recognises the right to health as a good that belongs to the natural right of the first generation of human rights. It is multi-component and includes the right to health care services and the right for everyone to use various services, institutions, and things that determine the health of any person, namely: safe environmental conditions and access to clean drinking water, healthy food, proper sanitation, and housing, as well as access to health-related education and information, provision of quality medical care, etc.

V. Lyaskovsky rightly points out that violations of the law of armed conflicts and human rights in such conflicts are practically the same regardless of the country's geographical location. Therefore, the study of international legal and national means of protection of human rights during armed conflicts is necessary. The current war in Ukraine has become the largest in Europe since World War II, and the number of human rights violations is expected to be significant.

Based on the understanding of the diversity of definitions of the concept of international legal means intended to ensure and protect basic human rights, in the context of international legal means of protecting the right to health, it is worth considering:

1) normative means, to which it is necessary to attribute international legal acts that determine the rules of activity and formulate the rights and obligations of the relevant subjects regarding the protection of the right to health, as well as international documents that usually do not contain norms or rules of conduct (in particular, declarations, statements, memoranda), and

2) institutional means, which include the activities of international bodies for monitoring and control over the observance of human rights and freedoms, including the right to health.

Normative means of ensuring and protecting the right to health. In times of peace, the right to health care is guaranteed by a number of international legal acts and international documents: the Universal Declaration of Human Rights, the Convention for the Protection of Human Rights and Fundamental Freedoms, the Convention and Protocol Relating to the Status of Refugees, the United Nations International Convention on the Elimination of All Forms of Racial Discrimination, the European Social Charter, the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disabilities, the Declaration on the Promotion of Patients’ Rights in Europe, the Convention on Human Rights and Biomedicine, the International Health Regulations, recommendations of the WHO, etc.

During an international armed conflict, the right to health is additionally guaranteed by four Geneva Conventions and three additional protocols. As O. Senatorova rightly points out, their provisions form the so-called ‘Geneva law’ or international humanitarian law (hereafter – IHL) stricto sensu. Thus, the right to health is directly or indirectly guaranteed in point a) part 1 and part 2 of Art. 3, Art. 4, Arts. 12, 13, 15, 18, 19-28, 29, part 5 of Art. 32, Arts. 33, 35, 36, 38-44, 46 I of the Geneva Convention, Arts. 3, 6, 7, 9, 10, 12-15, 20-30, 34-35, 37-40, 47, 51 II Geneva Convention, Arts. 3, 13, 15, 18-20, 22, 23, 25-32, 46, 47, 51-55, 72, part 2 of Art. 97, 98, 109, 110, 112-114, 122 III of the Geneva Convention, Art. 18-19, Art. 21-22, Art. 23, Art. 56, Art. 91, 92 IV of the Geneva Convention, which determine the specifics of the protection of the civilian population during the war. In 1977, the Additional Protocols to the Geneva Conventions were adopted on the protection of victims of international armed conflicts and on conflicts of a non-international nature. Another protocol concerning the adoption of an additional distinctive emblem was signed in 2005. They also mention the right to health.

At the same time, it is fair to criticise L. Rubenstein and argue that the Geneva Conventions...
Incentive that forces a state participating in an armed conflict to comply with IHL norms.

committed or ordered to commit a serious violation of IHL). According to O.V. Vasylenko,
(respectively 49/50/129/146), which declares the obligation of the parties to introduce into
retorts, and collective sanctions; material responsibility in the form of restitution and/or
may result in: political responsibility, which will be expressed in satisfaction, reprisals,
Institutional means of ensuring and protecting the right to health.

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23 Despite the fact that Ukraine signed the ICC Statute (RS) back on 20 December 2000, it was ratified
22 O Vasylenko, 'Some Aspects of Responsibility for Violations of the Norms of International Law of Armed
21 K Goniewicz, M Goniewicz, W Pawłowski, 'Protection of Medical Personnel in Contemporary Armed
20 RJ Haar, CB Risko, S Singh, et al. 'Determining the Scope of Attacks on Health in Four Governorates of

organisation whose activity is based on the principle of complementarity.23

Institutions that provide judicial protection of human rights include ad hoc courts: the
International Criminal Tribunal for the former Yugoslavia and the International Criminal
Tribunal for Rwanda, created by the UN resolution in 1993 and 1994, as well as the special
court for Sierra Leone. Their appearance at the end of the 20th century was preceded by
the holding of the Nuremberg and Tokyo tribunals after World War II. The activity of international
tribunals implies both the application of previous rules of IHL (written and customary) and the creation of new legal norms in the field of IHL and even in
the field of human rights protection.

However, the International Criminal Court (hereinafter – ICC) makes the most significant
contribution to the protection of the norms of international law of armed conflicts and
brings the persons who occupy the highest positions in the system of state authorities and
management to criminal responsibility for violations of the norms of IHL. It is a permanent
organisation whose activity is based on the principle of complementarity.23

According to the Rome Statute (hereinafter – RS), the jurisdiction of the ICC extends to the

most serious crimes, such as: genocide, crimes against humanity, war crimes, and crimes of
aggression. The commission of almost each of them may be accompanied by actions that
grossly violate the right to health care (paras b. c, d of Art. 6, paras b. c, d, e, f, g, j, k of Part
Art. 7, paras ii, iii, para a part 2 of Art. 8, paras i, iii, iv, v, vi, vii, ix, x, xi, xvii, xix, xx, xxi, xxv, xxv point b Part 2 of Art. 8, points i and point c Part 2 of Art. 8, points i, ii, iii, iv, v, vi, ix, xii point c Part 2 Art. 8 of the RS).

Summarising the above, it is worth stating that the presence of the provisions of the Geneva
Conventions, as well as the Additional Protocols to them, which guarantee the right to health
during such a conflict, today have a restraining effect on the parties to the armed
conflict. Judicial protection of the right to health is possible only in the context of bringing
to individual criminal responsibility persons who are guilty of the most serious crimes, the
objective side of which constitutes actions that violate the right to health and which fall
under the jurisdiction of the ICC. Therefore, I. Protsenko correctly notes that the result of
finding persons guilty of war crimes is the imposition of the ICC on them not only of imprisonment but also compensation for damage (Art. 75 of the RS) and punishment in the
form of a fine or confiscation (Art. 77 of the RS), which can be transferred to the Trust
Fund in the interests of persons affected by crimes.24 However, as practice shows,25 the
proof of guilt does not always correspond to full compensation for the damage caused to the
victim.

According to ordinary citizens, the European Court of Human Rights (hereafter – ECtHR)
is considered to be the most effective institution for the protection of human rights. This
is primarily because 1) in the event of a violation of the Convention for the Protection
of Human Rights and Fundamental Freedoms, the injured person (persons) may be awarded
personalised payment of material and/or moral damage, and 2) the terms of consideration at the
ECtHR are usually shorter than in other international institutions. The ECtHR does not
lose its role even during armed conflicts because where war crimes are concerned, the right
to life is often violated, and torture and other types of ill-treatment of a person take place.
This imposes on states not only negative obligations but also positive obligations, which
include responsibility for crimes related to the violation of fundamental rights and freedoms.
On the procedural level, the same positive obligations provide for conducting effective
investigations of violations contained in the Convention for the Protection of Human Rights
and Fundamental Freedoms.

At one time, in the case Hassan v. the United Kingdom (para 104), the ECtHR noted that
the Court considers that, even in situations of international armed conflict, the safeguards
under the Convention continue to apply, albeit interpreted against the background of the
provisions of international humanitarian law.26 O. Senatorova sees in this the opening of
the door to the application of IHL because the ECtHR emphasised the importance of erga omnes
in its precedent practice regarding armed conflicts.27

It should be noted separately that in a situation with a Russian-Ukrainian war due to active
hostilities and ‘effective control’ outside its own territory, the Court may apply extraterritorial
jurisdiction.28 At the same time, the state’s obligation to ensure human rights arises from

20  RJ Haar, CB Risko, S Singh, et al. ‘Determining the Scope of Attacks on Health in Four Governorates of
21  K Goniewicz, M Goniewicz, W Pawłowski, ‘Protection of Medical Personnel in Contemporary Armed
22  O Vasylenko, ‘Some Aspects of Responsibility for Violations of the Norms of International Law of Armed
24  I Protsenko, ‘Modern International Legal Means of Protecting the Property Rights of Civilians During
25  RJ Haar, CB Risko, S Singh, et al. ‘Determining the Scope of Attacks on Health in Four Governorates of
26  Hassan v the United Kingdom
27  Senatorova (n 16) 105.
Thus, as of 10 August 2022, 6,377,256 refugees who left Ukraine due to the war were recorded in the occupied territories of Ukraine [...] Therefore, the right to health can be protected in the ECHR in connection with the established facts of torture of the civilian population in the occupied territories, sexual violence that resulted in the infection of victims with HIV/AIDS, deprivation of their humanitarian aid (in particular, drinking water, food, medical products), resulting in the use of dangerous products or the interruption of treatment, as well as the appearance of mental illnesses, which deprive the civilian population of the opportunity to live a full life. It should be noted separately that the OSCE Special Monitoring Mission to Ukraine, which has been working since March 2014 at the invitation of the Ukrainian government, plays an extremely important supporting role. In particular, it documents violations of human rights and IHL, records the number of deaths and injuries due to the armed conflict among the civilian population, and systematically publishes reports on the situation with human rights and thematic reports concerning individual aspects, events, etc. The facts of human rights violations recorded by it may serve as evidence of IHL violations in international institutions. No less significant is the contribution of the Ukrainian Helsinki Human Rights Union, Regional Center for Human Rights, Center for Civil Liberties, Truth Hounds, Kharkiv Human Rights Protection Group, and a number of other human rights organisations that periodically provide the ICC with evidence of crimes committed by the Russian military in Ukraine from 2014.

3  NATIONAL NARRATIVES REGARDING ENSURING THE RIGHT TO HEALTH


38  As of 10 August 2022, the Mission has prepared 53 public reports on the human rights situation in Ukraine and has issued 1,263 thematic reports on civic space and fundamental freedoms. 176 reports related to the conflict, the human rights situation in the Autonomous Republic of Crimea, human rights violations and IHL violations in the context of the events near Ilivskoy in August 2014, etc.


IN THE PERIOD OF ARMED CONFLICT AND THEIR PRACTICAL IMPLEMENTATION IN UKRAINE


The current Criminal Code (hereinafter – CC) of Ukraine contains a number of norms that protect the right to health of every person (Arts. 131, 138, 139, 140, 141, 184, etc.). These norms are applied both in peacetime and in the period of armed conflict when it comes to the violation of the right to health by a medical and/or pharmaceutical worker. Also, the CC of Ukraine provides for a number of special norms for violations of IHL (Arts. 435, 433, 438, 445). These norms cover all significant violations of IHL contained in agreements ratified by Ukraine. At the same time, it is worth noting that most of their provisions are not sufficiently specified, which does not contribute to effective protection of violations of IHL. Therefore, sometimes the opening of criminal proceedings may take place under the general articles of the Criminal Code of Ukraine (item 8, part 2, Art. 115, Arts. 121, 122, 125, 126, 127, 194, etc.).

Institutional means of ensuring and protecting the right to health care. The national institutional bodies that ensure the protection of the right to health include: the police, the prosecutor’s office and the court. These bodies: 1) make it possible to bring to justice medical workers who violate the right to health of individual citizens in peacetime and during an armed conflict in a territory free from hostilities; 2) contribute to the prosecution of those guilty of violating IHL norms, which provide for the right to health, during an armed conflict. In particular, the Office of the Prosecutor General carries out proper documentation of war crimes and crimes against humanity committed by the Russian army in Ukraine. However, it is worth noting that due to a number of objective reasons, it is quite difficult to bring the perpetrators to criminal responsibility for violations of IHL norms, and therefore the main burden of protecting the right to health in armed conflicts is expected to be placed on international institutions.

Practical implementation of the right to health during armed conflicts under martial law. As already mentioned, the right to health is not an absolute right, and therefore the state can take a number of legitimate and justified measures aimed at limiting the right to health of the population in the rear during the introduction of martial law. The experience of the Russian-Ukrainian war testified that the following measures were taken:

1. Restrictions on trade of medicinal products originating from aggressor countries. In particular, immediately after the full-scale invasion of Ukraine, it was forbidden to register and sell medicinal products from the Russian Federation and the Republic of Belarus (hereafter – RB). In May, the Ministry of Health (hereinafter – MOH) was given the right to refuse state registration or cancel the registration of a medicinal product if one, several, or all stages of its production are carried out by enterprises located on the territory of the aggressor countries. It is worth noting that such a decision will affect the exclusion from the pharmaceutical market of a number of international pharmaceutical companies that have at least one stage of production on the territory of the Russian Federation and the Republic of Belarus. In turn, this can create a shortage of medicine.

2. Imposition of a moratorium on the implementation of planned measures of state control of the quality of medicinal products by the State Service of Ukraine for medicinal products and drug control. This control is currently carried out by international organisations and national regulatory bodies in the field of quality control of medicinal products. However, their detection of falsified pharmaceutical products does not entail a temporary ban on their circulation. Only the State Health Service can do this. Thus, a situation arises when the end user can receive low-quality medicine that can harm his/her health.

3. Simplification of the procedure for registration of medicinal products, as well as conditions for their storage and transportation. The provisions of a number of legal acts issued at the end of February and in the spring of 2022 by the Cabinet of Ministers of Ukraine (hereinafter – CMU) and the Ministry of Health of Ukraine 44 provide for: a) a simplified mechanism for the registration of medicinal products (including immunobiological medical preparations and blood preparations), as well as the continuing effects of registration certificates for medicinal products, and b) simplification of the procedure for issuing conclusions on the quality of medicinal products and facilitating access to medicinal products by granting permission for their import in foreign packaging; c) temporary refusal to apply requirements regarding the minimum shelf life of medicinal products supplied to Ukraine, d) simplified requirements for the transportation of medicinal products and preservation of medicinal products in warehouses.

4. Absence of a clear and strict mechanism of control by the state over the circulation of medicinal products that arrive in Ukraine as humanitarian aid. The state institution, the ‘Public Health Center of the Ministry of Health of Ukraine’, is authorised to receive humanitarian aid that are provided free of charge in the form of humanitarian and charitable aid and to distribute them among healthcare institutions and organisations. However, it was not foreseen to whom the Center of Public Health is accountable and under whose control. A control protocol was not established in this area.
mechanism was also not created for volunteers, public organisations, and pharmaceutical companies engaged in humanitarian aid of medical products or for the persons who receive it. This has led to reports of abuse, theft, and selling of this aid.\textsuperscript{46}

5. Limitation of the possibility of bringing medical workers to civil liability in the case of providing poor-quality medical care. In order to protect the right to quality medical services, civilians usually had the right to go to court and claim material and moral damage that occurred as a result of receiving poor-quality medical services in civil proceedings. Since, in such a case, we are talking about bringing the medical worker to civil liability, the burden of proving his/her guilt rests with the patient him/herself. For this, the latter should apply for a clinical expert assessment of the quality of medical care and medical service, which is carried out by the Clinical Expert Commission of the Ministry of Health of Ukraine.\textsuperscript{47} But since March 2022, such an assessment of the quality of medical care during the period of martial law, as well as within 30 calendar days after its termination or cancellation, cannot be conducted.\textsuperscript{48} Thus, having received material damage during martial law, for example, as a result of poor-quality dental prosthetics, a person will not be able to receive compensation for it in civil proceedings.

6. Cancellation of anti-epidemic restrictions in the conditions of an unfavourable epidemic situation. The disaster that preceded a full-scale war in Ukraine was the COVID-19 pandemic. As of 24 February 2022, there were five regions in our country that received a red level of epidemic danger of the spread of the coronavirus. At the beginning of the war, 25,789 cases of coronavirus were recorded per day, while 2,818 people were hospitalised, and another 276 people died.\textsuperscript{48} At the same time, on 26 March 2022, the division of regions of Ukraine into ‘green’, ‘yellow’, ‘orange’, or ‘red’ levels of epidemic danger during the spread of COVID-19 was cancelled.\textsuperscript{49} This led to the de facto cancellation of all quarantine restrictions. Currently, it is only recommended to follow anti-epidemic measures aimed at preventing the spread of the coronavirus disease. Mandatory vaccination of certain categories of workers was also suspended.

On the scale of the country, regulatory and institutional means of ensuring and protecting the right to health, forming an allegedly harmonious system, fail during war and are not able to properly ensure the ability of civilians to exercise their rights. The Ministry of Health of Ukraine is already warning that the war will have negative consequences for the health of Ukrainians in the long term. In particular, an increase in the number of diseases with advanced stages of development (stage III and IV oncological diseases), an increase in the number of heart attacks and strokes is expected, psychological support will be needed by about 15 million Ukrainians, and approximately 3 million people will need the help of a psychiatrist or psychotherapist.\textsuperscript{50} To minimise these consequences, Ukraine is currently national mental health program and the project ‘Rehabilitation of War Injuries in Ukraine’, which is part of the National Barrier-Free Strategy.

4 PROTECTION OF MEDICAL WORKERS AND HEALTHCARE FACILITIES: REALITIES OF RUSSIAN AGGRESSION IN UKRAINE

The realisation of the right to health is impossible without medical workers and the activities of medical institutions. In addition, the provision of medical aid in conflict conditions is the duty of any state and the basis for the realisation of the human right to health. To fulfil their obligations, states have agreed on a number of rules that are set out in the Geneva Conventions and Additional Protocols. De jure health workers (both civilian and military) in armed conflict have certain privileges. If they observe certain rules, they should be provided with the opportunity to perform their professional duties, and the wounded and sick, respectively, to receive medical assistance. A separate level of regulation of the protection of medical workers and facilities in conditions of armed conflict is acts of a recommendatory nature of international governmental and non-governmental organisations (for example, Resolution of the UN General Assembly 37/197, Resolution Council of Europe 904 (1988), Resolution WHA46.39, Resolution WHA55.13, etc.).

At the same time, the experience of the modern Russian-Ukrainian war has proved that the declaration of such norms does not always mean their implementation by at least one of the parties. For example, in February 2015, journalist A. Luhin posted a photo of a bombed ambulance on social media. Luhin explained that the car was on the western part of the road heading south, from Artemivsk to Luhansk. It is highly probable, based on the situation, that the shelling was from illegal military formations. According to the journalist, this was not the only case with traces of shelling.\textsuperscript{51} In 2018, as written by G.V. Gabrelyan, the Russian military carried out 11 attacks on medical workers and medical institutions in Ukraine. As a result, two people died, seven were injured, three medical workers received life threats, and three drivers were injured. As for medical institutions, two were damaged, and four were forcibly closed.\textsuperscript{52} On 13 July 2020, a military medic was killed while evacuating the body of a Ukrainian soldier in Luhansk region. According to the journalist, this was not the only case with traces of shelling.\textsuperscript{53} In November 2020, a military medic was killed while providing medical assistance to a man wounded in Volnovka. In 2021, according to G. Gabrelyan, on the territory of the Luhansk region, 24 medical workers were attacked, and two died.

However, no one has been punished for any incident to this day. A similar situation, as noted

\textsuperscript{46} In total, by July 2022, the National Police of Ukraine initiated 294 criminal proceedings for crimes related to humanitarian aid, charitable donations, and free aid (some of which involved medical products).

\textsuperscript{47} The Ministry of Health of Ukraine. 47  But since March 2022, such an assessment of the quality of medical care during the period of martial law, as well as within 30 calendar days after its termination or cancellation, cannot be conducted. 48  Thus, having received material damage during martial law, for example, as a result of poor-quality dental prosthetics, a person will not be able to receive compensation for it in civil proceedings.


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by Abdulkarim Ekzayev, took place in Syria. Moreover, just like in Ukraine, they remain unpunished.55 Perhaps that is why, since the full-scale invasion of the Russian Federation into the territory of Ukraine, numerous violations of IHL have been recorded: dropping of air bombs and rocket attacks on medical facilities, shooting of ambulances, and the killing and torture of medical workers not only in the frontline but also in the frontline zone and in the occupied territories. For example, a psychologist from the town of Dymer in the Kyiv region56 said that they brought a young man to the hospital whose feet were shot to pieces. He was in the Red Cross, carrying the wounded, and they caught him and tortured him.57

As a result, on 23 May 2022, WHO and 88 countries supported Ukraine’s resolution ‘Health emergency in Ukraine and refugee receiving and hosting countries, stemming from the Russian Federation’s aggression, noting the Russian Federation’s aggression against Ukraine ‘[…] is causing a serious impediment to the health of the population of Ukraine, as well as having regional and wider than regional health impacts.’58

The international community urged the RF to immediately cease any attacks on hospitals and other healthcare facilities and to fully respect and protect all medical personnel and humanitarian personnel exclusively engaged in medical duties, along with their means of transport and equipment. In addition, the need for respect for and protection of the sick and wounded, including civilians, health and humanitarian aid workers, and healthcare systems, was emphasised.59

However, as subsequent events have shown, no appeals are of any importance for the RF. For example, on 14 July 2022, as a result of rocket fire in the city of Vinnytsia (a regional centre ‘in the rear’), the Neuromed Medical Center was destroyed, as a result of which three doctors died, and there were both wounded and dead among the patients and staff of the clinic, including a seven-year-old child.60

In general, as of 27 July 2022, there were 414 verified attacks on health care, which took the lives of 85 people and injured 100 people.61 According to Ukraine’s calculations, for the period from 24 February to 24 July 2022, the Russians damaged almost 900 healthcare facilities, 127 hospitals were completely destroyed, 90 ambulances were shot and disabled, 250 vehicles were seized and not returned, 450 pharmacies were damaged and do not work, and 41 were destroyed.62 At the same time, it should be remembered that a large part of Ukraine is under occupation, and therefore it is extremely difficult to track the number of damaged, destroyed, or closed healthcare facilities there, and it will be possible to calculate it only after de-occupation. It should be noted separately that there are reports of the sale of medicines on the markets, which cannot guarantee their safety, in particular, due to improper storage conditions.63

The authorities of Ukraine are trying to restore medical facilities as quickly as possible in the de-occupied territories, and international organisations and EU countries, in turn, are helping with mobile medical teams and medical products until the healthcare facilities have resumed their work, as well as taking injured civilians for treatment and rehabilitation.

5 CONCLUSIONS

The right to health is not an absolute human right, and therefore during an armed conflict, it is limited legally and forcibly for citizens who remained in the rear by the state on whose territory the armed conflict continues; further, it is illegal when one of the parties to the conflict violates IHL norms. The experience of the Russian-Ukrainian war proved that ensuring the right to health in the conditions of martial law declared in connection with the armed conflict is a difficult task. Despite the normative means of ensuring and protecting the right to health (both at the international legal and national levels) established by the parties to the armed conflict – Ukraine and the Russian Federation – as well as a wide range of institutional (primarily at the international level) means of protection, the existing system is not able to protect the right of civilians to health. It seems that in order to successfully protect the right to health in the conditions of war, the parties to the conflict must, first of all, adhere to the following key rules: 1) not to inflict unjustified strikes on civilian infrastructure objects, endangering the life and health of the civilian (peaceful) population; 2) not to destroy or damage health care facilities, not to fire on ambulances, and not to take medical personnel and hospital patients prisoner, thereby ensuring the possibility for medical workers to perform their professional duties, and for patients to receive proper and quality medical care; 3) to create humanitarian corridors in the occupied territories, which would allow, among other things, the establishment of an effective supply of medicines (for insulin patients, HIV patients, etc.).

At the same time, it should be noted that, unfortunately, neither national nor international legislation provides quick mechanisms for the protection of IHL in the researched area. This approach leads to the fact that civilians often feel defenceless against aggressors. Therefore, it seems that the world community should review existing approaches and establish more effective means of protecting human rights, including the right to health.


REFERENCES


