

UDC 342

DOI 10.31733/2078-3566-2022-5-19-24



Roman HOLOBUTOVSKYI[®]
Dr. of Law, Associate Professor,
(Dnipropetrovsk State University
of Internal Affairs, Dnipro, Ukraine)

ADMINISTRATIVE AND LEGAL PROVISION OF STATE CONTROL OVER HUMANITARIAN AID

Роман Голобутовський. АДМІНІСТРАТИВНО-ПРАВОВЕ ЗАБЕЗПЕЧЕННЯ ДЕРЖАВНОГО КОНТРОЛЮ ЗА ГУМАНІТАРНОЮ ДОПОМОГОЮ. Стаття присвячена з'ясуванню змісту та особливостей державного контролю за гуманітарною допомогою та вироблення пропозицій щодо його вдосконалення. У статті вказується на те, що сьогодні існують чисельні проблеми, які пов'язані з порушеннями законодавства, що регулює порядок надання та забезпечення гуманітарною допомогою, що, в свою чергу, актуалізує питання ефективності та системності державного контролю у цій сфері. Аналіз стану нормативно-правового регулювання та діяльності органів публічної влади, волонтерів, громадських об'єднань свідчить про необхідність впровадження жорсткої системи державного контролю за гуманітарною допомогою. Звертається увага на те, що контроль, як функція управління, пов'язаний з необхідністю постійної перевірки результатів будь-якої діяльності з тим, щоб своєчасно усунути порушення законодавства, підвищити ефективність діяльності публічної адміністрації та їх посадових і службових осіб у тій чи іншій сфері. Виокремлено види, форми та напрямки державного контролю за гуманітарною допомогою.

Робиться висновок про те, що державний контроль за гуманітарною допомогою характеризується певними недоліками організаційно-правового регулювання, що в цілому призводить до нецільового та неефективного використання коштів, самої гуманітарної допомоги, відсутності законодавчого підґрунтя здійснення контрольних заходів, нормативного визначення змісту державного контролю за гуманітарною допомогою, його предмету та об'єкту, вимог до проведення, а також недосконалістю запроваджених форм і методів контролю, що в цілому слугує підґрунтям для зловживань у цій сфері. Тому має бути створений ефективний механізм державного контролю за гуманітарною допомогою. Обґрунтовується, що механізм державного контролю за гуманітарною допомогою має бути безперервним процесом чіткого функціонування всіх суб'єктів державного контролю на підставі спеціального законодавства, яке має визначати предмет та об'єкт державного контролю, завдання, процедури його проведення, види, форми та методи, систему суб'єктів, які мають його здійснювати з чітким розподілом повноважень між ними. Запропоновано прийняти Закон України «Про державний контроль за гуманітарною допомогою».

Ключові слова: гуманітарна допомога, державний контроль, органи публічної адміністрації, діяльність, адміністративно-правове забезпечення, механізм державного контролю.

Relevance of the study. Humanitarian aid stands out for its effectiveness and efficiency among the means of support for the military and the civilian population during the war. To support the military and the population and ensure their basic household needs, the international community, volunteers, various organisations and citizens provide various assistance, one of which is humanitarian assistance.

Along with this, information about abuses in this area, illegal and untargeted use of humanitarian aid appears in the mass media and social networks. In connection with this, the issue of creating an effective and efficient mechanism of state control over the receipt, distribution and accounting of humanitarian aid, combating offenses in this area becomes urgent.

© Holobutovskyi R., 2022

ORCID iD: <https://orcid.org/0000-0002-4670-5407>

kafedra_zpd@ukr.net

Recent publications review. In administrative law science, state control issues were studied quite widely by such scientists as: O. Andriyko, I. Golosnichenko, V. Harashchuk, K. Kolpakov, T. Minka, L. Nalyvaiko, V. Pohorilko and others. Along with this, the problems of state control over humanitarian aid in Ukraine have yet to receive the necessary scientific understanding. However, certain questions regarding administration and responsibility in this area have been highlighted in their works by such scientists as: O. Bida, Yu. Harust, O. Kryshevich, N. Koval, M. Khavronyuk. Therefore, a separate study requires insufficient study and comprehension by legal science of the content, tasks, forms, and methods of state control over humanitarian aid.

The article's objective. The article aims to clarify the content and features of state control over humanitarian aid and develop proposals for its improvement.

Discussion. In the vast majority of research approaches, state control is understood as "a special function of the state, which is expressed in the activities of its bodies, aimed at obtaining and analysing information about processes and phenomena occurring in society, establishing violations and deviations from normative and individual prescriptions, as well as at putting forth demands for the elimination of detected violations to protect the rights and freedoms of man and citizen, the constitutional system, and maintaining the regime of legality" [1, p. 294].

The approach of V. Harashchuk, in his monograph "Control and view in public administration", defines control as "the main way of ensuring legality and discipline in public administration", as "one of the factors that discipline the behaviour of civil servants and citizens in the sphere of public administration, which makes "transparent", for the society the activity of the state, and for the state – intra-societal relations, the state of work of individual state and other entities [2, p. 36].

Thus, state control is a tool that ensures the regime of legality under humanitarian aid, and the activity of public authorities in this area becomes transparent and open.

Along with this, one cannot fail to pay attention to the fact that today there are numerous problems associated with violations of the legislation regulating the procedure for providing and providing humanitarian aid, which in turn actualises the issue of effectiveness and systematic state control in this area.

The multitude of state entities involved in the process of recording, searching and distributing humanitarian aid, constant changes to the regulatory framework, lack of quality interaction, coordination and standardised approaches in working with humanitarian aid, and low level of accountability and transparency are only part of the problems, which were found based on the results of the analysis. Surveys of respondents – representatives of various state authorities and representatives of local authorities – proved that most of the processes related to humanitarian aid are unsystematised, not properly regulated, and are based largely on informal agreements [3].

The state tried to solve the inappropriate use of humanitarian aid by introducing criminal liability measures. On April 3, 2022, the Law of Ukraine No. 2155-IX of March 24, 2022, "On Amendments to the Criminal Code of Ukraine Regarding Liability for Illegal Use of Humanitarian Aid" [4] entered into force, supplemented by Article 2012 "Illegal use of humanitarian aid for profit, charitable donations or free assistance". Along with this, today, there are numerous discussions among specialists regarding the low level of rule-making technique, which is inherent in the legislative act which amended the Criminal Codex of Ukraine.

In this regard, M. Havroniuk notes that if Article 201-2 of the Criminal Code did not exist, then the sale of goods (items) of humanitarian aid or the use of charitable donations, or the conclusion of other transactions regarding the disposal of such property, committed obtaining profit and in the amount of more than 434,175 UAH., would qualify, based on this amount, taking into account point 3 of the note to Art. 185 of the Criminal Code, according to parts 4 or 5 of Art. 191 of the Criminal Code [5] as embezzlement of someone else's property, which was entrusted to a person or was in his care, or as embezzlement or appropriation of someone else's property by abuse of his official position by an official. Due to a mistake of the legislator, a more serious crime – embezzlement in significant amounts – should be punished more mildly (according to Article 201-2 of the Criminal Code) than embezzlement in amounts which, according to Article 201-2 of the Criminal Code are not significant (according to Article 191 of the Criminal Code) [6].

The possibility of liability for violations of the legislation on humanitarian aid is also defined in the Basic Laws of Ukraine "On Humanitarian Aid" [7] and "On Charitable Activities and Charitable Organizations" [8]. Along with this, the specified legislative acts contain general

wording and determine that state authorities and local self-government bodies bear civil, administrative, disciplinary and criminal liability for violations of legislation in this area. Regarding the mechanism of state control, the relevant forms and methods are not clearly defined by the specified legislation.

Creating an effective and efficient mechanism of state control over humanitarian aid remains relevant today. As noted by O. Andriyko, control in management has an independent meaning. It is an element, a part of other management functions, checking the implementation of management functions carried out at the final stages of the process [9, p. 92].

Control, as a management function, is associated with the need to constantly check the results of any activity to promptly eliminate law violations and increase the effectiveness of public administration and their officials and officials in one or another area.

In state administration, control is closely related to other management functions and, at the same time, is designed to assess the compliance of the implementation of these functions with the tasks facing management. The control function in the state administration consists of analysing and comparing the actual situation in one field with the requirements set before them, deviations in the performance of assigned tasks and the reasons for these deviations, as well as evaluating the activity and feasibility of this particular path. According to O. Andriyko, this specificity of the purpose of control makes it possible to distinguish it from other management functions, to create special bodies that do not perform or almost do not perform other, except for control, state functions, to determine the competence of these bodies [9, p. 95].

Speaking about state control over humanitarian aid, it should be noted that it aims to ensure the effectiveness and legality of the activities of central executive bodies, local self-government bodies, volunteers and public associations. State control in this area should be implemented in the following forms: control over compliance with the legislation on humanitarian aid; control over the conscientious performance of official duties; control over the use of financial, material and labour resources; control over compliance with the rights and interests of citizens in the process of providing humanitarian aid.

In addition, state control over humanitarian aid should be carried out in the following directions: forecasting the needs for humanitarian aid, analysis and processing of information about humanitarian aid that is transmitted to identify possible trends of deviations and violations of legal requirements; monitoring, i.e. systematic observation of the fulfilment of the mandatory requirements of the legislation on humanitarian assistance, the purpose of which should be the continuous collection of information on compliance with the legality regime; active application of state coercion measures to stop and eliminate the consequences of detected violations (administrative measures of prevention, termination and recovery). It seems that the measures of administrative punishment applied due to bringing guilty persons to administrative responsibility are not included by the legislator in the concept of "state control" [10].

Thus, the imperfect mechanism of determining real needs on the ground leads to the fact that some of these needs remain partially or completely unsatisfied. The multiplicity of entities that simultaneously carry out needs accounting, search for sources of receiving humanitarian aid and delivery of such aid and do not coordinate their actions with other bodies that perform the same tasks has the consequence of duplication of requests and the impossibility of qualitative systematisation and generalisation of the needs of the population. Complex organisational and logistical chains, combined with the non-transparency of processes at most stages, lead to the fact that both domestic and international donors are more inclined to cooperate not with official state representations (central or local authorities) but with non-governmental organisations or volunteer organisations initiatives that are trusted [3].

Therefore, the analysis of the state of regulatory and legal regulation and the activities of public authorities, volunteers, and public associations indicates the need to implement a strict system of state control over humanitarian aid.

State control over humanitarian aid should be embodied in "a form of exercise of state power that ensures compliance with laws and other normative acts issued by state authorities" [11, p. 112]. This indicates the collective nature of state control since its implementation involves the activity of the state apparatus, which organises the control system in controlled structures. Accordingly, relevant institutions carry out state control that ensures its effectiveness in various spheres and branches of public administration [12].

Depending on the field of activity, state control over humanitarian aid may be; departmental (which is carried out by ministries and departments within the relevant organisational structure and related to the tasks facing ministries and departments. In accordance with this, independent intra-

departmental control structures should be created and function in the central bodies of executive power; inter-departmental control is carried out by an inter-branch body of competence, which ensures control over the implementation of mandatory rules operating in the relevant field, has the right to check the interdepartmental control body, on issues that are narrow, special, facing this body; supra-departmental control is carried out by bodies of general competence – the Cabinet of Ministers of Ukraine, local state administrations on issues of economic, socio-cultural and administrative-political construction, regardless of the departmental subordination of objects of control in the form of inspections (survey and study of certain areas of financial and economic activity, according to the results of which a reference or report is made), audit (documentary control of financial and economic activity, based on the results of which an act is drawn up), demand for reports, etc. [11, p. 131; 13].

In general, the solution to the issue of improving state control over humanitarian aid is possible by improving the state of departmental, inter-branch and supra-departmental control. Implementing these types of control can be embodied in a normative legal act, which, for example, can become the Law of Ukraine "On State Control of Humanitarian Aid".

The subject and object of state control over humanitarian aid also need clear legal regulation. Clear legal regulation of the subject and object of state control as a public activity carried out by public administration bodies helps to determine its scope, criteria, nature and essence [14-15]. It should be noted that the legislation currently lacks a definition of such concepts as the subject and object of state control over humanitarian aid, which generally leads to uncertainty about the nature and content of state control in this area. Attention should also be paid to the fact that the legislation does not systematise, and in general, there is no clear list of subjects of state control over humanitarian aid. That is why, to more fully cover control measures in the field of humanitarian aid, we propose to establish the concept of the subject and object of state control over humanitarian aid in the legislation, as well as to regulate a clear list of entities that carry it out with a definition of their scope powers

Conclusions. Thus, summarising the above, it can be noted that state control over humanitarian aid is characterised by certain shortcomings of organisational and legal regulation, which in general leads to non-targeted and ineffective use of funds, humanitarian aid itself, in the absence of a legislative basis for the implementation of control measures, normative definition of the content of state control over humanitarian aid, its subject and object, requirements for implementation, as well as the imperfection of the introduced forms and methods of control, which in general serves as a basis for abuses in this area. Therefore, an effective mechanism of state control over humanitarian aid should be created. The mechanism of state control over humanitarian aid should be a continuous process of clear functioning of all subjects of state control based on special legislation, which should define the subject and object of state control, tasks, procedures for its implementation, types, forms and methods, a system of subjects, which should carry it out with a clear division of powers between them. To solve these issues, we propose to adopt the Law of Ukraine "On State Control of Humanitarian Aid".

Conflict of Interest and other Ethics Statements

The author declares no conflict of interest.

References

1. Парфьонова М. Й., Бабишин В. Д., Юркевич С. В. N та ін. Методика прийняття управлінських рішень на основі модифікованої моделі Рамсі. *Азіатська соціальна наука*. 2014. № 10(17). С. 292-301.
2. Гарашук В. М. Контроль та нагляд у державному управлінні : монограф. Харків : Фоліо. 2002. 176 с.
3. Механізм надання державою гуманітарної допомоги в умовах воєнного стану. URL : <https://nazk.gov.ua/wp-content/uploads/2022/07/Mehanizmu-nadannya-derzhavnoyu-gumanitarnoyi-dopomogy-v-umovah-voyennogo-stanu.pdf>.
4. Про внесення змін до Кримінального кодексу України щодо відповідальності за незаконне використання гуманітарної допомоги. Закон України від 24.03.2022. URL : <https://zakon.rada.gov.ua/laws/show/2155-20#Текст>.
5. Кримінальний кодекс України від 05.04.2001. URL : <https://zakon.rada.gov.ua/laws/show/2341-14#Текст>.
6. Хавронюк М. За незаконне використання гуманітарної допомоги – кримінальна відповідальність. URL : <https://pravo.org.ua/blogs/za-nezakonne-vykorystannya-gumanitarnoyi-dopomogy-kryminalna-vidpovidalnist/>.

7. Про гуманітарну допомогу : Закон України від 22.10.1999. URL : <https://zakon.rada.gov.ua/laws/show/1192-14#Text>.
8. Про благодійну діяльність і благодійні організації : Закон України від 05.07.2012. URL : <https://zakon.rada.gov.ua/laws/show/5073-17#Text>.
9. Білокур Є. І. Функції державного управління : поняття, особливості, правове регулювання : дис. ... канд. юрид. наук : 12.00.07 / Національний університет "Одеська юридична академія". Одеса. 2015. 195 с.
10. Вороніна Ю. Комунікативна політика в системі публічного управління. *Вісник Академії митної служби України. Серія: «Економіка»*. 2018. 3(61). С. 29-34.
11. Бутинець Ф.Ф., Бардаш С.В., Малуха Н.М., Петренко Н.І Контроль і ревізія : підруч. Вид. 2-е доп. і перероб. Житомир : ЖІТІ, 2000. 512 с.
12. Терещенко М. М. Державний контроль: сутність, основні підходи та концепції. URL : http://www.pubadm.vernadskyjournals.in.ua/journals/2019/4_2019/23.pdf.
13. Наливайко О. І. Державний контроль у системі міського самоврядування в Україні: проблеми теорії та практики. *Право і суспільство*. 2015. 3(2). С. 22-28.
14. Парасюк В. М. Адміністративно-правове регулювання державного фінансового контролю в Україні : автореф. дис. ... канд. юрид. наук : 12.00.08 / Запорізький національний університет. Запоріжжя, 2020. 216 с.
15. Nalyvaiko I. The role of civil society institutions in preventing and combating corruption in public authorities. *Analytical and Comparative Jurisprudence*. 2022. No 2. P. 27-30.

Submitted: 28.11.2022

1. Parfenova, M. J., Babishin, V. D., Yurkevich, E. V., et al. (2014) Methodology making management decisions based on a modified Ramsey model. *Asian Social Science*. No 10(17), pp. 292-301.
2. Harashchuk, V. M. (2002) Kontrol ta nahliad u derzhavnomu upravlinni: monohrafiia [Control and supervision in public administration: monograph]. Kharkiv: Folio, 176 p. [in Ukr.].
3. Mekhanizm nadannia derzhavoiu humanitarnoi dopomohy v umovakh voiennoho stanu [The mechanism for the provision of humanitarian aid by the state in conditions of martial law]. URL : <https://nazk.gov.ua/wp-content/uploads/2022/07/Mehanizmy-nadannya-derzhavnoyu-gumanitarnoyi-dopomogy-v-umovah-voennogo-stanu.pdf>. [in Ukr.].
4. Pro vnesennia zmin do Kryminalnoho kodeksu Ukrainy shchodo vidpovidalnosti za nezakonne vykorystannia humanitarnoi dopomohy. Zakon Ukrainy vid 24.03.2022 [On amendments to the Criminal Code of Ukraine regarding liability for illegal use of humanitarian aid. Law of Ukraine dated March 24, 2022]. URL : <https://zakon.rada.gov.ua/laws/show/2155-20#Text>. [in Ukr.].
5. Kryminalnyi kodeks Ukrainy vid 05.04.2001 [Criminal Code of Ukraine dated April 5, 2001]. URL : <https://zakon.rada.gov.ua/laws/show/2341-14#Text>. [in Ukr.].
6. Khavroniuk, M. Za nezakonne vykorystannia humanitarnoi dopomohy – kryminalna vidpovidalnist [Criminal responsibility for illegal use of humanitarian aid]. URL : <https://pravo.org.ua/blogs/za-nezakonne-vykorystannya-gumanitarnoyi-dopomogy-kryminalna-vidpovidalnist/>. [in Ukr.].
7. Pro humanitarnu dopomohu : Zakon Ukrainy vid 22.10.1999 [On humanitarian aid. Law of Ukraine dated October 22, 1999]. URL : <https://zakon.rada.gov.ua/laws/show/1192-14#Text>. [in Ukr.].
8. Pro blahodiinu diialnist i blahodiini orhanizatsii : Zakon Ukrainy vid 05.07.2012 [On charitable activities and charitable organizations. Law of Ukraine dated July 5, 2012]. URL : <https://zakon.rada.gov.ua/laws/show/5073-17#Text>. [in Ukr.].
9. Bilokur, Ye. I. (2015) Funktsii derzhavnoho upravlinnia: poniattia, osoblyvosti, pravove rehuliuвання [Functions of state administration: concepts, features, legal regulation] : dys. ... kand. yuryd. nauk. 12.00.07 / Natsional'nyy universytet "Odes'ka yurydychna akademiya". Odessa, 195 s. [in Ukr.].
10. Voronina, Yu. Ie. (2018) Komunikatyvna polityka v systemi publicnoho upravlinnia [Communicative policy in the public administration system.]. Collection of scientific papers. *Bulletin of the Academy of the Customs Service of Ukraine. Series: "Economics"*. No 3(61), pp. 29–34. [in Ukr.].
11. Butynets', F.F., Bardash, S.V., Malyuha, N.M., Petrenko, N.I (2000) Kontrol' i reviziya [Control and revision] : pidruch. Vyd. 2-e dop. i pererob. Zhytomyr : ZHITI, 512 p. [in Ukr.].
12. Tereshchenko, M. M. Derzhavnyi kontrol: sutnist, osnovni pidkhody ta kontseptsii [State control: essence, main approaches and concepts]. URL : http://www.pubadm.vernadskyjournals.in.ua/journals/2019/4_2019/23.pdf. [in Ukr.].
3. Nalyvaiko, O. I. (2015) Derzhavnyi kontrol u systemi mistsevoho samovriaduvannia v Ukraini: problemy teorii ta praktyky [State control in the system of local self-government in Ukraine: problems of theory and practice]. *Law and society*. No 3(2), pp. 22-28. [in Ukr.].
14. Parasyuk V. M. (2020) Administratyvno-pravove rehuliuвання derzhavnoho finansovoho kontrolyu v Ukraini [Administrative and legal regulation of state financial control in Ukraine] : avtoref. dys. ... kand. yuryd. nauk : 12.00.08 / Zaporizkyy natsional'nyy universytet. Zaporizhzhya, 216 p. [in Ukr.].
15. Nalyvaiko I. (2022) The role of civil society institutions in preventing and combating corruption in public authorities. *Analytical and Comparative Jurisprudence*. No 2, pp. 27-30.

ABSTRACT

The article is devoted to clarifying the content and features of state control over humanitarian aid and making proposals for its improvement. The article points out that today there are numerous problems associated with violations of the legislation regulating the procedure for providing and providing humanitarian aid, which in turn actualises the issue of efficiency and systematic state control in this area. An analysis of the state of legal regulation and the activities of public authorities, volunteers, and public associations indicates the need to implement a strict system of state control over humanitarian aid. Attention is drawn to the fact that power, as a management function, is associated with the need to constantly check the results of any activity to promptly eliminate violations of the law and increase the effectiveness of public administration and their officials and officials in one or another area. Types, forms and directions of state control over humanitarian aid are highlighted.

It is concluded that state control over humanitarian aid is characterised by certain shortcomings of organisational and legal regulation, which in general leads to non-targeted and inefficient use of funds, humanitarian aid itself, from the essence of the legislative basis for the implementation of control measures, normative definition of the content of state control over humanitarian aid, its subject and object, requirements for performance, as well as imperfection of the introduced forms and methods of power, which in general serve as grounds for abuses in this area. Therefore, an effective mechanism of state control over humanitarian aid should be created. It is justified that the tool of state control over humanitarian aid should be a continuous process of apparent functioning of all subjects of state control based on special legislation, which should determine the subject and object of state control, tasks, procedures for its implementation, types, forms and methods, system subjects who have to implement it with a clear division of powers between them. It is proposed to adopt the Law of Ukraine "On State Control of Humanitarian Aid".

Keywords: *humanitarian aid, state control, public administration bodies, activity, administrative and legal support, mechanism of state control.*

UDC 340

DOI 10.31733/2078-3566-2022-5-24-29



Andrii KUCHUK ©
Dr. of Law, Professor
(Sumy State Pedagogical
University named after
A. S. Makarenko, Sumy,
Ukraine)

Kateryna VETOSHKO ©
Student
(Sumy State Pedagogical
University named after
A. S. Makarenko, Sumy,
Ukraine)

UKRAINIAN LANGUAGE AS STATE LANGUAGE: GENERAL AND LAW DISCOURSE

Андрій Кучук, Катерина Ветошко. УКРАЇНЬСКА МОВА ЯК ДЕРЖАВНА: ЗАГАЛЬНОПРАВОВИЙ ДИСКУРС. Актуальність дослідження обумовлюється необхідністю висвітлення значимості української мови як державної у творенні та подальшій розбудові української держави. Вказується, що до російської агресії питання правового статусу української мови не стало предметом комплексного дослідження правничої науки, а окремі аспекти функцій української мови в державі були предметом гносеології переважно філологів. Метою дослідження є акцентування уваги на необхідності сприйняття мови через її державотворчу роль, на значимості виконання вимог забезпечення функціонування української мови в усіх сферах діяльності суспільства. Наголошується на окремих положеннях рішень Конституційного Суду України у справах, пов'язаних з статусом української мови як державної та забезпеченням її функціонування в Україні. Наводяться приклади порушення мовного законодавства окремими суб'єктами політичної діяльності. Вказується на позитивний досвід європейських держав щодо забезпечення функціонування державної мови, формування дискурсу про важливу роль мови в державотворенні.

Резюмується, що виконання органами публічної влади завдання утвердження української мови як державної в українському суспільстві виявився недостатньо ефективним. Ми могли

© Kuchuk A., 2022

ORCID iD: <https://orcid.org/0000-0002-5918-2035>

kucshuk@ukr.net

© Vetoshko K., 2022