

## HUMANITARIAN (ANTHROPOLOGICAL) TURN TO MISSING PERSONS IN THE CONDITIONS OF MARTIAL LAW IN UKRAINE

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### INTRODUCTION

The concept of a humanitarian turn in the legal space is determined in the studies of Western European scientists. A separate vector of these studies is represented by the study of the interaction of: a) humanitarian law; b) human rights law; c) human rights during an armed conflict.

This issue is reflected in publications Hathaway O.<sup>1</sup>; Ben-Naftali O.<sup>2</sup>; Roberts A.<sup>3</sup>; Doswald-Beck L.<sup>4</sup>; Kwakwa E.<sup>5</sup> and others. In particular, the book by Edward Kwakwa examines: a) the justifications of humanitarian law; b) the effectiveness of its influence on the parties to the conflict; c) the use of humanitarian law to protect and victims of war. This book is a contribution to the study of human rights in general and humanitarian law in particular. It contains detailed information and analysis of the law and practice relating to international armed conflicts involving irregular combatants. The discussion focuses on the most controversial provisions of Additional Protocol I to the Geneva Conventions: the classification of wars of national liberation, the treatment of guerrillas and mercenaries upon capture, reprisals, and the question of supervision and implementation in such conflicts. The manuscript on which this book was based was awarded the 1991 Paul Reuter Prize by the International Committee of the Red Cross.

In the aspect of these interpretations (analysis of the publication Ben-Naftali O. (ed.). *International Humanitarian Law and International Human Rights Law*) deserves careful analysis position of Yuval Shany, which is set out in essay "Human Rights and Humanitarian Law as Competing Legal Paradigms for Fighting Terror". The title already shows: the author explores competition a) human rights and b) humanitarian law in the field of anti-

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<sup>1</sup> Hathaway O. A. et al. Which Law Governs During Armed Conflict? The Relationship Between International Humanitarian Law and Human Rights Law. *Minnesota Law Review*, 2012. Vol. 96, p.1883-1944.

<sup>2</sup> Ben-Naftali O. (ed.). *International Humanitarian Law and International Human Rights Law*. Oxford: Oxford University Press. 2011. Pp. 424.

<sup>3</sup> Roberts A. *Humanitarian war: military intervention and human rights* // *International Affairs* (Royal Institute of International Affairs 1944-). 1993. P. 429-449.

<sup>4</sup> Doswald-Beck L. *Human rights in times of conflict and terrorism*. OUP Oxford, 2011. P. 600. DOI: 10.1093/law/9780199578931.001.0001. ISBN: 9780199578948

<sup>5</sup> Kwakwa E. K. *The international law of armed conflict: personal and material fields of application*. BRILL, 2023. P. 224

terrorist activities. This provides a basis for extrapolating these views to the area of ensuring the rights of missing persons in military conflicts. As a result, a new framework for research on the rights of victims of armed conflict is being determined: the interaction of humanitarian law with the rights of missing persons.

The above circumstances are determinants of the phenomenon "humanitarian twist in jurisprudence" or "anthropological twist in jurisprudence". This conclusion applies to all segments of the legal space. It is relevant to the area of ensuring the rights of persons who are missing in the course of armed conflict.

Humanitarian (anthropological) turn to missing persons in the conditions of martial law in Ukraine formally begins with the action of norms: a) Instruction on the procedure for the implementation of the norms of international humanitarian law in the Armed Forces of Ukraine<sup>6</sup>; b) Decree of the President of Ukraine "On the Introduction of Martial Law in Ukraine"<sup>7</sup>; c) Law of Ukraine "On the Legal Status of Persons Disappeared Under Special Circumstances"<sup>8</sup>; d) Law of Ukraine "On the legal regime of martial law"<sup>9</sup>; e) Law of Ukraine "On Amendments to the Law of Ukraine "On the Legal Status of Missing Persons" and other legislative acts of Ukraine on improving the legal regulation of social relations related to the acquisition of the status of persons missing under special circumstances"<sup>10</sup>.

Based on the conducted research, I propose a definition of the concept of "Humanitarian (anthropological) turn in the contours of the rights of missing persons in armed conflict". The humanitarian (anthropological) turn in the contour of the rights of the missing in armed conflict is the transition of the functioning of the system of ensuring the rights of the missing to the mode of integrative interaction: a) means of humanitarian law; b) means of ensuring human rights; c) means of ensuring the legal status of persons missing in special circumstances.

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<sup>6</sup> Інструкція про порядок виконання норм міжнародного гуманітарного права у Збройних Силах України. Офіційний вісник України. 2017, № 61, ст. 1886.

<sup>7</sup> Про введення воєнного стану в Україні: Указ Президента України від 24.02.2022. № 64/2022. Голос України № 37 від 24.02.2022.

<sup>8</sup> Про правовий статус осіб, зниклих безвісти за особливих обставин: Закон України від 12.07.2018 № 2505-VIII. ВВР, 2018, № 38, ст.280.

<sup>9</sup> Про правовий режим воєнного стану: Закон України від 12.05.2015. № 389-VIII. ВВР. 2015. № 28. Ст.250.

<sup>10</sup> Про внесення змін до Закону України "Про правовий статус осіб, зниклих безвісти" та інших законодавчих актів України щодо вдосконалення правового регулювання суспільних відносин, пов'язаних із набуттям статусу осіб, зниклих безвісти за особливих обставин: Закон України від 14.04.2022. Офіційний вісник України. 2022. № 35, ст.1896.

## **1. Ontology of the humanitarian turn in the field of human rights protection in the conditions of armed conflicts**

It contains the ontological paradigm of the humanitarian turn in the sphere of human rights protection in the conditions of armed conflicts Resolution XXIII "Human Rights in Armed Conflicts" adopted by the International Conference on Human Rights, Tehran, 12 May 1968.

Louise Doswald-Beck and Sylvain Vité in this regard noted: "international humanitarian law is increasingly perceived as part of human rights law applicable in armed conflict. This trend can be traced back to the United Nations Human Rights Conference held in Tehran in 1968 which not only encouraged the development of humanitarian law itself, but also marked the beginning of a growing use by the United Nations of humanitarian law during its examination of the human rights situation in certain countries or during its thematic studies. The greater awareness of the relevance of humanitarian law to the protection of people in armed conflict, coupled with the increasing use of human rights law in international affairs, means that both these areas of law now have a much greater international profile and are regularly being used together in the work of both international and non-governmental organizations"<sup>11</sup>.

At the same time, interpretations of the humanitarian turn must take such caveats into account. First, human rights law and humanitarian law have different genesis and legal content; secondly, therefore, their provision by the norms of positive law follows different principles and legal means; thirdly, the study of military conflicts of the 21st century (in particular in Ukraine) testifies to a) their similarity, b) mutual influence; fourth, the interaction of human rights law and humanitarian law forms a specific system of; fifth, this system generates new social relations that need legal regulation; sixth, the development and adoption of new norms of positive law requires thorough research into the system.

The emergence of concepts of "humanitarian war" should be attributed to important results of the study of the system "human rights law humanitarian law" (Handler G. *The Concept of Humanitarian War: the Relationship Between International Humanitarian Law and Human Rights Law Based on the Lex Specialis-solution*, 2013) and "humanitarian intervention" (Norman R. *War, humanitarian intervention and human rights. The ethics of war*. Routledge, 2020. C. 191-207; Swatek-Evenstein M. *A history of humanitarian intervention*. Cambridge University Press, 2020; Orford A. *Reading humanitarian intervention: Human rights and the use of force in international law*. Cambridge University Press, 2003. T. 30).

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<sup>11</sup> Doswald-Beck L., Vité S. *International humanitarian law and human rights law*. International Review of the Red Cross (1961-1997). 1993. T. 33. № 293. Pp. 94-119. P.94.

Humanitarian intervention is the use or threat of military force by a state (or states) across borders with the intent of ending severe and widespread human rights violations in a state which has not given permission for the use of force.

Legal debates about humanitarian intervention military intervention by one or more states to curb gross human rights violations occurring in another state tend to assume that its legitimacy is irrelevant to its legality. Debates among philosophers and political theorists often assume the inverse, that the legality of humanitarian intervention is irrelevant to its legitimacy. This paper defends an alternative account, one that sees the legality and legitimacy of humanitarian intervention as intertwined and ultimately tied to the justice of the distribution of sovereign power that lies at the heart of the international legal order. Drawing on a long standing debate among domestic legal theorists about the rule of law, it first identifies formal constraints on the UN Security Council's discretion to authorize the use of force to end human rights violations.

Developing a distributional conception of international human rights, it then identifies substantive considerations that shed further light on the legality of intervention. It suggests that a failure by the UN Security Council to authorize humanitarian intervention, in some circumstances, may constitute an international illegality, and that, in such circumstances, intervention might not only be legitimate but assume a measure of international legality<sup>12</sup>.

In conclusion of the ontological analysis of the subject of our research, we emphasize that in the ontology of the humanitarian (anthropological) turn, a specific legal reality arises in which the vitality of human existence predetermines the legal principles, forms and methods of organizing public space.

It is precisely this legal reality (in relation to ensuring the legal status of persons missing under special circumstances) that is examined in the second part of our research.

## **2. Human rights standards in the conditions of armed conflicts**

Human rights standards in armed conflicts are formulated by International Humanitarian Law. They are called: a) humanitarian standards; b) standards of humanitarian law.

Reference publications define humanitarian law as a part of international law that establishes rules and regulations for the protection of the rights and dignity of people in armed conflicts. It is also known as the law of war or international humanitarian law (abbreviated as IHL). Humanitarian law

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<sup>12</sup> Macklem P. Humanitarian intervention and the distribution of sovereignty in international law. *Ethics & International Affairs*. 2008. T. 22. №. 4. C. 369-393. C.369.

governs the conduct of armed conflicts, including the protection of civilians, prisoners of war, the wounded and sick, and the provision of humanitarian assistance. Its norms prohibit the use of certain types of weapons and methods of warfare. The main sources of humanitarian law are: a) international treaties (including the Geneva Conventions of 1949, their additional protocols, and other documents); b) documents related to ensuring human rights; c) customary international law; d) court decisions. Humanitarian law aims to protect the most vulnerable groups during conflicts and reduce the human suffering associated with war.

Its forerunner was the idea of concluding legally binding documents (agreements, treaties, conventions, pacts, protocols, declarations) regarding standards: a) protection of the wounded in active armies and b) formation of national societies (associations, communities, alliances) for training of specialists and concentration of material resources for the purpose of helping the wounded and sick during the war.

In the times of "new history", the most clearly humanitarian standards were formulated in the book of the Geneva businessman Jean Henri Dunant "Memories of Solferino" (1862) about the authentic and tragic consequences of the bloody battle that took place near the Italian town of Solferino in 1859 year.

In fact, Dunant laid out the first research vision of the characteristics of the humanitarian movement in the conditions of armed conflicts. The published theses and justifications formed the basis for the creation in 1863 of the organization that later became known as the International Committee of the Red Cross.

Thus, the nature of humanitarian law standards is triune. Its first genetic contour is the legal fixation of standards in the form of rules and regulations regarding their obligation in wartime conditions for participants in the conflict; the second standards of real assistance to persons who suffered as a result of military actions; the third genetic circuit is research. Let's remember that it all started with the study of the military clash at Solferino.

Each of the mentioned contours received an evolutionary development in time and space. Legal fixation took place primarily in international conventions, pacts and declarations. From their case we mention the following: The Hague Convention on the Laws and Customs of Land War; Geneva Convention on the Amelioration of the Fate of the Wounded and Sick in Active Armies; Geneva Convention for the Amelioration of the Fate of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea; Geneva Convention on the Treatment of Prisoners of War and others.

Standardization of real practical assistance to persons injured as a result of military actions is characterized by multi-vector nature and is provided by legal means: a) in the fields of education, economy, medicine, jurisprudence,

social counseling, etc.; b) regarding the use of soft power and smart power; c) regarding the involvement of state resources and opportunities of civil society.

In this regard, it is appropriate to mention the practical humanitarian dictionaries of the legal director of Doctors Without Borders (France) Françoise Bouchet-Saulnier, the 4th edition of which is dated October 2013<sup>13</sup>, as well as Francisco Rubio and Christelle Hure, whose work contains almost 500 definitions and uses the concept (and term) "humanitarian world"<sup>14</sup>.

The research circuit of humanitarian law generates in its "melting pot" positive results of practical activity and research achievements of specialists of various legal branches and law schools. First of all, this concerns the sphere of human rights. In the publications devoted to these issues, it is proved that the norms of humanitarian law and the norms of human rights law are complementary, that is, they complement each other.

The analysis of their judgments shows that humanitarian standards: firstly, do not exclude the application of normative material of various legal fields; secondly, require the occupying state to observe (to the extent possible) the laws of the occupied state; thirdly, they are not motives for denunciation of internal regulations in conflict zones; fourthly, when regulating relations, conflict participants are referred to domestic legislation; fifth, contribute to the disclosure of the inability of domestic legislation designed for peacetime to regulate relations under martial law.

The cited and other works reflect the consistent evolution of humanitarianism, project the directions of discussions, arouse interest in actions of humanitarian content, stimulate the search for the latest and most effective methods and forms of humanitarian activity, the integration of concrete practice and research activity.

Recently, the focus of the novel has been on the achievements of the standards of humanitarian diplomacy. Asma Mahai-Batel's dissertation "Humanitarian Diplomacy and International Humanitarian Law: From Empiricism to Catalytic Diplomacy"<sup>15</sup> is considered to be a landmark study of this phenomenon.

According to her vision, the concept of humanitarian diplomacy appeared in the 2000s based on meaningful practices of implicit negotiations on humanitarian issues. The purpose of this diplomacy is to convince public leaders of the expediency of always and under any circumstances to act in

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<sup>13</sup> Bouchet-Saulnier F. Dictionnaire pratique du droit humanitaire. Rowman littlefield ed. 2013. P. 760.

<sup>14</sup> Rubio F., Huré C. Dictionnaire pratique de l'humanitaire. Ellipses, 2010. P. 272.

<sup>15</sup> Asma Mahai-Batel. Humanitarian diplomacy and international humanitarian law: from empiricism to catalytic diplomacy. University of the Côte d'Azur. Submitted on 18 Dec 2021. P. 553. <https://theses.hal.science/tel-03491862>.

favor of vulnerable population groups, while observing and respecting basic humanitarian principles.

It covers the activities of humanitarian actors whose goal is to obtain a "comfortable" space for their activities from the political and military authorities. This activity includes: 1) guaranteeing the safe presence of humanitarian organizations in a certain country; 2) access to negotiations with the civilian population in need of assistance and protection; 3) monitoring of aid programs; 4) ensuring respect for the standards of international law; 5) support of humanitarian organizations and their goals at various socio-political levels. Thus, humanitarian diplomacy acts as an actual channel of access to the most vulnerable sections of the population.

Ukrainian researchers note that in the domestic legal space, the standards of humanitarian law are characterized by: a) a steady tendency to expand the sphere of social relations, which are affected by this law; b) quantitative growth and qualitative evolution of the functions of organizational and structural entities that ensure the implementation of its norms; c) constant expansion of subjects of legal protection; d) increase in the range of situations in which victims of armed conflicts appear<sup>16</sup>.

The act of implementing the standards of international humanitarian law into the Ukrainian legal space became the "Instruction on the procedure for the implementation of the norms of international humanitarian law in the Armed Forces of Ukraine". According to the analysis, the trigger for their actualization in the conditions of martial law was the Decree of the President of Ukraine dated February 24, 2022 "On the Introduction of Martial Law in Ukraine" and the Law of Ukraine "On the Legal Status of Persons Disappeared Under Special Circumstances".

In this regard, it is appropriate to state that research into the processes of implementation of international humanitarian law standards into the Ukrainian legal space is difficult to recognize as active and adequate to the challenges of the time. First of all, this assessment stems from a small number of monographic publications on the implementation of international humanitarian law standards in Ukrainian jurisprudence.

According to the Instruction, in the Ukrainian legal space, international humanitarian law (the law of armed conflicts) is understood as a system of internationally recognized: a) legal norms; b) standards; c) the principles applied during armed conflicts establish the rights and obligations of subjects of international law regarding the prohibition or restriction of the use of certain means and methods of conducting armed conflict, ensuring the protection of victims of the conflict, and determine responsibility for

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<sup>16</sup> Міжнародне гуманітарне право за ред. Т. Р. Короткого. Київ-Одеса: Фенікс, 2017. 145 с. С. 28.

violations of these norms. The norms of international humanitarian law come into force with the beginning of an armed conflict or an operation to maintain peace and security.

The analysis of the instruction shows that the regulatory influence of its norms is correlated with the standards in which the leading place is recognized, **firstly**, at the request of the parties involved in the conflict, in all circumstances, to distinguish between the civilian population and direct participants in hostilities (combatants) in order to ensure the protection of the civilian population and civilian objects; **secondly**, it is forbidden to attack both the civilian population in general and individual civilians. Attacks should be directed only against military objects. Persons who do not or have ceased to participate in hostilities have the right to respect for their lives, as well as physical and mental integrity. Such people must be provided with protection and humane treatment in all circumstances without any discrimination; **thirdly**, the prohibition to kill or injure an enemy who has surrendered or can no longer participate in hostilities; **fourth**, by imposing on the parties to the conflict and members of the armed forces, restrictions on the right to choose methods and means of warfare, as well as prohibitions on the use of weapons or methods of warfare that may cause unnecessary losses or unnecessary suffering; **fifth**, at the request of the parties involved in the conflict, pick up the wounded and sick, provide them with medical assistance. Aid should be given to the side of the conflict in whose power they ended up. It is necessary to ensure the protection of medical personnel and medical institutions, as well as their transport and equipment; **sixth**, the parties involved in the conflict recognize the red cross or red crescent emblem on a white background as an object of special protection. Persons and objects using the red cross and red crescent emblems may not be attacked; **seventhly**, captured participants in hostilities and civilians who are in the power of the enemy have the right to preserve their lives, respect for their dignity, personal rights and beliefs (political, religious and other). They must be protected from any violent actions and reprisals. They have the right to correspond with their families and to receive assistance. Every person should be given basic judicial guarantees.

Thus, humanitarian international standards and practices implemented in the Ukrainian legal space introduce legal means of conflict resolution into martial law relations in order to protect the victims of such conflicts and prevent destruction that endangers the existence of people in the areas where they occur.



### **3. Subjects of ensuring the protection of the rights of persons who have disappeared under special circumstances**

The state of the armed conflict determined the urgency of the state's prompt response to changes in social life through the adoption of complex, urgent and unprecedented measures of a military, economic, informational, political and legal nature in order to ensure human rights in the conditions of a state of war.

An urgent task has become the integration of the practices of countries that have survived armed conflict and the achievements of international humanitarian law into their own experience of regulating social relations.

One of the responses to modern challenges was the improvement of the legal status of persons who have disappeared. Already on April 14, 2022, the main legal, organizational and ideological regulators of this sphere were reformed. According to them, the concept of "a person who has disappeared under special circumstances" is introduced into circulation, a special legal mechanism for ensuring their rights and a special method of searching for them is introduced.

The special legal mechanism consists of: a) normative acts and their norms; b) organizational and legal structures; c) public collective entities; d) individual individuals.

The main structure of this mechanism is the Law of Ukraine dated July 12, 2018 (as amended by the Law of Ukraine dated April 14, 2022) "On the Legal Status of Persons Disappeared Under Special Circumstances". The law defines: the rights of a missing person (Article 5); the rights of close relatives and family members of missing persons (Article 6); prohibition of discrimination against missing persons, as well as their close relatives and family members (Article 7); legal consequences of acquiring the legal status of a person who has disappeared under special circumstances (Article 8); regulates the functions of the Commissioner for issues of persons who have disappeared under special circumstances (art. 10, 11); regulates the functions of the Unified Register of Persons Disappeared Under Special Circumstances (Articles 12, 16); regulates search measures for persons missing under special circumstances (Articles 17-20), etc.

The second component of the mechanism is the organizational and legal structures operating in the field of the Institute of Missing Persons. Such structures are organizationally organized subjects of administration, which are competent to carry out legal regulation in the relevant segments of law enforcement.

The Law includes the National Police of Ukraine, the Ministry of Defense of Ukraine; Ministry of Reintegration of the Temporarily Occupied Territories of Ukraine; local bodies of executive power and others.

The role of specialized entities is particularly emphasized: a) the Commissioner for Persons Missing under Special Circumstances (hereinafter referred to as the Commissioner) and b) the Unified Register of Persons Missing under Special Circumstances (hereinafter referred to as the Register).

The third component of the mechanism is public collective subjects. Among them, it makes sense to name the Delegation of the International Committee of the Red Cross in Ukraine; International Commission on Missing Persons; The National Bar Association, a number of legal companies, for example "Everlegal".

The fourth component of the mechanism is individual individuals. According to the Law, such persons are: close relatives of the missing person; family members of the missing person; communities involved in her search; the applicant is the person who submitted the search application; carriers of information that can contribute to the search.

The need to take care of the effectiveness of regulatory and organizational novelties stimulates dynamic, proactive, correct research investigations in their segments and systematic scientific support of the practice of their implementation.

The above-mentioned motives cause scientific interest in obtaining new knowledge about the legal status of missing persons under special circumstances and the organization of their search.

The legal concept of persons missing under special circumstances and the understanding of ensuring their rights appear in Ukrainian jurisprudence with the adoption of the Law of Ukraine (hereinafter referred to as the Law) dated 07.12.2018 "On the Legal Status of Persons Missing under Special Circumstances" (in the version of the Law of Ukraine dated 04/14/2022 "On Amendments to the Law of Ukraine "On the Legal Status of Persons Missing" and other legislative acts of Ukraine regarding the improvement of legal regulation of social relations related to the acquisition of the status of persons missing under special circumstances").

A person acquires the status of missing under special circumstances (hereinafter referred to as a missing person) from the moment of entering information about him or her into the Unified Register of Persons Missing under Special Circumstances (hereinafter referred to as the Register). The source of such information is the application about the disappearance of a person, which is submitted to the territorial body of the National Police of Ukraine.

Important for understanding the status of such persons is the provision of the Law, according to which a person is considered missing from the moment the applicant submits a statement about the fact of disappearance. The application can be submitted: by a relative of such a person; a representative

of a military formation; a state authority; local self-government body; public association; by any other person who became aware of the disappearance.

A person who has disappeared has all the rights guaranteed by the Constitution and laws of Ukraine, and also has the right to a comprehensive investigation of the circumstances of his disappearance and to establish his whereabouts (search). The rights and interests of such persons, as well as their property, are subject to protection until the search for her is terminated, or she is declared dead, in accordance with the law. It is the duty of the state to take all possible measures to ensure the rights of a missing person, including search operations.

For this purpose, the legislator defined the appropriate subjects, formulated their powers and interaction parameters. He included power holders and representatives of the public sector in their totality.

Among the latter, the Law names citizens, public associations, legal entities under private law, who may be involved by state bodies in participating in relevant events only with their consent. The scope of their activity is limited to the provision of assistance and assistance to state structures in forms not prohibited by law.

The leading role in ensuring the rights of missing persons is assigned to the bearers of power, namely the state structures. Such structures are organizationally organized subjects of administration, which are competent to carry out legal regulation in the relevant segments of law enforcement.

The Law includes the National Police of Ukraine, the Ministry of Defense of Ukraine; Ministry of Reintegration of Temporarily Occupied Territories of Ukraine; State Service of Ukraine for Emergency Situations; Security Service of Ukraine; prosecutor's office and others.

The role of specialized entities is particularly emphasized: a) the Commissioner for Persons Missing under Special Circumstances (hereinafter referred to as the Commissioner) and b) the Unified Register of Persons Missing under Special Circumstances (hereinafter referred to as the Register).

Register is an electronic database of persons missing under special circumstances. The Register is assigned 2 main functions: the first is the accumulation and centralization of information about such persons; the second record of information necessary for their effective search.

For this purpose, the Register is given the right to receive information from authorities, in accordance with its competence; accumulate information on missing persons; accumulate information about their unidentified remains of likely such persons; to concentrate information on court decisions regarding the recognition of such persons as a) missing, b) missing without notice, c) deceased; to centralize other data that can ensure the effectiveness of search activities.

The Registry: firstly, stores the specified information; secondly, provides protection, including using technical and cryptographic tools; thirdly, it ensures its use for searching for missing persons.

As an important form of using the Register base, the Law defined information interaction between the Register and other state information resources. It is separately established that such interaction is carried out by electronic information and communication means.

The purpose of processing personal data stored in the Register is: first, to ensure the implementation of relations related to the acquisition of legal status of missing persons; secondly, the fulfillment by authorized bodies of the tasks of establishing the whereabouts of such persons.

The holder of the Register is the Ministry of Internal Affairs of Ukraine. This body has access to the funds of the Register in full.

The Commissioner is an official of the Ministry of Reintegration of Temporarily Occupied Territories. In accordance with the Law and the Regulations on the Commissioner, he is appointed and dismissed by the Cabinet of Ministers of Ukraine, and reports to the Vice-Prime Minister of Ukraine, the Minister for Reintegration of the Temporarily Occupied Territories. His position belongs to the positions not covered by the Law of Ukraine "On Civil Service".

Ensuring the activities of the Commissioner is carried out by the Secretariat of the Commissioner, which is an independent structural unit of the Ministry of Reintegration. Employees of the Secretariat are civil servants.

In the absence of the Commissioner, his duties are performed by the head of the Secretariat. The regulations on the Secretariat of the Commissioner and its structure are approved by the Vice-Prime Minister of Ukraine, the Minister for Reintegration of the Temporarily Occupied Territories.

The authorized officer performs the following functions: coordination of the search for persons who have gone missing under special circumstances; information support for their search; analysis of the effectiveness of the search system; preparation of recommendations and proposals for subjects of investigation; functions of a control and supervisory nature; forms search groups to search for missing persons.

Search coordination function. The Commissioner is entrusted with the coordination of the search for persons who have gone missing under special circumstances, as well as the resolution of related issues.

For this purpose, the Commissioner interacts: firstly, with the bodies of state power and local self-government, various services of the President of Ukraine and the Cabinet of Ministers of Ukraine; secondly, with the relevant bodies of foreign states and international organizations; thirdly, with public associations, trade unions, employers' organizations; fourth, with enterprises,

institutions and organizations; fifth, with natural persons (citizens, foreigners and stateless persons).

The search information support function. An important place in the activity of the Commissioner belongs to the function of information provision of search. The law provides that it is implemented by: a) obtaining information from the subjects of the investigation; b) exchange of information with the Register, as well as other state information resources; c) transfer of generalized information to the National Police, as well as other state bodies that have the authority to register or search for missing persons; d) communication with relatives of missing persons regarding informing them about search operations.

Within the scope of such communication, the Commissioner applies to state authorities, local self-government, public associations and international humanitarian organizations with requests for obtaining information that may contribute to the search for a missing person.

Heads of state authorities and local self-government bodies, as well as public associations, to which the Commissioner's request was received, are obliged to consider it within three days and give a written response.

At the same time, the legislator has set restrictions on the actions of the Information Commissioner. It is prohibited to exchange data obtained as a result of investigative actions or operative and investigative activities.

The function of analyzing the effectiveness of the search system. The commissioner is tasked with analyzing the effectiveness of the system for searching for missing persons. The purpose of the analysis is to identify the shortcomings of the investigation, their causes, and to determine measures to eliminate them. The Commissioner submits the results of the analytical work to the Ministry of Reintegration together with proposals for improving the system of searching for missing persons.

The function of preparation of offers and recommendations on search. On the basis of analytical materials on the generalization of search practice, he develops measures to improve both the activities of search subjects and the organizational and legal support of the entire search system.

In particular, these are proposals to the Ministry of Reintegration. Such proposals may refer to draft acts of the Cabinet of Ministers of Ukraine, orders and orders of the Ministry of Reintegration, plans for relevant measures, etc.

If drafts of such acts are initiated by other entities (for example, the Commissioner of the Verkhovna Rada of Ukraine for Human Rights, the Ministry of Internal Affairs, Defense, Health Protection, etc.), the Commissioner participates in their development.

A special place in the implementation of these functions belongs to the preparation of recommendations to state authorities regarding the fulfillment

of Ukraine's international obligations regarding persons who have disappeared under special circumstances.

For this purpose, the Commissioner conducts negotiations with humanitarian missions, public associations, charitable organizations and individuals who are involved in the search for missing persons.

Functions of a control and supervisory nature. The authorized person has functions of a control and supervisory nature. He is tasked, firstly, with monitoring the implementation of measures to search for missing persons; secondly, to demand from the relevant bodies of the National Police information about the results of the implementation of such measures at any stage of their implementation; thirdly, to initiate the formation of commissions, working and expert groups (they are formed by order of the Ministry of Reintegration); fourthly, to involve specialists, including foreign ones, to solve issues of their competence; fifth, to draw up protocols on administrative offenses provided for by Article 188-51 of the Code of Ukraine on Administrative Offenses (hereinafter the Code of Administrative Offenses); sixth, to empower authorized persons of its Secretariat to draw up protocols for violation of Article 188-51 of the Code of Administrative Offenses.

Function regarding the creation of search groups. The function of the Commissioner for formation of search groups is specific. In Article 1 of the Law, the "search group" is identified as a "humanitarian mission" of bodies authorized to register and search for missing persons, as well as to perform tasks derived from this.

The term "humanitarian mission", firstly, is associated with the concept of "humanitarian law", i.e. law aimed at a) humanizing military actions, b) protecting victims of armed conflicts, c) alleviating their suffering; secondly, with the concept of "mission" as a structured group of specialists and experts who represent different institutions, but have related competencies.

The specificity of the search groups is as follows: first, the Commissioner forms groups in agreement with the National Police, the Security Service of Ukraine, the State Emergency Service of Ukraine and the Joint Operational Headquarters of the Armed Forces; secondly, proposals regarding the formation and personal composition of search groups are submitted to the Commissioner by subjects who have the right to register and search for missing persons (Article 17 of the Law); thirdly, it follows from the previous one that the Commissioner himself does not have the right to make proposals regarding the formation and personal composition of search groups; fourthly, with the written permission of the Ministry of Reintegration, search groups have the right to establish contacts with legal entities and individuals in the

temporarily occupied territories of Ukraine; fifthly, representatives of law enforcement agencies are not included in search groups that conduct search operations in the temporarily occupied territories of Ukraine; sixth, search groups are formed by order of the Commissioner.

The activities of search groups are aimed at: a) the search for persons who have gone missing under special circumstances, b) their remains, c) the search for and recording of the burial places of such persons, d) the removal of bodies (remains) of deceased (deceased) persons, e) their removal remains, f) carrying out search operations in areas where security and defense measures are taking place, f) in the temporarily occupied territories of Ukraine.

The creation of an algorithm of actions for relatives and family members who are looking for missing relatives should be recognized as an important positive result of the functioning of the subjects of ensuring the protection of the rights of persons who have disappeared under special circumstances<sup>17</sup>.

The disappearance of a missing person is a particularly tragic event for his relatives and family members. Figuratively speaking, they find themselves in the "hell of the unknown". Therefore, it is quite natural for the wide spread of various offers to facilitate the search. Most of them are focused on the orientation of interested persons on the effective use of relevant state resources and opportunities of civil society. First of all, it is the organization of legal consultations, clarifications, advice, expert proposals, etc.

Thus, the Ministry of Internal Affairs of Ukraine has published an action algorithm for relatives and family members who are looking for missing relatives, which includes hotline telephone numbers, addresses of relevant websites, and coordinates of the National Information Bureau.

Similar resources were introduced by the Ministry of Defense of Ukraine, the Ministry of Reintegration of the Temporarily Occupied Territories of Ukraine, the Security Service of Ukraine and others.

The delegation of the International Committee of the Red Cross in Ukraine issued a practical manual "Supporting relatives of missing persons", which reveals ways to overcome legal, administrative, financial, and psychological difficulties by relatives of missing persons.

Centers of the Commissioner's Office have been established at the regional level. Today they work in Zaporizhzhia, Kyiv, Dnipropetrovsk, Lviv, Rivne and other regions.

In this regard, the Commissioner's office notes that the search for missing persons is ongoing. Regional coordinators daily receive a large number of citizens whose relatives cannot be contacted. They work directly on the

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<sup>17</sup> Kolpakov V. K. Legal status of the missing during the martial law period. Ensuring human rights in the conditions of martial law in Ukraine. Kyiv: Kyiv National University named after Taras Shevchenko, 2022. 203p. P. 109-112.

ground. They help in accepting applications for search. The specifics of the disappearance are being clarified. After all, in the search, all the details are important.

## **CONCLUSIONS**

1. The concept of humanitarian (anthropological) turn in the legal space is determined in the studies of Western European scholars. A separate vector of these studies is represented by the study of the interaction of: a) humanitarian law; b) human rights law; c) human rights during armed conflict.

2. The humanitarian (anthropological) turn to missing persons under martial law in Ukraine formally begins with the norms of: a) the Instruction on the procedure for implementing the norms of international humanitarian law in the Armed Forces of Ukraine; b) the Decree of the President of Ukraine of February 24, 2022 "On the introduction of martial law in Ukraine"; c) and the Law of Ukraine "On the legal status of missing persons under special circumstances".

3. The humanitarian turn in the contour of the rights of the missing in armed conflict is the transition of the functioning of the system of ensuring the rights of the missing to the mode of integrative interaction: a) means of humanitarian law; b) means of ensuring human rights; c) means of ensuring the legal status of persons missing in special circumstances.

4. The competence of entities that ensure the protection of the rights of persons who have disappeared under special circumstances is connected by correlational links with the legal status of persons who have disappeared under special circumstances. Regulation of the competence of subjects that ensure the protection of the rights of persons who have disappeared under special circumstances, as well as regulation of the legal status of persons who have disappeared under special circumstances, is carried out by one normative act. Today it is the Law of Ukraine "On the Legal Status of Persons Disappeared Under Special Circumstances".

5. In order to effectively protect the rights of persons who have disappeared under special circumstances, the state has formed a special legal mechanism, which consists of: a) normative acts and their norms; b) organizational and legal structures; c) public collective subjects; d) individual individuals.

6. Protection of the rights of persons who have disappeared under special circumstances is ensured by a system of entities with special powers, which are differentiated into two groups. The first includes the holders of power. The second group includes representatives of civil society.

7. Special tasks in the protection of the rights of persons who have disappeared under special circumstances are performed by a) the



Commissioner for Issues of Persons who have disappeared under special circumstances; b) Unified register of persons missing under special circumstances. The functions of these subjects are regulated in detail by legislation.

8. An important positive result of the functioning of subjects for the protection of the rights of persons who have gone missing under special circumstances is the creation of an algorithm of actions for relatives and family members who are looking for missing relatives.

## **SUMMARY**

The author presents their perspective on the issues of the humanitarian (anthropological) turn in the legal space of Ukraine, which occurred due to evolutionary changes in the mechanism of legal regulation of the status of persons missing under martial law conditions.

The aim of the study is to gain new knowledge about the features of the humanitarian turn in the context of the military conflict in Ukraine, specifically regarding missing persons.

The research methodology is harmonized with the fundamental principle that the use of any method cannot be reduced to a single formula, and specific research technologies (procedures of analysis, comparison, systematization) vary depending on the nature of the research subject and its purpose.

The phenomenon of the humanitarian (anthropological) turn in Ukraine is analyzed, firstly, as a cluster of sectoral knowledge (epistemological dimension); secondly, as a segment of social practice (ontological dimension). In the epistemological (theoretical) vector, the focus is on the final product of scientific activity – the system of scientific legal knowledge, its structure, and genesis. In the ontological (practical) vector of the study, the practice of implementing normative material accompanying the humanitarian turn is analyzed.

The epistemology of the Ukrainian humanitarian (anthropological) turn relies on the doctrines and concepts of Western European scholars. Special attention is paid to summarizing the interaction of: a) humanitarian law; b) human rights law; c) the law of protection under conditions of armed conflict. In this regard, the author analyzes the publications of O. Hathaway, O. Ben-Naftali, A. Roberts, L. Doswald-Beck, E. Kwakwa, and other experts, firstly, regarding the impact of humanitarian law on the parties to the conflict; secondly, its role in protecting war victims, including missing persons.

The author emphasizes the importance of the humanitarian turn for ensuring the rights of missing persons during military actions. The anthropological significance of Ukrainian normative acts regulating the legal

status of persons missing under special circumstances in martial law conditions is highlighted.

As a result of the study, the author proposes the following concept of the humanitarian (anthropological) turn: "The humanitarian turn in the contour of the rights of missing persons in armed conflicts is the transition of the functioning of the system ensuring the rights of missing persons into a mode of integrative interaction: a) means of humanitarian law; b) means of ensuring human rights; c) means of ensuring the legal status of persons missing under special circumstances."

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