

HUMAN RIGHTS PROTECTION CONDITIONS OF COVID-19, LEGAL PRINCIPALS AND ADMINISTRATIVE BARRIERS IN UKRAINE

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Abstract: The article discusses the administrative and legal principles of human rights protection in terms of the spread of COVID-19, which is relevant in Ukraine and around the world based on theoretical and practical views. Regarding this, the question of the effectiveness of measures to counteract the spread of the virus, created regarding the new tasks of state authorities and, above all, health authorities, without violating the basic rights of the individual and citizen, becomes important. It has been proven that the legal analysis of the international and domestic regulations ratification shows unusual views on the problems of ensuring human rights in an emergency in connection with the fight against COVID-19. Based on international and national practice, attention is drawn to the administrative and legal principles of protecting medical confidentiality during the epidemic. It is proved that the disclosure of medical secrecy is allowed in cases of suspicion of the patient's intention to commit a crime or based on a court decision. The article provides recommendations aimed at improving measures to protect human and civil rights in the context of countering the spread of COVID-19.

Keywords: medical secrecy, human rights, COVID-19, emergency, health care, quarantine.

I. Introduction

With the advent of COVID-19, the international community is facing a massive challenge that threatens the health and lives of billions of people more than ever. Here it is worth mentioning the words of Pope John Paul II, who said that the activities of health workers are of great importance because their job is to save lives. This is the embodiment of a deeply human and Christian vocation, which is not only about technical activities but about self-sacrifice and love for one's neighbor as well. This is a "form of Christian witness", their profession requires them to be guardians and custodians of life [1].

Due to the coronavirus pandemic, quarantine measures were introduced in many countries of the world, including Ukraine. According to the world and domestic practice, the introduction of such a special regime as quarantine is ensured by the restriction of fundamental human rights and freedoms by the implementation of new norms and sanctions to bring to justice for violation of quarantine norms and rules; therefore, during this period, the activities of public authorities to ensure the sanitary and epidemic well-being of the society when interfering with human rights should be more reasonable, balanced, and aimed at protecting them.

II. Purpose and objectives of the study

The study aims to develop and create the main provisions of administrative and legal principles for the protection of human rights in the conditions of the spread of COVID-19 in Ukraine.

To achieve this goal, the following tasks were solved:

- to study and analyze normative and literary data and the formulation of the problem of human rights protection in the context of the COVID-19 pandemic in Ukraine;
- substantiate the methodology and approaches to solving the problem of compliance with the administrative and legal principles of human rights protection in the context of the spread of COVID-19 in Ukraine;
- outline the administrative and legal principles of protection and grounds for disclosure of medical secrecy in the context of the COVID-19 epidemic;
- to study the administrative and legal basis for the observance of human and civil rights in the field of business activities and the issues of punishment for violation of the quarantine rules.

III. Study and analysis of normative and literary data and formulation of the problem of human rights protection in the context of COVID-19 in Ukraine

Throughout its existence, humanity has been always undergone outbreaks of epidemics. Scientists began their study in the middle of the XVIII century. It is known that the first coronavirus infection appeared in the 1960s; in 2002 it was discovered in China (the so-called "SARS" (a severe acute respiratory syndrome associated with coronavirus)), and ten years later, in 2012, it began to spread in the Middle East. The virus is called "MERS" (which means Middle East respiratory syndrome). It killed about 35% of those infected. And only in 1960 that epidemiologist William Kermak and biochemist Anderson McKendrick created the first model for systematic prediction of the origin, spread, and resistance to viruses. The content of this model is based on universal equations and consists of dividing the population into three groups: vulnerable, infected, and recovering. However, due to the mutation of the virus, the proposed model for countering the acute respiratory disease COVID-19 turned out to be imperfect and ineffective.

Today, a disproportionate number (approximately 60 percent) of African Americans are dying from the coronavirus. They settle more densely and have less access to health care. Of the 328 million people living in America, 30 million do not have health insurance. And for 23% of the population, current health policies do not fully cover coronavirus treatment. Its cost, according to experts, ranges from \$42 486 to \$74 310. As a result, many Americans passed away, afraid to seek medical care because they could not pay for it. There are no statistics on this, but local experts call this situation "extremely likely" [2]; besides, a study conducted by nine countries, including the UK, the US, and China, found that out of 24,410 cases:

- 78% had fever (there is a gap in the indicators of different countries: in Singapore, 72% of patients reported fever, in Korea-32%);
- 57% reported coughing, but in the Netherlands 76% reported it, in Korea 18%;
- 31% reported suffering from fatigue;
- 25% lost the ability to smell;
- 23% reported difficulty breathing [3].

One of the COVID-19 spread features in Ukraine and the world is the rapid increase in the number of patients who suffer from the virus without

symptoms while being a source of infection for others. Another feature, according to the short-term practice of countering the COVID-19, is the problem of testing the contact persons. It is not clear why in Ukraine, based on a certain three-level contact group, only the first level of people who were in direct contact with patients with coronavirus is tested, ignoring other contact levels. The truth is that testing of contact persons after 14 days takes a lot of time, and during this period the contact person of the first level communicates with family members, and those, in turn, with other people, which leads to the uncontrolled spread of the virus.

According to the National Security and Defense Council, as of the morning of June 26, 41 117 cases of COVID-19 were registered in Ukraine. A record number of new COVID cases have been identified in the past 24 hours - 1 109. Since the beginning of the pandemic in Ukraine, 1 110 people have died from coronavirus, 18 701 have recovered, and 22 254 people continue treatment. According to the head of the Ministry of Health, the death rate from coronavirus in Ukraine is 2.6%. The mortality rate in Germany is 4%, in the USA - 5%, in Spain - 9.5% [4]. As for the situation with the pandemic in the world, 4 891 people have died from coronavirus on June 26. Of these people, 1 055 victims were reported in Brazil, 736 in Mexico, 663 in the United States, and 381 in India. According to the WHO, it will take more than \$31 billion a year to develop an effective drug against COVID-19.

Such a sad situation forced the Ukrainian authorities to take urgent anti-epidemic measures to protect the population from the deadly disease; thus, according to the resolution of the cabinet of ministers of Ukraine № 211 of March 11, 2020 "on preventing the spread of acute respiratory disease COVID-19 in Ukraine caused by the SARS-COV-2 coronavirus" (hereinafter referred to as the resolution), and taking into account the decision of the state commission for technogenic and environmental safety and emergencies from March 10, 2020 [6], quarantine was introduced throughout Ukraine. According to the decree, on March 17, 2020, the authorities banned all mass events. The work of educational, cultural, commercial, public catering, and religious events, the transportation of passengers by rail and road in all types of domestic communication were stopped as well. Already with the adoption of the resolution of the cabinet of ministers Ukraine № 92 from May 20, 2020 "On the establishment of quarantine to prevent the spread of acute respiratory disease COVID-19 caused by coronavirus SARS-CoV-2, and stages of mitigation of anti-epidemic measures" according to part 5 of Article 4 of this resolution, the decision about mitigation of anti-epidemic measures is made and terminated in the region based on the decision of the regional commission on technogenic and environmental safety and emergencies which is approved taking into account the assessment of the epidemic situation and the presence of signs of anti-epidemic measures in the region. The decision to facilitate anti-epidemic measures is reviewed at least once every seven days, taking into account the results of the assessment of the current epidemic the situation in the region [7]. Undoubtedly, all of

the above and other regulations on ensuring sanitary and hygienic and sanitary-anti-epidemic measures during quarantine will contribute to the active counteraction of the COVID-19 pandemic: the population of Ukraine and the whole world will soon finally sigh with relief after overcoming this deadly virus, as it was after the Spanish flu epidemic.

IV. Methodology and approaches to solving the problems of administrative and legal principles of regulating the protection of human rights in the context of the spread of COVID-19 in Ukraine.

At the same time, the question arises as to whether international and domestic legislation is regulated sufficiently in the situation that has happened in connection with the occurrence of quarantine, to what extent the quality of the law meets modern requirements, and if there was such a public danger that led to the use of compulsory measures by the government to restrict the rights and freedoms of human and citizen. As for the quality of the law, we are impressed by the reasonable statement of the European Court of Human Rights in the case of Alexander Volkov v. Ukraine. "The quality of the law" means that national legislation must be accessible and predictable, that is, it must contain enough provisions to give people an adequate indication of the circumstances and conditions under which public authorities have the right to take measures affecting the rights of individuals" [8].

Surely, the questions mentioned above can be partially answered by paragraph 11 of Part 1 of the European Social Charter (ESC), signed by the Governments of the Council of Europe in Strasbourg on May 3, 1996, which states that everyone has the right to use measures to achieve the best state of health. Article 11 ESC supplements the above: "In order to ensure the effective implementation of the right to health, the parties undertake, independently or in cooperation with public or private organizations, to take appropriate measures to prevent, as far as possible, epidemic, endemic, and other diseases, as well as accidents " [9]. No less important in the protection of human and civil rights is the provision of Article 6 of the European Charter of Patients' Rights of Ukraine, which provides that everyone has the right of the confidentiality of personal information, including information about the state of health and possible diagnostic or therapeutic procedures, as well as the right to privacy during diagnostic examinations [10].

However, given the problems our study, the content of the 8-11 Articles of the Convention for the Protection of Human Rights and Fundamental Freedoms from November 4, 1950, allows a state of emergency to intervene in human rights "for the protection of health", and Article 15 paragraph 1 of the Convention states that High Contracting Party may take measures derogating from its obligations under this Convention only to the extent caused by the severity of the situation, and provided that such measures are not inconsistent with other obligations under international law [11].

No wonder today that because of the terrible plague COVID-19 more than ten countries of *Council of Europe* and other countries of the world are forced to deviate from certain provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms. But these exceptions should not allow encroachments of state bodies and private organizations, institutions, and enterprises on such basic inalienable human rights as the right to life and health protection; the right to respect for private and family life; the right to freedom of speech and thought; the right to protect personal data, including medical secrecy; the right to access information about the activities of public authorities; the right to work and entrepreneurship.

Especially unacceptable in the context of the COVID-19 epidemic is the disclosure of personal data about people with coronavirus disease, their addresses, and places of work in the media as was widely reported on *Facebook*, regarding the personal data of the woman who first died of coronavirus in the Transcarpathian region, and the material was published in the *Vesti* edition with an infographic titled "Where in Kyiv was reported about COVID-19". This vicious practice, as international and domestic experience shows, can first of all lead to confrontation and destructive processes in society, which can manifest themselves in the form of panic and aggression on the part of the population. It is also disgusting to hear fake reports from politicians about cases of coronavirus disease of a political opponent.

The "witch hunt" of those whose fear and aggression overwhelm the ability to think critically and weigh their actions does not stop. Commenting on this information, human rights activist, journalist, and coordinator of the project *Without borders* Maxim Butkevich notes that the publication of *Vesti* was simply impressive. and not because the veil is lifted over the true scale of the spread of COVID-19 in Kyiv (this is not so), but as an example of a blatant violation - not only of human rights but also of journalistic standards and legislation of Ukraine [12]. The Independent Media Council also sharply criticized the violation of the right to privacy of a person in the context of quarantine, noting that "a journalist must find a balance between the public's right to information and the potential harm that this information can cause" [13].

V. Administrative and legal principles of human rights protection and grounds for disclosure of patient confidentiality in the conditions of COVID-19 quarantine

It is worth noting that the spread of the coronavirus epidemic in an emergency exacerbates legal relations concerning the observance of the right to secrecy about health. In accordance with Article 286 of the Civil Code, "an individual has the right to secrecy about the state of his health, the fact of seeking medical help, diagnosis, as well as information obtained during his medical examination. it is prohibited to request and provide information about the diagnosis and treatment methods of an individual

at the place of work or study” [14]; however, given the problems of implementing certain regulations in the field of combating COVID-19, it would be desirable to supplement the provisions of Article 286 of the Civil Code with a list of circumstances in which a deviation from this norm is possible in the interests of national security, economic prosperity, and human rights, as previously mentioned in part 1 of Article 32 of the Constitution of Ukraine.

Under part two of Article 6 of the law of Ukraine from October 2, 1992, № 2657-XII "About information", the right to information may be restricted by law in the interests of national security, territorial integrity or public order, the prevention of disorder or crime, for the protection of the health of the nation, the protection of the reputation or rights of others, for preventing disclosure of confidential information or to preserve the reputation and impartiality justice. And the provision of part two of the 11 Article of the law does not allow the collection, storage, use, and dissemination of confidential information about a person without his consent. The concept of confidential information includes, in particular, information about his citizenship, education, marital status, religious beliefs, health status, as well as address, date, and place of birth [15].

The obligation to provide administrative and legal protection of personal data of patients covered by the legislation on medical secrecy is based on paragraph 6 of the second of Article 7 of the law of Ukraine "On personal data". Data protection "is the responsibility of medical personnel and other persons in the health care facility". Criminal liability for illegal disclosure of medical secrecy is provided with Article 145 of the Criminal Code of Ukraine; however, the law of Ukraine of April 13, 2020, № 555-IX "On amendments to the law of Ukraine" On Protection of the Population from Infectious Diseases to Prevent the Spread of Coronavirus (COVID-19) provides that for the period of quarantine or restrictive measures related to the spread of coronavirus disease (COVID-19), and within 30 days from the date of its cancellation:

“It is allowed to process personal data without the consent of the person, including data, concerning the state of health, place of hospitalization or self-isolation; date of birth; place of residence, work (study); first name; last name; patronymic for countering the spread of coronavirus disease (COVID-19), in the manner specified in the decision to establish quarantine, provided that such data is used exclusively for anti-epidemic measures. Within 30 days after the end of the quarantine period, such data are subject to depersonalization, and in the case of impossibility - destruction” [16].

In the order of the Ministry of Health of Ukraine from 13.03.2020 № 663 "On the optimization of measures to prevent the penetration and spread of COVID-19 cases in Ukraine" which establishes recommendations for the actions of state institutions of regional and Kyiv laboratory centers

of the Ministry of Health of Ukraine in detecting COVID-19 cases based on emergency information notification of these persons by the territorial body of the State Sanitary and Epidemiological Service of Ukraine by phone and, in particular, active identification of contact persons and transfer of this information to primary care physicians (PHC) to create active medical supervision - disclosure of information classified as medical secrecy is officially permitted [17].

However, supporting the opinion of the public and journalists, the disclosure of personal data of sick patients, even those in quarantine, cannot be carried out solely based on the interests of certain segments of the society, these relations should be regulated by international and national legislation aimed at the administrative and legal protection of human and civil rights and freedoms enshrined in the constitution of Ukraine. As for the international practice of disclosing medical secrecy, in Germany, after a case when a pilot who suffered from depression and deliberately committed a plane crash in 2015, it was suggested to disclose medical secrecy in the case when the patient is suspected of intending to commit a crime. American practice also shows that it is allowed to disclose medical secrecy based on a court decision in case of a dangerous infectious disease.

Recently, in the United States and elsewhere, the idea of stimulating people with coronavirus symptoms to voluntarily report their status to identify and test those they come into contact with has gained widespread popularity; otherwise (disclosure of medical data without the consent of the carrier), most likely, changes in the current legislation will be required, which needs a prompt response of the parliament and the judiciary [18].

VI. Administrative and legal principles of respect for human and civil rights in the field of entrepreneurship and issues of punishing the population for violating the rules of quarantine

Unregulated administrative and legal issues of protection of human and civil rights in the sphere of business are of great importance in the quarantine period, the subjects of which have lost and continue to lose more and more investments and savings due to restrictive measures during the isolation period.

Business circumstances related to quarantine phenomena require business entities to be flexible and capable of rapid changes, both in the national and global markets. And despite the benefits provided to subjects in quarantine to regulate financial and tax relations, statistics show a sad picture in which enterprises during quarantine face unforeseen daily challenges. So, according to the NBU, in April 2020, the business activity index fell below 30 points.

"Business has almost stopped," the chairman of the National Bank said in an interview with BBC News Ukraine. According to a survey conducted by the European Business Association, it will take up to one year for

60% of companies to recover from quarantine, 28% of companies have lost up to half of their income, and only 3% of companies have increased their income. 16% of respondents announced that they have already resumed work or did not stop it at all. Most companies reported losses. More than a third lost up to 20% of their income, another 28% - up to half, 18% - from half to three quarters; only each one the tenth company did not lose anything, and 3% of companies even increased their income [19].

With the adoption of the newly introduced Article 325 of the Criminal Code of Ukraine, related to the violation of the rules and regulations established for the fight against mass non-communicable diseases (poisoning) and the fight against them if such actions caused or intentionally could cause the spread of these diseases, a number of legal issues arise. In particular, there is no difference between the composition of an administrative offense under Article 44-3 of the Code of Administrative Offenses and the composition of the above-mentioned crime and the size of the fines; moreover, the norms and rules aimed at preventing epidemic and other infectious diseases under Article 325 of the Criminal Code of Ukraine without introducing a state of emergency violate international and constitutional human rights which can lead to public discontent.

Today, the process of implementing Article 44-3 of the Code of Administrative Offences of Ukraine which was introduced based on the Law of Ukraine from March 17, 2020, № 530-IX "On amendments to the law of Ukraine" aimed at preventing the occurrence and spread of coronavirus disease (COVID - 19), continues [20]. As it turned out, the analysis of decisions under Article 44-3 of the Code of Administrative Offenses of Ukraine shows that judges in 90% of cases refuse to fine Ukrainians for violating quarantine rules.

As of April 6, 2020, only 32 people out of 402 persons were found guilty and had to pay a fine for violating quarantine rules. In particular, 212 decisions on the materials of the case on bringing a person to administrative responsibility under Article 44-3 of the Administrative Code were returned to the GUNP of Ukraine for revision, since the protocols on administrative offenses did not meet the requirements of Article 256 of the Code of Administrative Offences of Ukraine; moreover, most of the charges were based on evidence obtained illegally, as well as on assumptions [21].

For example, Zhovtnevy District Court of Zaporizhzhia city closed proceedings in case № 331/1132/20 on April 6, 2020. The court found that the police officers did not provide the court with any evidence that the citizen under investigation consulted visitors face to face, and there were no explanations from witnesses-buyers, and the fact of the sale of goods was not recorded in any way. It was also argued that the open doors of the store could not indicate the reception of visitors for trade and serve as convincing and sufficient evidence of a violation of quarantine rules [22].

VII. Conclusion

The progressive world and domestic community, taking into account the threat to human and civil rights in the context of overcoming the coronavirus, calls on state bodies to make reasonable, balanced, and, above all, decisions aimed at protecting these rights during the epidemic.

Today, more than ever, the main provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms, the Convention on Human Rights, Biomedicine, and National Emergency Legislation are important in the field of medicine, as well as the ways to respond to them.

In particular, the main provisions of the conventions require equal access to health care for all people with limited resources, so that the most vulnerable segments of the population are not discriminated against; data collected to combat Covid-19 must be strictly regulated by law and aimed at protecting human rights; restrictions on human rights must comply with legislation and be aimed at collective interests and public health; the rights of persons involved in the development of treatment measures in crisis periods need special protection [23].

Summing up, administrative and legal measures to protect human and civil rights in the context of countering the spread of COVID-19 should be aimed at:

- development of a state strategy to counter the threat of the coronavirus epidemic to preserve the life and health of the population, prevent violations of human and civil rights, protect their honor, dignity, and identity;
- a thorough scientific study of the administrative and legal mechanism for the protection of human rights in quarantine and health care;
- protection against possible abuses by state and local authorities with the expansion of restrictive measures;
- respect for privacy and health;
- awareness of the rights and guarantees of ensuring the life and health of the person under study;
- provision of necessary material and medical assistance to elderly people who cannot independently cope with social protection issues during the period of self-isolation;

- ensuring that any restrictions imposed are adequate and proportionate to the threats posed by the emergency;
- protecting the rights of internally displaced persons by providing them with access to sanitation, personal hygiene, and medicines;
- adoption of a codified act - the Medical Code, the norms of which would regulate relations between doctors and patients, professional relations of doctors among themselves and with public authorities;
- summary of judicial and administrative practice of human rights protection in quarantine and health care;
- improving the administrative and legal mechanism for the protection of human rights in the context of countering the spread of COVID-19 and in some other emergencies.

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