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Criminal liability for humanitarian aid embezzlement during war: The case of Ukraine

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Dmitriy Kamensky *
Oleksandr Dudorov **
Andrii Savchenko ***
Roman Movchan ****
Yuliia Danylevska *****

Abstract

The aim of the article was to reveal the content of the controversial elements of the illegal use of humanitarian aid, provided for in Article 201-2 of the Criminal Code of Ukraine; to clarify the validity of the introduction of this prohibition and, moreover, to discuss its impact on law enforcement. All of which in order to be able to determine the prospects for the development of criminal law in the field. Several research methods have been used in the article, such as: comparative, systemic-structural and legal-formal. Referring to the appropriate methodological basis has made it possible to delve into the issues of criminal liability for embezzlement of humanitarian aid funds in Ukraine. Based on the results of the comparative analysis, it has been noted that there are no special provisions on appropriation and embezzlement of humanitarian aid items in the legislation of certain European states. As a conclusion it has been argued that the introduction of article 201-2 in the Criminal Code, is an example of excessive criminalization because: in this case, the act, which is inherent in the social harmfulness necessary for criminalization, did not require criminalization, since criminal liability for it has already existed and is broadly typified in the law.

* Doctor of Legal Sciences, Professor, Professor of the Legal Courses Department of the Berdyansk State Pedagogical University (Berdyansk, Ukraine). ORCID ID: https://orcid.org/0000-0002-3610-2514

** Doctor of Legal Sciences, Professor, Professor of the Department of Criminal Law Policy and Criminal Law of the Educational and Scientific Institute of Law at Taras Shevchenko National University of Kyiv (Kyiv, Ukraine). ORCID ID: https://orcid.org/0000-0003-4860-0681

*** Doctor of Legal Sciences, Professor, Professor of the Criminal Law Department of the National Academy of Internal Affairs (Kyiv, Ukraine). ORCID ID: https://orcid.org/0000-0003-2101-296X

**** Doctor of Legal Sciences, Professor, Professor of the Department of Constitutional, International and Criminal Law of the Donetsk National University named after Vasyl Stus (Vinnitsa, Ukraine). ORCID ID: https://orcid.org/0000-0003-2074-8895

***** Candidate of Legal Sciences, Senior Researcher, Head of Doctoral Studies of the Donetsk State University of Internal Affairs (Kropivnitskiy, Ukraine). ORCID ID: https://orcid.org/0000-0002-1893-8473

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Keywords: humanitarian aid; charitable donations; misappropriation of humanitarian aid; embezzlement; criminal liability for embezzlement.

Responsabilidad penal por malversación de ayuda humanitaria durante la guerra: el caso de Ucrania

Resumen

El objetivo del artículo fue revelar el contenido de los elementos controvertidos del uso ilegal de la ayuda humanitaria, previsto en el artículo 201-2 del Código Penal de Ucrania; aclarar la validez de la introducción de esta prohibición y, además, discutir su impacto en la aplicación de la ley. Todo lo cual para poder determinar las perspectivas de desarrollo del derecho penal en la materia. En el artículo se han utilizado varios métodos de investigación, tales como: comparado, sistémico-estructural y jurídico-formal. La remisión a la base metodológica adecuada ha permitido profundizar en las cuestiones de la responsabilidad penal por malversación de fondos de ayuda humanitaria en Ucrania. Basándose en los resultados del análisis comparativo, se ha observado que no existen disposiciones especiales sobre la apropiación y malversación de artículos de ayuda humanitaria en la legislación de ciertos Estados europeos. Como conclusión se ha argumentado que la introducción del articulo 201-2 en el Código Penal, es un ejemplo de criminalización excesiva porque: en este caso, el acto, que es inherente a la nocividad social necesaria para la criminalización, no requería la criminalización, puesto que la responsabilidad penal por ello ya ha existido y está ampliamente tipificada en la ley.

Palabras clave: ayuda humanitaria; donaciones caritativas; apropiación indebida de ayuda humanitaria; malversación de fondos; responsabilidad penal por malversación.

Introduction

Throughout its history, humanity has encountered various manifestations of military conflicts, disasters and other extraordinary events. Only in modern times realizing its liability to those affected by such events, global community has learned to cope with their consequences. It was from this collective awareness that the modern understanding of humanitarian aid as a manifestation of solidarity has developed; later on, a block of legal norms designed to regulate such activities has been created.

Today, international humanitarian organizations operating in many countries of the world enjoy recognized authority and are actively supported. We refer primarily to the International Federation of the Red Cross and Red Crescent, the World Health Organization, the United Nations Children's Fund, the World Food Program, "Doctors without Borders", as well as dozens of other funds and organizations of similar profile.

The Russian invasion of Ukraine on February 24, 2022 has led to approximately sixteen million people being either displaced from their homes or struggling to survive in the extreme conditions of the conflict and in urgent need of humanitarian assistance. This emergency has caused serious challenges for the international humanitarian aid system (Issues, 2022). Also, Russia's armed aggression against Ukraine has put on the agenda the need to solve a number of issues related to this event, including the adaptation of national criminal legislation to the conditions and challenges of martial law.

In a short period, more than ten laws were adopted in the emergency mode, designed to improve the mechanism of criminal law regulation of social relations in the relevant sphere. Among other things, based on the Law of Ukraine of March 24, 2022 "On Amendments to the Criminal Code of Ukraine Regarding Liability for Illegal Use of Humanitarian Aid" (hereinafter – the Law of March 24, 2022) the Criminal Code of Ukraine (hereinafter, if no other reservations are made – Criminal Code) has been supplemented by Art. 201-2 "Illegal use of humanitarian aid, charitable donations or gratuitous aid for profit".

Since not only the military, but also ordinary people currently need help, humanitarian aid to Ukraine from the international community is of particular importance. Along with powerful economic and political aid, it has become an important component of support for Ukraine, which generally demonstrates a decent level of management of international humanitarian aid and does everything to increase transparency in this area (Kostin *et al.,* 2022). At the same time, the National Agency for the Prevention of Corruption identifies a number of factors, which can lead to a loss of trust by international donors and a decrease in the amount of humanitarian aid provided to Ukraine.

Among such factors is the lack of a proper response by the state to the facts of the illegal use of humanitarian aid and communication policy to take effective measures to prevent such cases, due to which law enforcement agencies are faced with the issue of monitoring compliance with laws and preventing possible cases of embezzlement and misuse of humanitarian aid as one of the priority tasks under conditions of martial law and armed aggression against Ukraine (Corruption, 2022).

Offenses related to humanitarian aid distribution, including its embezzlement, not only violate provisions of the criminal law, but are also a manifestation of shameful, immoral behavior directed against persons who are already *de facto* in a vulnerable state (because they are victims of a military conflict or other emergency events). The social inadmissibility of such abuses is caused both by assaults on other people's property and by a cynical violation of the fundamental right of recipients of humanitarian aid to receive it.

Based on the decision of the Parliament of Ukraine of September 20, 2022, the Temporary Investigative Commission of the Verkhovna Rada of Ukraine has been established to investigate possible violations of the legislation of Ukraine in the field of receiving, distribution, transportation, storage, use for the intended purpose of humanitarian and other aid, as well as inefficient use of state property, which may be used for temporary accommodation of internally displaced persons as well as provision of other needs of the state. In addition, law enforcement agencies of Ukraine have actively "joined" in combating schemes of illegal use of humanitarian aid, which is delivered from both international and domestic donors. This has led to the formation of a significant body of the practical experience in applying Art. 201-2 of the Criminal Code.

According to the information provided by the Minister of Internal Affairs of Ukraine, today law enforcement officers record the most cases of theft of humanitarian aid in the capital city of Kyiv, as well as in Lviv, Kharkiv and Kirovohrad regions. In most cases offenders' appropriate cars, fuel, medicines, body armor and food products – all items purchased for the army. Moreover, some of the schemes exposed by law enforcement officers have been organized by citizens of the Russian Federation, in particular by creating fictitious "charity" Telegram channels for the purpose of obtaining and then illegally appropriating items of humanitarian aid (Most cases, 2022).

We believe that the law making and law-enforcement experience of Ukraine in terms of criminal law countermeasures against the abuse of humanitarian aid can be potentially useful for other countries, in which armed conflicts or other emergency situations may become factors, which trigger such illegal abuses.

1. Methodology

While working on this research paper, several methods of research have been employed extensively. They include the following. The comparative law method has enabled to research embezzlement statutes in several European jurisdictions and then to compare foreign models with relevant

Ukrainian statutes. Such comparative analyses have revealed that, unlike in Ukraine, there are no specific humanitarian aid embezzlement statutes in European legislation. It should be added that currently the comparative law method is widely used when researching various issues of white-collar crime (Pidgorodynskyi *et al.,* 2021; Reznik *et al.,* 2020).

The system-structural method has been used to describe applicable statutes and their location within the structures of the national Criminal Codes. By referring to this method, components of scientific approaches to understanding problematic issues and ways of developing the "war-related" block of the criminal law of Ukraine in the context of European integration have been discussed.

The formal-legal method has enabled us to analyze in detail the legal meaning of the provisions of regulatory legal acts, which cover operation of charity (humanitarian) foundations as well as distribution of humanitarian aid.

Overall, extensive use of appropriate methodological base has allowed to look deeper into the issues of criminal liability for humanitarian aid embezzlement in Ukraine, even more so in the context of the unprovoked military aggression against this country.

It is worth adding that general principles of criminal law have also remained in focus while working on this research – namely, the principle of legality, the principle of equality of citizens before the law, the principle of humanism, and the principle of justice (Danylevskyi *et al.*, 2020).

2. Recent research and findings

Though being a rather new statute (enacted in March of 2022), the issues of criminal liability for the illegal use of humanitarian aid in Ukraine have been studied, in particular, by A. Aydinyan (2022), O. Kolb (2022), M. Kutsevich (2022), O. Kryshevich (2022), O. Marin (2022), M. Havronyuk (2022), A. Shevchuk and O. Bondaruk (2022). Works by these researchers contain a lot of meaningful and interesting (sometimes controversial) positions regarding the legal analyses of the offense under Art. 201-2 of the Criminal Code, as well as regarding ways of improving the statutory language.

We have also previously addressed some problematic issues of the criminal law characteristics of the offense provided for in Art. 201-2 of the Criminal Code (Dudorov and Movchan, 2022). In particular, we have found out the fallacy of placing this prohibition among the articles of the Criminal Code on liability for economic criminal offenses.

For their part, such scholars from other countries (Ukraine excluded) as G. Corn (2010), E. Engle (2012), B. Jakovljević (1987), J. Lyall (2018), F. Schwendimann (2011), R. Stoffels (2004) and some other have also addressed provisions of international humanitarian aid law in their works. Looking ahead, we note that the works of foreign authors are devoted to various aspects of international humanitarian law, as well as the issues of observance and protection of human rights and fundamental freedoms in the territories of military conflicts as well as in the occupied territories.

Such works do not deal with the abuse of humanitarian aid provided to the local population by international donors, and, even more so, with the criminal law assessment of such abuses. As will be shown below, in other states, particularly in European countries, the issue of illegal use of humanitarian aid practically does not exist, which is indicated by the absence of both relevant criminal law prohibitions and the coverage of such issues in scientific research.

However, from the standpoint of law-making and law-enforcement realities in Ukraine, Art. 201-2 of the Criminal Code requires an in-depth scientific analysis both from the point of view of clarifying its effectiveness and consistency with the provisions of regulatory legislation and other criminal law prohibitions, and in the context of using the comparative method.

3. Results and discussion

We will start with a brief reference to the international law aspects, which partially relate to the problem under review. Nowadays, humanitarian aid can be provided both at the national and international levels; this also applies to legal norms, which regulate humanitarian activities. International humanitarian assistance becomes necessary where a separate state is involved in a humanitarian mission and faces difficulties in individually assuming this responsibility, and when it believes that coordinated international actions are able to successfully complement national efforts, while recognizing all components of the state sovereignty (Jakovljević, 1987).

Based on the norms of international law, the state must ensure the basic needs of the population living on its territory. This thesis stems primarily from the well-established principle of state sovereignty enshrined in international law. In particular, Resolution 46/182 (1991) of the UN General Assembly (Guiding Principles of Humanitarian Assistance) contains the following requirement: each state is obliged to take care of the victims of natural disasters and other emergency situations, which occur on its territory. Thus, the affected state plays the main role in initiating,

organizing, coordinating and implementing humanitarian aid on its territory (UNGA, 1991).

Humanitarian aid can be provided if it is prescribed by a treaty and only under the conditions specified in such a treaty, as is the case, for example, in armed conflicts. In particular, the Geneva Conventions for the Protection of War Victims of August 12, 1949 and Additional Protocols to these conventions dated June 8, 1977 are international documents, which create imperative obligations for the participating countries to provide humanitarian assistance and establish specific conditions for such assistance.

With reference to Art. 23 of the Geneva Convention on the Protection of the Civilian Population in Time of War of August 12, 1949, each High Contracting Party allows the free passage of all parcels with medicines and sanitary materials, as well as items necessary for the performance of religious rites, which are intended exclusively for the civilian population of the other High Contracting Party, even if that Party is a hostile one.

In accordance with Part 1 of Art. 18 of the Additional Protocol to the Geneva Conventions of August 12, 1949, relating to the Protection of Victims of Armed Conflicts of a Non-International Character (Protocol II), of June 8, 1977, relief societies located in the territory of the High Contracting Party, such as the Red Cross Crescent, Red Lion and Sun), may offer services to fulfill their traditional functions for victims of an armed conflict.

If the local civilian population suffers extreme hardship due to the insufficient supply of essentials for its survival, such as food and medical supplies, then with the consent of the High Contracting Party concerned, operations to provide assistance to the civilian population are carried out, which are of an exclusively humanitarian and impartial nature and are carried out under any unfavorable difference (Part 2 of Article 18). Obviously, various issues of logistics and transport related offenses, which include delivery of humanitarian aid items, also can rise as a practical matter (Minchenko *et al.,* 2021).

As the Swiss author F. Schwendimann observes, today the number of humanitarian organizations has increased significantly. This means that one needs to coordinate one's actions even more during the implementation of humanitarian projects. In addition, in practice, the boundaries between military, political and humanitarian operations often become blurred – such processes are intertwined. If a party to the conflict or part of the local population begins to use the humanitarian mission for its own political purposes, access to those who really need help can be seriously hampered. What is more: volunteers and representatives of humanitarian organizations on the ground may themselves become objects of armed attacks or other aggressive actions (Schwendimann, 2011).

The Spanish commentator R. Stoffels points out that modern approaches to understanding the mission of humanitarian aid during armed conflicts create a confusing picture. Currently, there are many public and private humanitarian organizations operating in the world.

Their ongoing activities contribute to saving lives and alleviating the suffering of those, who do not take part in armed conflict and those who are deprived of the basic life necessities because of hostilities. Organizations responsible for compliance with international humanitarian law and international human rights, and under certain circumstances, persons responsible for fighting threats to international peace and security, also take serious measures when parties to the conflict impede efforts to provide humanitarian assistance (Stoffels, 2004).

We will not further emerge into the international legal aspects of the issue of humanitarian aid, given the other, mainly "national law" direction of our research, as stated in the title of this paper.

Turning to Ukrainian legislative realities, we note that in Art. 1 of the Law of Ukraine of October 22, 1999 "On Humanitarian Aid" (hereinafter – the Law of October 22, 1999) reflected such a broad approach, because humanitarian aid is defined here as targeted free aid not only in monetary or in-kind form, in the form of non-refundable financial assistance or voluntary donations, but also in the form of performing certain works or providing services.

However, since within the text of Art. 201-2 of the Criminal Code of Ukraine (hereinafter – Criminal Code) only "goods (items) of humanitarian aid" and "such property" appear, non-targeted use of humanitarian aid, which is provided in the form of performing works or providing services, does not form part of the criminal offense provided for in Art. 201-2 of the Criminal Code. This applies to free aid (a type of humanitarian aid), which can also be provided in the form of work and services.

Hence, there is inconsistency between the analyzed criminal law prohibition and the prescriptions of the regulatory legislation, and therefore, a violation of the principle of systemic and legal consistency of the criminalization of the act. Another similar inconsistency must be stated due to the fact that Part 1 of Art. 201-2 of the Criminal Code refers to charitable donations and at the same time does not mention those, which appear in the Law of Ukraine of July 5, 2012 "On Charitable Activities and Charitable Organizations" (hereinafter – the Law of July 5, 2012) along with charitable donations, charitable grants (targeted assistance in the form of currency values, which must be used by the beneficiary within the period determined by the benefactor).

On the one hand, approach according to which the use or disposal of charitable grants for the purpose of obtaining profit can be qualified under

Art. 201-2 of the Criminal Code, indicates the disclaimer made in Part 2 of Art. 6 of the Law of July 5, 2012: provisions on charitable donations apply to charitable grants, unless otherwise specified by law. On the other hand, such approach can be criticized as the one violating the prohibition on the application of the law on criminal liability by means of analogy (Part 4 of Article 3 of the Criminal Code).

Failure of the title of Art. 201-2 of the Criminal Code is such that it does not cover all possible forms of committing a criminal offense for which this article provides liability. As an option, the improved title of this article of the Criminal Code could be like this: "Illegal actions regarding humanitarian aid, charitable donations or free aid", since the construction "illegal actions..." has already been successfully tested in the names of articles 169, 200, 313, 388 of the Criminal Code. At the same time, we would like to note that under Art. 201-2 of the Criminal Code such actions, for example, cannot be addressed as destruction or damage of the relevant property (in such cases, the "general" articles of the Criminal Code dedicated to criminal offenses against property are applicable), violation of the procedure for writing off goods (items) of humanitarian aid, which have a certain term of operation (here, in particular, articles of the Criminal Code on criminal offenses in the field of official activity should be used).

Since the untargeted use of humanitarian aid, charitable donations, other than the disposal of such property for the purpose of obtaining profit, does not form the criminal offense under review, *de lege ferenda* Art. 201-2 of the Criminal Code (provided the expediency of its future existence or that of its analogue) should provide for liability, among other things, for the unintended use of goods without signs of theft, which are currently the subject of the analyzed offense.

It should be understood that criminal liability for the combined use of humanitarian and gratuitous aid, charitable donations, and disposal of such property for the purpose of obtaining profit existed even before the adoption of the Law of March 24, 2022. In other words, introduction of Art. 201-1 into the Criminal Code can be characterized as excessive criminalization.

The result of the desire to "establish criminal liability" for actions that were previously recognized as criminally illegal was the appearance of a special norm in the Criminal Code (Article 201-2), which represents inappropriate humanization of criminal liability. It is another matter that today the shortcomings inherent in the punishment of the researched offense are eliminated by incriminating part 3 of Art. 201-2 of the Criminal Code on the grounds of committing acts during martial law.

We believe that in the vast majority of cases actions listed in Art. 201-2 of the Criminal Code, in its absence would be recognized under Ukrainian law as embezzlement, and more specifically, such "classical" encroachments

on property as: 1) embezzlement, when someone else's property ceases to exist in its previous physical form; embezzlement can take the form of consumption of goods and material values, spending money, alienation of property in one way or another – its sale, gift, exchange, loan or loan repayment, etc.; 2) appropriation – turning to one's own benefit or to the benefit of other persons the property which is in the legal possession of the culprit, having been entrusted to him or handed over to him; in case of appropriation, the property retains its existence in physical and tangible form; 3) taking possession of someone else's property by abusing official position (Art. 191 of the Criminal Code).

If the elements of this criminal offense could not be seen in what was committed (in particular, due to the absence of a special subject), then almost all actions specified in the current wording of Art. 201-1 of the Criminal Code, subject to the establishment of illegality and gratuity, would receive an assessment on the basis of other articles of the Criminal Code on liability for criminal offenses against property. Moreover, these would be both provisions on embezzlement – encroachments related to the conversion of someone else's property to one's own benefit or the benefit of other persons, and Art. 192 of the Criminal Code "Causing property damage by deception or abuse of trust" (the criminal offense provided for by this article of the Criminal Code, in particular, may differ from theft or other illegal use of someone else's property (including entrusted property), as well as disposing of it with the purpose of obtaining profit.

Law enforcement practice confirms our thesis that we are dealing with excessive criminalization in this case. For example, it has been stated in the decision of the investigating judge of the Rivne city court of the Rivne region on the application of a preventive measure that a person has been notified of the suspicion of committing a crime under Part 3 of Art. 201-2 of the Criminal Code.

It was established that this person, while having the intention of selling humanitarian aid goods in a significant amount for the purpose of obtaining profit, illegally sold to another person four passenger cars for the total amount of UAH 666,533.29. These cars were imported to the territory of Ukraine in the form of humanitarian aid in accordance with the requirements of the resolution of the Cabinet of Ministers of Ukraine dated March 1, 2022 No. 174 "Some issues of the passage of humanitarian aid through the customs border of Ukraine under martial law" (Decision, 2022).

Next, turning to the relevant experience of individual European states, we will try to identify criminal law statues, which are similar to Art. 201-2 of the Criminal Code of Ukraine.

According to Art. 226 of the Criminal Code of the Federal Republic of Germany any person who abuses the authority granted to him by law or legal agreement to dispose of the assets of another person or enter into other binding agreements with such assets with another person, or any person who violates his duty to protect the property interests of another person, which are entrusted to him on the basis of the law, through the exercise of authority, legal transaction or fiduciary relations, and thus causes damage to the person for whose property interests he was responsible, shall be punished by imprisonment for a term of up to years or a fine (German Criminal Code, 1998).

In this rather cumbersome wording, if we refer to Ukrainian criminal law terminology, we are talking about the appropriation (waste) of someone else's property which was entrusted to a person, that is about the encroachment described in Art. 191 of the Criminal Code of Ukraine. At the same time, we were not able to identify provisions in the Criminal Code of the Federal Republic of Germany, which would prohibit the appropriation and embezzlement of humanitarian aid and the content of which would be similar to the content of Art. 201-2 of the Criminal Code of Ukraine.

According to § 1 of Art. 284 of the Criminal Code of Poland, appropriation of someone else's movable property or property rights is punishable by imprisonment for a term of up to 3 years. At the same time, misappropriation of someone else's movable property entrusted to a person is punishable by imprisonment for a term of 3 months to 5 years (§ 2 of Art. 284 of the Criminal Code of the Republic of Poland) (Polish Penal Code, 1997).

As for foreign (non-Polish) researchers, it is quite difficult for us to comprehend why the Polish legislator has put the element of trust as the basis for distinguishing between the two above-mentioned types of appropriation of another's property. However, without plunging deeper into the intricacies of qualification under Art. 284 of the Criminal Code of Poland (due to a different focus of our research), we note that this article is also reminiscent, same as the aforementioned German ban, of Art. 191 of the Criminal Code of Ukraine.

Based on Art. 372 of the Criminal Code of Hungary, cases where a person illegally appropriates or disposes of a thing entrusted to him as his own, are punished by law. At the same time, such a crime-forming feature as embezzlement in an emergency situation and embezzlement in commercial dimensions is singled out (Criminal Code of Hungary, 2012). The meaning of the element of emergency situation generally corresponds to the content of the aggravating element "in conditions of war or a state of emergency" provided for in part 4 of Art. 191 of the Criminal Code of Ukraine.

The Hungarian legislator does not consider it necessary to single out the norm devoted to embezzlement or other illegal actions with items

of humanitarian aid or any specially defined items – the link between punishment and the amount of damage caused by embezzlement is established in different parts of Art. 372 of the Criminal Code of Hungary.

Comparative data on humanitarian aid embezzlement statutes in several European jurisdictions is presented in the Figure 1.

	Country	General Embezzlement Statute	Humanitarian Aid Embezzlement Statute
1.	Germany	Art. 226, Criminal Code of the Federal Republic of Germany	No
2.	Hungary	Art. 372,Criminal Code of Hungary	No
3.	Poland	§ 1 of Art. 284, of the Criminal Code of Poland	No
4.	Ukraine	Art. 191, Criminal Code of Ukraine	Art. 201-2, Criminal Code of Ukraine

Fig. 1. General embezzlement statutes and humanitarian aid embezzlement statutes in various European jurisdictions. Source: prepared by the authors.

Therefore, we were not able to identify an analogue of Art. 201-2 of the Criminal Code of Ukraine in the criminal law of the above-mentioned European countries. This once again leads us to the conclusion that this ban is recognized as a kind of unjustified casuistic manifestation of *ad hoc* criminal law-making.

Taking into account the fact that in the absence of Art. 201-2 in the Criminal Code illegal actions regarding humanitarian aid, charitable donations or free aid would be qualified mainly according to the relevant parts of Art. 191 of the Criminal Code, we consider it expedient that the value criteria characterizing the subject of the analyzed criminal offense are clearly overstated and over-specified in paragraph 2 of the footnote to Art. 201-2 of the Criminal Code. This brings it into line with quantitative indicators specified in clauses 2, 3 and 4 of Art. 185 of the Criminal Code, which relate to criminal offenses against property and which also apply to Art. 191 of the Criminal Code.

The "purpose of obtaining profit" element of the offense, which in the structure of Part 1 of Art. 201-2 of the Criminal Code "replaces" the element of illegality indicated in the title of this article, as ambiguous. On the one hand, the wording "for the purpose of obtaining profit" is borrowed (literally) from the regulatory legislation (Article 12 of the Law of October 22, 1999). On the other hand, such legislative step can play a bad joke in practice.

The fact is that the normative indication of the purpose of obtaining profit complicates incrimination of Art. 201-2 of the Criminal Code in cases where the illegal disposition of the property specified in this article of the Criminal Code will take the form of, for example, donation, transfer to repay a debt, compensation for damages or as a payment for work performed or services rendered. In practice, there are also quite a few cases when humanitarian aid is used in one's own (personal) interests or in the interests of third parties, without receiving profit. The pressing nature of the indicated problem increases because of a potentially restrictive understanding of the concept of "profit" (the difference between the amount of income and the amount of incurred expenses).

At the same time, we do not rule out that in practice the "purpose of obtaining profit" will be interpreted as broadly as possible – as receiving any (property or even non-property) compensation for the property illegally disposed of by the guilty party, which will in turn increase the scope of efforts by an attorney. We believe that the reference to the "purpose of obtaining profit" in the title and disposition of Part 1 of Art. 201-2 of the Criminal Code does not meet the needs of law enforcement practice. It also significantly complicates the process of proof in criminal proceedings. Therefore, we propose to exclude the indication of the specified purpose from Art. 201-2 of the Criminal Code.

Considering the fact that the illegal use of humanitarian aid often involves implementation of complex criminal schemes, in which representatives of the authorities, law enforcement officers, military personnel, etc. are involved, *de ledge ferenda* the corruption-related nature of the investigated criminal offense cannot be ignored. Unfortunately, corruption remains among the major threats to the national security of Ukraine – while penetrating into all spheres of public life, it damages the most important social values of both the state as a whole and its individual citizens in particular (Vozniuk *et al.*, 2021).

Hence, we suggest replacing the construction "using official position", which is used in Part 2 of Art. 201-2 of the Criminal Code, with another wording – "by abusing official position". In the future, subject to the will of the legislator, this will make it possible to classify such a criminal offense as a corruption offense, for which it will be necessary to amend the footnote to Article 45 of the Criminal Code, which lists corruption offenses.

In our opinion, within the improved Art. 96-3 of the Criminal Code, the commission of a criminal offense by an authorized person on behalf of and in the interests of a legal entity, provided for in Article 201-2 of this Code, must be recognized as grounds for applying criminal law measures to the legal entity. Hence, additional mechanisms of criminal law protection of relations will be created, thus ensuring the provision of humanitarian aid, charitable donations or free assistance.

Conclusions

Therefore, the introduction of Art. 201-2 in the Criminal Code can be characterized as an example of excessive criminalization: in this case, we are talking about an act, which is inherent in the social harmfulness necessary for criminalization, but which did not require criminalization, since criminal liability for it has already existed. Criminal laws of some European countries, in which there are no analogues of the analyzed criminal law prohibition, additionally attest to the fact that, there are reasons to regard Art. 201-2 of the Criminal Code as a manifestation of unjustified casuistry of the criminal law and excessive criminalization. The negative consequences of the latter include: violation of the principle of economy of criminal law repression; artificial creation of unwanted collision between criminal law norms; the emergence of paradoxical situations in which the same act entails application of significantly different criminal law means.

At the same time, it is obvious that during the war, when abuse of humanitarian aid is particularly unacceptable and causes significant public outcry, the Ukrainian legislator is unlikely to take such a drastic and unpopular step as the exclusion of Art. 201-2 from the Criminal Code.

Therefore, members of jurisprudence community should focus their efforts on consideration of debatable issues related to the interpretation, application and improvement of Art. 201-2 of the Criminal Code. We believe that the latter needs improvement at least in terms of: 1) clarification of the official title: the proposed title of Art. 201-2 of the Criminal Code – "Illegal actions regarding humanitarian aid, charitable donations or free aid"; 2) exclusion of words "for the purpose of obtaining profit" from the title and disposition of Part 1 of Art. 201-2 of the Criminal Code; 3) adjustment of the value criteria, which characterize the subject of the analyzed (actually "proprietary") criminal offense and specified in paragraph 2 of the footnote to Art. 201-2 of the Criminal Code, with the notes specified in clauses 2, 3 and 4 of Art. 185 of the Criminal Code with quantitative indicators relating to criminal offenses against property.

In addition, by using construction "by abuse of official position" in the improved Part 2 of Art. 201-2 of the Criminal Code and making amendments to the note of Article 45 of the Criminal Code, the idea of classifying relevant manifestations of the illegal use of humanitarian aid among corruption criminal offenses could be implemented.

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