

## Research Article

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

*Tetiana Mykhailichenko, Yuliia Zabuha, Viktoria Babanina and Mykola Syjploki*

Submitted on 1 Jul 2022 / Revised 1<sup>st</sup> 20 Sep 2022 / Revised 2<sup>nd</sup> 30 Sep 2022 /

Approved 12 Oct 2022 / Published Online: 18 Nov 2022 // Published 15 Dec 2022

**Tetiana Mykhailichenko:** Cand. of Legal Science (Equiv. Ph.D. in Law), Assoc. Prof. at the Department of Criminal Law and Criminal Law Disciplines, Poltava Law Institute of the Yaroslav Mudryi National Law University, Poltava, Ukraine [mykhailichenko\\_t@yahoo.com](mailto:mykhailichenko_t@yahoo.com) <https://orcid.org/0000-0002-4668-3375> **Corresponding author**, responsible for investigation, including the conceptualization and design of the methodology, writing and revising the manuscript, and for ensuring that the descriptions and the manuscript are accurate and agreed upon by all authors. **Competing interests:** Any competing interests were declared. **Disclaimer:** The author declares that her opinion and views expressed in this manuscript are free of any impact of any organizations.

**Translation:** The content of this article was translated with the participation of third parties under the authors' supervision.

**Funding:** The author(s) received no financial support for the research, authorship, and/or publication of this article. The Journal provided funding for the publication of this article.

**Managing editor** – Dr. Serhii Kravtsov. **English Editor** – Dr. Sarah White.

**Copyright:** © 2022 *T Mykhailichenko, Yu Zabuha, V Babanina, M Syjploki*. This is an open access article distributed under the terms of the Creative Commons Attribution License, (CC BY 4.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

**How to cite:** T Mykhailichenko, Yu Zabuha, V Babanina, M Syjploki 'Protection of the Right to Health During the Period of Armed Conflict: The Experience of Ukraine' 4-2 (17) Special Issue Access to Justice in Eastern Europe 66-81. <https://doi.org/10.33327/AJEE-18-5.4-a000434>

**Yuliia Zabuha:** Cand. of Legal Science (Equiv. Ph.D. in Law), Senior Research Officer of the Laboratory for the Study of National Security Problems in the Field of Public Health, Academician Stashis Scientific Research Institute for the Study of Crime Problems of the National Academy of the Law Sciences of Ukraine, Kharkiv, Ukraine [zabugaulia1@gmail.com](mailto:zabugaulia1@gmail.com) <https://orcid.org/0000-0003-1956-2233> **Co-author**, responsible for writing and data collection, conducting research, and collecting the data/evidence. **Competing interests:** Any competing interests were declared. **Disclaimer:** The author declares that her opinion and views expressed in this manuscript are free of any impact of any organizations.

**Viktoria Babanina:** Dr. Sc. (Law), Full Professor, Professor of Criminal Law Department of the National Academy of Internal Affairs, Kyiv, Ukraine [8iktoria@gmail.com](mailto:8iktoria@gmail.com) <https://orcid.org/0000-0003-4173-488X> **Co-author**, responsible for data collection and writing. **Competing interests:** Any competing interests were declared. **Disclaimer:** The author declares that her opinion and views expressed in this manuscript are free of any impact of any organizations.

**Mykola Syjploki:** Dr. Sc. (Law), Associate Professor, Professor of Criminal Law and Process Department of the Uzhhorod National University, Uzhhorod, Ukraine [sijploki@ukr.net](mailto:sijploki@ukr.net) <https://orcid.org/0000-0001-6131-9179> **Co-author**, responsible for data collection and writing. **Competing interests:** Any competing interests were declared. **Disclaimer:** The author declares that his opinion and views expressed in this manuscript are free of any impact of any organizations.

**Summary:** 1. Introduction. – 2. International Legal Means of Protecting the Right to Health During an Armed Conflict. – 3. National Narratives Regarding Ensuring the Right to Health During the Armed Conflict and Their Practical Implementation in Ukraine. – 4. Protection of Medical Workers and Health Institutions: The Realities of Russian Aggression in Ukraine. – 5. Conclusions.

**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,<sup>1</sup> which has now been extended until 21 November 2022.<sup>2</sup>

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

1 Decree of the President of Ukraine of 24 February 2022 No 64/2022 'On the Introduction of Martial Law in Ukraine' <<https://zakon.rada.gov.ua/laws/show/64/2022#n2>> accessed 20 September 2022.

2 Law of Ukraine of 15 August 2022 No 2500-IX 'On the Approval of the Decree of the President of Ukraine "On Extending the Period of Martial Law in Ukraine"' <<https://zakon.rada.gov.ua/go/2500-20>> accessed 20 September 2022.

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.<sup>3</sup> There are also numerous victims among the civilian population.<sup>4</sup> As of 25 July 2022, 12,272 civilian casualties were recorded, with a reported 5,237 killed and 7,035 injured.<sup>5</sup>

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’.<sup>6</sup>

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 rights 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’.<sup>7</sup> WHO’s/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’.<sup>8</sup> 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.<sup>9</sup> It is predicted that this number will increase due to the recently announced mandatory evacuation from the Donetsk region.<sup>10</sup> Evacuation announcements from other

3 ‘Zelensky Told the EU Leaders about the Real Losses of the Armed Forces in Donbas’ (*Ukrainska Pravda*, 2 June 2022) <<https://www.pravda.com.ua/news/2022/06/2/7350156/>> accessed 20 September 2022.

4 The bloodiest tragedies in 2022 have been: the airstrike on the Drama Theater in Mariupol (about 600 people died, 16 March); the rocket attacks on the Mykolaiv regional state administration building (37 dead, 29 March); the attack on the Kramatorsk railway station (more than 50 people died, including five children, and 98 were injured, 8 May); the attack on the ‘Amstor’ shopping centre in Kremenchuk (22 people died and 59 were injured, 27 June); the attack on a recreation centre and a nine-story residential building in Serhiyivka, Odesa region (20 people died, including a child, and 38 were injured, 1 July); the attack on a five-story residential building in Chasiv Yar, Donetsk region (48 dead, including a child, 9 July); the attack on the central part of Vinnytsia (25 dead, including three children, and 202 people injured, 14 July); the attack on the Chaplyno railway station (25 dead, including two children, and 31 people injured, 24 August). The hostilities continue. Kharkiv and Mykolaiv, as well as the border areas of the Dnipropetrovsk region, Sumy region, Kharkiv region, and Chernihiv region are subjected to almost daily shelling from MLRS. Every week, the Russian army launches missile strikes on the territory of Ukraine. This indicates a constant increase in the number of dead and wounded both among the military and among the civilian population.

5 ‘Ukraine: civilian casualty update 25 July 2022’ <<https://www.ohchr.org/en/press-releases/2022/07/ukraine-civilian-casualty-update-25-july-2022>> accessed 20 September 2022.

6 M Bersi, ‘A Healthier World Is One without War’ (*School of Public Health*, 30 March 2022) <<https://www.bu.edu/sph/news/articles/2022/a-healthier-world-is-one-without-war/>> accessed 20 September 2022.

7 ‘Five months of fighting full-scale Russian aggression. 150 days of resistance, unbreakable on the way to victory’ (*Ministry of Health of Ukraine*, Facebook, 24 July 2022) <<https://www.facebook.com/moz.ukr>> accessed 20 September 2022.

8 WHO, Surveillance System for Attacks <<https://extranet.who.int/ssa/LeftMenu/Index.aspx>> accessed 20 September 2022.

9 IOM, Ukraine – Internal Displacement Report — General Population Survey Round 7 (17-23 July 2022), 29 July 2022.

10 ‘Vice Prime Minister Iryna Vereshchuk: Consider evacuating – we will take care of you and your loved ones’ (*Ministry of Reintegration of the Temporarily Occupied Territories of Ukraine*) <<https://minre.gov.ua/>> accessed 20 September 2022.

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.<sup>11</sup> 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'.<sup>12</sup> 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 without discrimination. No small role in ensuring the right to health is played by those factors 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.<sup>13</sup>

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

11 'Coronavirus in Ukraine: the Ministry of Health stated that the incidence rate is increasing, there are fatalities' (*Slovo i dillo: analytical portal*, 10 August 2022) <<https://www.slovoidilo.ua/2022/08/10/novyna/suspilstvo/koronavirus-ukrayini-moz-zayavyly-riven-zaxvoryuvanosti-zrostaye-ye-letalni-vypadky>> accessed 20 September 2022.

12 Constitution of the WHO <<https://www.who.int/about/governance/constitution>> accessed 20 September 2022.

13 Committee on Economic, Social and Cultural Rights, General Comment 14, The right to the highest attainable standard of health (Twenty-second session, 2000). For text, see UN Doc. E/C.12/2000/4 (2000): A Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.6 at 85 (2003); V Kovalchuk, B Melnychenko, K Marysyuk, et al, 'Right to Health in the Decisions of the European Court of Human Rights' 2022 (55) 1-2 *Informatologia* 14-26 DOI: 10.32914/i.55.1-2.2; O Yaroshenko, V Steshenko, O Tarasov, I Nurullaiev, M Shvartseva, 'Right to Health Care: The Practice of the ECtHR and the Case of Ukraine' (2022) 18 *The Age of Human Rights Journal* 239-256 <https://doi.org/10.17561/tahrj.v18.6496>.

location.<sup>14</sup> 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,<sup>15</sup> 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*.<sup>16</sup> 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, two 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.<sup>17</sup> They also mention the right to health.

At the same time, it is fair to criticise L. Rubenstein and argue that the Geneva Conventions are silent on the current obligations of belligerent states to offer affordable, acceptable, and

14 VI Lyaskovskiy, 'Legal Regulation of Armed Conflicts at the Present Stage and Features of The Application of International Humanitarian Law in Them' (2013) 5 Legal Science 113 <[http://nbuv.gov.ua/UJRN/jnn\\_2013\\_5\\_14](http://nbuv.gov.ua/UJRN/jnn_2013_5_14)> accessed 26 September 2022.

15 M Antonovych, 'The International System of Human Rights Protection: Through the Prism of Ukraine' (2007) 3 Law of Ukraine 37-41 <<https://core.ac.uk/download/pdf/149240005.pdf>> accessed 26 September 2022.

16 OV Senatorova, *Human Rights and Armed Conflicts* (textbook, FOP Holembovska 2018) 21.

17 The Geneva Conventions and their Commentaries <<https://www.icrc.org/en/war-and-law/treaties-customary-law/geneva-conventions>> accessed 26 September 2022.

high-quality medical services to the civilian population. Instead, there is a requirement to provide continuity of medical services, for example, through the prevention and treatment of infectious diseases.<sup>18</sup> But only a 'pure' requirement does not guarantee its fulfilment. And if, at the beginning of the 19th century, scientists claimed that the 'IHL provides robust protection to health care services,'<sup>19</sup> the experience of the hybrid war in Syria<sup>20</sup> and Ukraine proves the opposite.<sup>21</sup>

*Institutional means of ensuring and protecting the right to health.* Violations of IHL may result in: political responsibility, which will be expressed in satisfaction, reprisals, retorts, and collective sanctions; material responsibility in the form of restitution and/or reparation; criminal liability of natural persons (see all Geneva Conventions have an article (respectively 49/50/129/146), which declares the obligation of the parties to introduce into law the necessary norms that will ensure effective criminal sanctions for persons who have committed or ordered to commit a serious violation of IHL). According to O.V. Vasylenko, state responsibility has a more preventive (deterrent) effect because it acts as an additional incentive that forces a state participating in an armed conflict to comply with IHL norms. Individual responsibility implies criminal prosecution of individual war criminals who massively commit 'serious violations' of the norms of international law of armed conflicts, the list of which is contained in each of the Geneva Conventions.<sup>22</sup>

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 criminal 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 bringing 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.<sup>23</sup>

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

- 18 L Rubenstein, 'War, Political Conflict, and the Right to Health' (2020) 22 (1) Health and Human Rights 339-341.
- 19 K Footer, L Rubenstein, 'A Human Rights Approach to Health Care in Conflict' (2013) 95 (889) International Review of the Red 167-187, at 167. doi:10.1017/S1816383113000349.
- 20 RJ Haar, CB Risko, S Singh, et al. 'Determining the Scope of Attacks on Health in Four Governorates of Syria in 2016: Results of a Field Surveillance Program' (2018) PLoS Med 15(4). DOI: 10.1371/journal.pmed.1002559; L Rubenstein (n 18) 339-341.
- 21 K Goniewicz, M Goniewicz, W Pawlowski, 'Protection of Medical Personnel in Contemporary Armed Conflicts' (2016) 69 (2 Pt 2) Wiad Lek 280-284.
- 22 O Vasylenko, 'Some Aspects of Responsibility for Violations of the Norms of International Law of Armed Conflicts' 2020 (9) ΛΟΓΟΣ. The Art of Scientific Mind 122-125. DOI: 10.36074/2617-7064.09.027.
- 23 Despite the fact that Ukraine signed the ICC Statute (RS) back on 20 December 2000, it was ratified only after the large-scale offensive of the Russian army on the territory of Ukraine (20 May 2022). At the same time, in 2014, Ukraine recognised the jurisdiction of the ICC and granted it the right to investigate all alleged international crimes committed on Ukrainian territory. In 2020, the ICC launched an official investigation. On 13 September 2000, Russia signed the RS, but having never ratified it, on 16 November 2016, by order of V. Putin, it refused to participate in it. This happened after the ICC confirmed that the occupation of Crimea is an international armed conflict. However, withdrawing from the agreement does not prevent the ICC from prosecuting crimes committed by Russian citizens on the territory of Ukraine.

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 1 Art. 7, paras ii, iii, para a part 2 of Art. 8, paras i, iii, iv, v, vi, vi, viii, ix, x, xi, xvii, xviii, xix, xx, xxii, xxiv, xxv point b Part 2 of Art. 8, points and point c Part 2 of Art. 8, points i, ii, iii, iv, v, vi, ix, xii point e 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.<sup>24</sup> However, as practice shows,<sup>25</sup> 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.’<sup>26</sup> 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.<sup>27</sup>

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.<sup>28</sup> At the same time, the state’s obligation to ensure human rights arises from

24 I Protsenko, ‘Modern International Legal Means of Protecting the Property Rights of Civilians During Armed Conflicts’ 2020 (11) Law of Ukraine 92. DOI: 10.33498/louu-2020-11-091.

25 See ‘The Al Mahdi case’ (*The Trust Fund for Victims*) <<https://www.trustfundforvictims.org/en/what-we-do/reparation-orders/al-madhi>> accessed 26 September 2022.

26 *Hassan v the United Kingdom* App no 29750/09 (ECtHR, 16 September 2014) <<https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22hassan%22%2C%22itemid%22:%5B%222001-146501%22%5D%7D>> accessed 27 September 2022.

27 Senatorova (n 16) 105.

28 Extra-territorial jurisdiction of States Parties to the European Convention on Human Rights: Factsheet. July 2018. <[https://www.echr.coe.int/Documents/FS\\_Extra-territorial\\_jurisdiction\\_ENG.pdf](https://www.echr.coe.int/Documents/FS_Extra-territorial_jurisdiction_ENG.pdf) > accessed 27 September 2022.

the very fact of establishing control over a certain territory with the help of its own armed forces or through subordinate local administration.<sup>29</sup> Thus, it can be predicted that the ECtHR will also consider cases related to the occupied Ukrainian territories.<sup>30</sup> The court has repeatedly considered disputes about violations of human rights in the occupied territories.<sup>31</sup> So, as O. Plotnikov rightly observes, it is hardly to be expected that the ECtHR will refuse to recognise the responsibility of the Russian Federation for human rights violations in the occupied territories of Ukraine [...]. However, the responsibility of Ukraine cannot be excluded, as well as the possibility of avoiding such responsibility by the Russian Federation, at least in some cases.<sup>32</sup>

At the same time, an accurate assessment of the nature of human rights violations in these territories is complicated, on the one hand, by the fact that representatives of international organisations, even with humanitarian missions, are not allowed to enter these territories.<sup>33</sup> On the other hand, there is difficulty in recording the facts of violations in connection with the abandonment of civilians in the occupied territories due to the small number and unreliability of humanitarian corridors,<sup>34</sup> with the departure of victims and potential witnesses of crimes to other states.<sup>35</sup>

But it should be borne in mind that the Protection of Human Rights and Fundamental Freedoms does not directly provide for a norm regarding the protection of the right to health. At the same time, the analysis of the practice of the ECtHR shows that the realisation of the right to life is impossible without guaranteeing the right to health. The right to life is considered to be violated not only in the case of a person's death but also in the case of injuries that, although they did not cause the person's death, posed a serious

29 Senatorova (n 16) 106.

30 Although Ukraine has not exercised control over Crimea and parts of the Donetsk and Luhansk regions since 2014 (when they became part of the so-called 'Donetsk People's Republic' and 'Luhansk People's Republic'), parts of the Donetsk, Zaporizhzhia, Kharkiv, and Kherson regions were occupied after 24 February 2022 and are currently de-occupied, together with the Kyiv, Chernihiv, Sumy, and part of the Kharkiv regions, which were under the control of the Russian Federation for a long time.

31 See *Loizidou v Turkey* App no 40/1993/435/514, *Ilascu and Others v Moldova and Russia* App no 48787/99, *Mozer v the Republic of Moldova and Russia* App no 11138/10, *Cyprus v Turkey* App no 25781/94, *Xenides-Arestis v Turkey* App no 46347/99, *Papamichalopoulos and others v Greece* App no 14556/89, *Chiragov and Others v Armenia* App no 13216/05, *Khlebiuk v Ukraine* App no 2945/16, etc.

32 O Plotnikov, 'International Legal Responsibility for the Observance of Human Rights in the Occupied Territories of Ukraine' (2020) 11 Law of Ukraine 89. DOI: 10.33498/louu-2020-11-080.

33 'Report on the Human Rights Situation in Ukraine 16 February to 15 May 2019' (United Nations, 1 June 2019) <<https://www.ohchr.org/en/documents/country-reports/report-human-rights-situation-ukraine-16-february-15-may-2019>> accessed 27 September 2022; 'Situation of Human Rights in Ukraine In The Context Of The Armed Attack By The Russian Federation 24 February – 15 May 2022' <<https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-06-29/2022-06-UkraineArmedAttack-EN.pdf>> (United Nations, 29 June 2022); A Pavlenko, 'Diseases of War. The Head of the WHO in Ukraine Assesses the Probability of the Spread of Cholera, Dysentery and Tetanus' (NV-Ukraine, 27 August 2022) <<https://nv.ua/ukr/ukraine/events/interv-yu-z-golovoyu-vooz-v-ukrajini-shcho-potribno-ukrajinskim-medikam-novini-ukrajini-50259013.html>> accessed 27 September 2022.

34 'Situation of Human Rights in Ukraine' (n 33); 'High Commissioner updates the Human Rights Council on Mariupol, Ukraine. 16 June 2022' (United Nations, 16 June 2022) <<https://www.ohchr.org/en/statements/2022/06/high-commissioner-updates-human-rights-council-mariupol-ukraine>> accessed 27 September 2022.

35 Thus, as of 10 August 2022, 6,377,256 refugees who left Ukraine due to the war were recorded in Europe. See: 'Ukraine Refugee Situation' (Operational Data Portal) <<https://data.unhcr.org/en/situations/ukraine>> accessed 27 September 2022; as of 26 May 2022, according to the Ukrainian government, 1.4 million Ukrainian citizens were deported to Russia from temporarily occupied Ukrainian territories, of which 230,000 were children. See: 'The RF Deports the Ukrainian Children in Order to Destroy the Ukrainian Nation' (Ukrinform, 26 May 2022) <<https://www.ukrinform.ua/rubric-ato/3492343-rf-deportue-ditez-j-metou-znisenna-ukrainskoi-nacii-ukraina-v-radbezi-oon.html>> accessed 27 September 2022.



threat to his life. The state also has a positive obligation to protect people from the risk of contracting a disease that can cause death. The right to health can also be reflected through the prism of the prohibition of torture, the guarantee of the right to freedom and personal integrity, a fair trial, respect for personal and family life, the inviolability of housing, etc.<sup>36</sup> In this aspect, we have numerous violations on the part of the Russian Federation, based on the reports and articles of international organisations.<sup>37</sup> Therefore, the right to health can be protected in the ECtHR 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,<sup>38</sup> etc. The facts of human rights violations recorded by it may serve as evidence of IHL violations in international institutions.<sup>39</sup> 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.<sup>40</sup>

36 Y Shvets, 'Features of the Protection of the Right to Health Care in The European Court of Human Rights' 2018 (1) 1 National Law Journal: Theory and Practice 57; V Kovalchuk, B Melnychenko, K Marysyuk, et al, 'Right to Health in the Decisions of the European Court of Human Rights' (2022) 55(1-2) Informatologia 14-26. DOI: 10.32914/i.55.1-2.2; O Yaroshenko, V Steshenko, O Tarasov, et al, 'Right to Health Care: The Practice of the ECtHR and the Case of Ukraine' (2022) 18 The Age of Human Rights Journal 239-256. DOI: 10.17561/tahrj.v18.6496.

37 'Situation of human rights in Ukraine' (n 33); 'High Commissioner updates the Human Rights Council on Mariupol, Ukraine' (n 34); 'Ukraine: Humanitarian situation deteriorates as major cities bear the brunt of heavy fighting' (*International Committee of the Red Cross*, 22 June 2022) <<https://www.icrc.org/en/document/ukraine-humanitarian-situation-deteriorates-major-cities-bear-brunt-heavy-fighting>> accessed 27 September 2022; 'Ukrainian Humanitarian Situation Reports' (*Unicef Ukraine*) <<https://www.unicef.org/ukraine/en/research-and-reports>> accessed 27 September 2022.

38 As of 10 August 2022, the Mission has prepared 53 public reports on the human rights situation in Ukraine and a number of thematic reports on civic space and fundamental freedoms in Ukraine, sexual violence 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 Ilovaik in August 2014, etc.

39 'Ukraine: Monitoring the Devastating Impact of the War on Civilians' (*United Nations*, 24 May 2022) <<https://www.ohchr.org/en/stories/2022/05/ukraine-monitoring-devastating-impact-war-civilians>> accessed 27 September 2022.

40 'What Laws and Customs of War Does Russia Violate in Ukraine?' (*Ukrainer*, 12 June 2022) <<https://ukrainer.net/laws-russia-violate/>> accessed 27 September 2022.

### 3 NATIONAL NARRATIVES REGARDING ENSURING THE RIGHT TO HEALTH IN THE PERIOD OF ARMED CONFLICT AND THEIR PRACTICAL IMPLEMENTATION IN UKRAINE

*Normative means of ensuring and protecting the right to health.* The right to health is guaranteed by a number of Ukrainian legal acts. In particular, Part 1 of Art. 3 and Part 1 of Art. 49 of the Constitution of Ukraine, Art. 8 of the Fundamentals of Ukrainian Legislation on Health Care (1992), Laws of Ukraine 'On Ensuring Sanitary and Epidemic Welfare of the Population' (1994), 'On Protection of the Population from Infectious Diseases' (2000), 'On Childhood Protection' (2001), 'On the Fight against Tuberculosis' (2001), 'On the Prevention of Acquired Immunodeficiency Syndrome (AIDS) and Social Protection of The Population' (2010), etc. However, it is not absolute, and therefore, based on Art. 64 of the Constitution of Ukraine, it may be temporarily limited under conditions of a state of emergency or martial law. The scope of such restrictions is regulated by the Laws of Ukraine 'On the Legal Regime of Martial Law' (2015) and 'On Approval of the Decree of the President of Ukraine "On the Introduction of Martial Law in Ukraine"' (2022).

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 prosecution for 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).<sup>41</sup> 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.<sup>42</sup> 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.*<sup>43</sup> 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<sup>44</sup> 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 medical 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 medical products that are provided free of charge in the form of humanitarian and charitable aid and to distribute them among healthcare institutions and organisations.<sup>45</sup> However, it was not foreseen to whom the Center of Public Health is accountable and under whose control. A control

41 Orders of the Ministry of Health ‘Some Issues of Emergency State Registration of Medicinal Products During Martial Law’ of 26 February 2022 No 384 and ‘On the Ban on the Use of Medicinal Products from the Republic of Belarus on the Territory of Ukraine’ of 19 March 2022 No 503.

42 Law of Ukraine of 22 May 2022 No 2271-IX ‘On Amendments to the Law of Ukraine “On Medicinal Products” regarding restrictions on the circulation of medicinal products, the production of which is located on the territory of the Russian Federation or the Republic of Belarus, as well as on the export of medicinal products from Ukraine’ <<https://zakon.rada.gov.ua/laws/show/2271-20#Text>> accessed 27 September 2022.

43 Decree of the CMU of 13 March 2022 No 303 ‘On the Termination of Measures of State Supervision (Control) and State Market Supervision in Conditions of Martial Law’ <<https://zakon.rada.gov.ua/go/303-2022-%D0%BF>> accessed 27 September 2022.

44 See Order of the Ministry of Health of 26 February 2022 No 384 ‘Some Issues of Emergency State Registration of Medicinal Products During Martial Law’, which approved the ‘Procedure for emergency state registration of medicinal products, medical immunobiological products, blood preparations supplied to Ukraine during the introduction of martial law, under obligations’, Order of the Ministry of Health of 3 March 2022 No 406 ‘Regarding the Circulation of Certain Medicinal Products in the Conditions of Martial Law in Ukraine’, Resolution of the CMU of 15 April 2022 No 471 ‘Some Issues of Emergency State Registration of Medicinal Products, Medical Immunobiological Products, Blood Preparations, which are Produced or Supplied to Ukraine during the Period of Martial Law, Under Obligation’.

45 Order of the Ministry of Health of Ukraine of 12 March 2022 No 474 ‘Some Issues of Receiving Humanitarian and Charitable Aid Under Martial Law’ <<https://zakon.rada.gov.ua/go/v0474282-22>> accessed 27 September 2022.

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.<sup>46</sup>

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 violated right to quality medical services, individuals usually had the right to go to court and compensate for 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.<sup>47</sup> 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, will not be conducted.<sup>48</sup> 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.<sup>49</sup> 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.<sup>50</sup> 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

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) <<https://mvs.gov.ua/news/igor-klimenko-19-tizniv-povnomasstabnoyi-viini-v-cifrax-nacionalnoyi-policiyi>> accessed 27 September 2022.

47 Order of the Ministry of Health of Ukraine of 5 February 2016 No 69 'On the Organization of Clinical and Expert Assessment of the Quality of Medical Care and Medical Services' <<https://zakon.rada.gov.ua/laws/show/z0285-16#Text>> accessed 27 September 2022.

48 Order of the Ministry of Health of Ukraine of 20 March 2022 No 508 'On Amendments to the Order of the Ministry of Health of Ukraine of 5 February 2016 No 69' <<https://zakon.rada.gov.ua/go/z0352-22>> accessed 27 September 2022.

49 'Coronavirus in Ukraine. The situation in Ukraine. Information as of 24 February 2022' (*Ministry of Health of Ukraine*) <<https://covid19.gov.ua/>> accessed 27 September 2022.

50 Decree of the CMU of 9 December 2020 No 1236 as amended of 26 March 2022 'On the Establishment of Quarantine and the Introduction of Restrictive Anti-Epidemic Measures in order to Prevent the Spread of the Acute Respiratory Disease COVID-19 caused by the SARS-Cov-2 Coronavirus on the Territory of Ukraine' <<https://zakon.rada.gov.ua/laws/show/1236-2020-%D0%BF#Text>> accessed 27 September 2022.

psychiatrist or psychotherapist.<sup>51</sup> To minimise these consequences, Ukraine is currently launching a 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. Luhn posted a photo of a bombed ambulance on social media. Luhn 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 car with traces of shelling.<sup>52</sup> 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.<sup>53</sup> On 13 July 2020, a military medic was killed while evacuating the body of a slain Ukrainian Armed Forces serviceman, although the Ukrainian Armed Forces, in coordination with the OSCE, had previously planned the operation, having received security guarantees and a cease-fire commitment from the Russian occupation forces in the area.<sup>54</sup> In general, almost every year from 2014 to 2022, Russian forces unlawfully attacked not only civilian objects but also medical facilities and sanitary transport and killed or injured medical workers.

51 'Lyashko Told How the War Will Affect the Health of Ukrainians in the Long Term' (*Slovo I dilu: analytical portal*, 18 August 2022) <<https://www.slovoidilo.ua/2022/08/18/novyna/suspilstvo/lyashko-rozpoviyak-vijna-vplyne-zdorovya-ukrayincziv-dovhostrokovij-perspektyvi>> accessed 27 September 2022.

52 "'The surround' for peaceful residents. Obstructing the evacuation of the civilian population during the armed conflict in Donetsk and Luhansk regions' in *Violations of human rights and international crimes during the war in Donbas* (almanac of monitoring reports, NGO 'Civil Liberties Center' 2018) 70 <[https://ccl.org.ua/wp-content/uploads/2021/08/kami-export-combinereport\\_ccl\\_mf\\_v5-1.pdf](https://ccl.org.ua/wp-content/uploads/2021/08/kami-export-combinereport_ccl_mf_v5-1.pdf)> accessed 27 September 2022.

53 G Gabrelyan, 'Problems of the Protection of Medical Personnel in the Context of the Armed Conflict in Ukraine' (2019) 3 *Social Law* 95.

54 'War crime: Ukraine calls on the OSCE to respond to the killing of a doctor in Donbas' (*Ukrinform*, 15 February 2020) <<https://www.ukrinform.ua/rubric-ato/3063424-voennij-zlocin-ukraina-zaklikae-obse-vidreaguvati-na-vbivstvo-medika-na-donbasi.html>> accessed 27 September 2022.

However, no one has been punished for any incident to this day. A similar situation, as noted by Abdulkarim Ekzayez, took place in Syria. Moreover, just like in Ukraine, they remain unpunished.<sup>55</sup> 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 Dymmer in the Kyiv region<sup>56</sup> 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.<sup>57</sup>

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'.<sup>58</sup>

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.<sup>59</sup>

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.<sup>60</sup>

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.<sup>61</sup> 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

55 M Bersi, 'A Healthier World Is One without War': At a recent School of Public Health seminar, experts discussed the long-term effects of war on the health of populations (*School of Public Health*, 30 March 2022) <<https://www.bu.edu/sph/news/articles/2022/a-healthier-world-is-one-without-war/>> accessed 27 September 2022.

56 The village of Dymmer, Kyiv region, was under occupation for 35 days.

57 'The Russians tortured a guy from the Red Cross...' (*Ukrainian Helsinki Human Rights Union*, 2 August 2022) <<https://helsinki.org.ua/articles/rosiiany-katuvally-khloptsia-z-chervonoho-khresta/?fbclid=IwAR3vEPwNAPkNrUCHHaCrjPErLjly7kY-BAQ36lGwsTyVkaYtdHLzRVu913s>> accessed 27 September 2022.

58 Resolution No A75/A/CONF.6 of 23 May 2022 'Health Emergency In Ukraine And Refugee Receiving And Hosting Countries, Stemming From The Russian Federation's Aggression' <[https://apps.who.int/gb/ebwha/pdf\\_files/WHA75/A75\\_ACONF6-en.pdf](https://apps.who.int/gb/ebwha/pdf_files/WHA75/A75_ACONF6-en.pdf)> accessed 27 September 2022.

59 *ibid.*

60 'In Vinnytsia, a Rocket Attack Completely Destroyed the Neuromed Center: There Are Preliminary Casualties' (*Fakty*, 14 July 2022) <<https://fakty.com.ua/ua/proisshestvija/20220714-u-vinnyczi-raketnyj-udar-vshhent-znyshhyv-czentr-nejromed-poperedno-ye-zagybli/>> accessed 27 September 2022; 'A Doctor Injured as a Result of a Rocket Shelling of the City Died in Vinnytsia' (*Ukrinform*, 2 August 2022) <<https://www.ukrinform.ua/rubric-regions/3541964-u-vinnici-pomer-likar-paranenij-unaslidok-raketnogo-obstrilu-mista.html>> accessed 27 September 2022; 'Russia Killed Them: Photos and Names of Victims of the Occupiers: Attack on Vinnytsia' (*Apostrophe*, 16 July 2022) <<https://apostrophe.ua/ua/news/society/accidents/2022-07-16/ih-ubila-rossiya-foto-i-familij-zhertv-udara-okkupantov-po-vinnice/274444>> accessed 27 September 2022.

61 5 WHO, Surveillance System for Attacks on Health Care.

41 were destroyed.<sup>62</sup> 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.<sup>63</sup>

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.

62 'Invaders Damaged Almost 900 Objects of Health Care Facilities in Ukraine – Lyashko' (*Ukrinform*, 24 July 2022) <<https://www.ukrinform.ua/rubric-ato/3535627-zagarniki-poskodili-majze-900-obektiv-zakladiv-ohoroni-zdorova-v-ukraini-lasko.html>> accessed 27 September 2022.

63 'There are problems with access to medicines in the temporarily occupied territories – V. Lyashko' (*Weekly magazine Apteka*, 13 June 2022) <<https://www.apteka.ua/article/636507>> accessed 27 September 2022; 'It's an eerie chaos' More than 5,000 Ukrainian pharmacies were under occupation. How does farm retail work in the temporarily uncontrolled territory of Ukraine' (*Forbes*, 22 July 2022) <<https://forbes.ua/inside/velike-malenke-porno-12082022-7663>> accessed 27 September 2022.

## REFERENCES

1. Antonovych M, 'The International System of Human Rights Protection: Through the Prism of Ukraine' (2007) 3 Law of Ukraine 37-41 <<https://core.ac.uk/download/pdf/149240005.pdf>> accessed 26 September 2022.
2. Bersi M, 'A Healthier World Is One without War: At a recent School of Public Health seminar, experts discussed the long-term effects of war on the health of populations' (*School of Public Health*, 30 March 2022) <<https://www.bu.edu/sph/news/articles/2022/a-healthier-world-is-one-without-war/>> accessed 27 September 2022.
3. Footer K, Rubenstein L, 'A Human Rights Approach to Health Care in Conflict' (2013) 95 (889) *International Review of the Red Cross* 167-187. DOI: 10.1017/S1816383113000349
4. Goniewicz K, Goniewicz M, Pawłowski W, 'Protection of Medical Personnel in Contemporary Armed Conflicts' (2016) 69 (2) *Wiad Lek* 280-4.
5. Haar RJ, Risko CB, Singh S, et al, 'Determining the Scope of Attacks on Health in Four Governorates of Syria in 2016: Results of a Field Surveillance Program' (2018) 15 (4) *PLoS Med*. DOI: 10.1371/journal.pmed.1002559
6. Habelian H, 'Problems of the Protection of Medical Personnel in the Context of the Armed Conflict in Ukraine' (2019) 3 *Social Law* 94-98.
7. Kovalchuk V, Melnychenko B, Marysyuk K, et al, 'Right to Health in the Decisions of the European Court of Human Rights' 9(2022) 55 (1-2) *Informatologia* 14-26. DOI: 10.32914/i.55.1-2.2.
8. Liaskovskiy V, 'Legal Regulation of Armed Conflicts at the Current Stage and Features of Their Application of International Humanitarian Law' (2013) 5 *Legal Science* 111-124.
9. Plotnikov O, 'International Legal Responsibility for Observing Human Rights in the Occupied Territories of Ukraine' (2020) 11 *Law of Ukraine* 80-90. DOI: 10.33498/louu-2020-11-080.
10. Protsenko I, 'Modern International Legal Means of Protecting the Property Rights of Civilians During Armed Conflicts' (2020) 11 *Law of Ukraine* 91-109. DOI: 10.33498/louu-2020-11-091.
11. Rubenstein L, 'War, Political Conflict, and the Right to Health' (2020) 22 (1) *Health and Human Rights* June 339-341.
12. Senatorova OV, *Human Rights and Armed Conflicts* (textbook, FOP Holembovska 2018).
13. Shvets Y, 'Features of the Protection of the Right to Health Care in the European Court of Human Rights' (2018) 1 (1) *National Law Journal: Theory and Practice* 56-58.
14. Vasylenko O, 'Individual Aspects of Responsibility for Violations of International Law of Armed Conflicts' (2020) 9 *ΛΟΓΟΣ. The Art of Scientific Mind* 122-152. DOI 10.36074/2617-7064.09.027.
15. Yaroshenko O, Steshenko V, Tarasov O, et al, 'Right to Health Care: The Practice of the ECtHR and the Case of Ukraine' (2022) 18 *The Age of Human Rights Journal* 239-256. DOI: 10.17561/tahrj.v18.6496.