

Quarantine as Administrative and Legal Regime: Theoretical Principles and Problems of Implementing the Article 44-3 of the Code of Ukraine on Administrative Offences

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Abstract. The article analyses quarantine as an administrative and legal regime, defining its key features and identifying problematic aspects of the application of Article 44-3 of the Code of Administrative Offences, with an emphasis on finding ways to improve administrative liability for violations of this regime and ensuring the unity and effectiveness of law enforcement. Methodology. The study is based on a legal analysis using historical, comparative and systematic approaches, which made it possible to trace the evolution of the concept of 'quarantine', identify the features of quarantine as an administrative and legal regime, problematic aspects of administrative liability for its violation, the search for ways to improve Article 44-3 of the Code of Administrative Offences, and ensuring the uniformity of law enforcement. Results. It has been established that quarantine is multidimensional in nature: historically, it combines medical, social and regulatory functions, while the modern understanding includes sanitary protection and administrative and legal aspects. It has been shown that quarantine in the administrative law system is a comprehensive legal regime with clear rules, procedures and enforcement measures that provide preventive, control and restrictive functions to protect public health. Problems with the application of Article 44-3 of the Code of Administrative Offences have been identified: the vagueness of the disposition, the excessive severity of sanctions and the lack of alternative measures, which reduces the effectiveness of administrative enforcement and creates risks of uneven law enforcement. It has been substantiated that improving the regulatory definition of quarantine and liability mechanisms, introducing proportionate sanctions and taking into account international experience will contribute to the uniformity of law enforcement and increase the effectiveness of public health protection.

Key words: quarantine, public health, healthcare, administrative and legal regime, quarantine measures, administrative liability).

INTRODUCTION

The issue of quarantine occupies a special place in the legal framework for public health, as it combines medical, social and administrative-legal aspects. It should be agreed that epidemic and pandemic threats go beyond purely medical issues, taking on a global dimension and requiring the consolidation of efforts by the state and the international community. An important component of this system is ensuring the epidemiological well-being of the population, which should be considered both a medical and legal category and an element of national security [21]. It is within this approach that quarantine emerges as a special administrative and legal regime aimed at protecting public interests and maintaining public safety.

Compliance with established quarantine rules is ensured by measures of administrative responsibility, which is a key instrument of state coercion in the field of public health. The achievement of the main goal – ensuring legality, discipline and real compliance with anti-epidemic requirements – depends on the proper regulatory definition of this responsibility and the effectiveness of its practical implementation.

The relevance of the study is determined by the need to clarify the legal nature of quarantine, improve the norms of administrative legislation and harmonise national law enforcement practice with international standards in the field of health care.

The aim of the study is to conduct a comprehensive analysis of quarantine as an administrative and legal regime, to identify its key features, as well as to identify problematic aspects of the application of Article 44-3 of the Code of Administrative Offences, to search for

ways to improve it and to ensure uniformity in law enforcement.

RESEARCH METHODOLOGY

The study was conducted on the basis of legal analysis using historical-legal and comparative-legal approaches. The historical-legal method made it possible to trace the evolution of the concept of 'quarantine' from antiquity to the present day and to identify its socio-legal, regulatory and organisational functions [4; 12].

Legal analysis of the regulatory framework of Ukraine, in particular Article 44-3 of the Code of Administrative Offences, 'On the protection of the population from infectious diseases', resolutions of the Cabinet of Ministers, decisions of courts of general jurisdiction in Ukraine, made it possible to determine the structure of the administrative and legal regime of quarantine, the peculiarities of its application, problems of law enforcement and the existence of legislative gaps [2; 3; 4].

A comparative legal approach was used to clarify international practices in quarantine regulation (Germany, France, Georgia, Poland, Italy), which made it possible to identify the principles of differentiation of sanctions, strengthening of the preventive effect and protection of public interests in different legal systems [1; 18].

A systematic approach ensured the integration of data from various sources, including scientific publications, reference and encyclopaedic publications, legislative acts and judicial practice – allowing for a comprehensive coverage of the issues of the administrative and legal regime of quarantine and identification of areas

for improvement of Article 44-3 of the Code of Administrative Offences [3; 8; 9; 14; 15; 19; 20; 22]. This approach combines historical, theoretical and practical aspects, focusing on the coordination of the preventive, control and restrictive functions of administrative law in emergency sanitary and epidemiological situations.

The validity and reliability of the study are ensured by checking and comparing various sources: normative provisions, judicial practice, scientific commentaries, reference and encyclopaedic publications, etc. The risks of regulatory ambiguity and non-systematic application are reduced by the use of standardised definitions of key concepts.

The methodological limitations of the study are related to the incomplete disclosure of data by control authorities, the heterogeneity of judicial reporting, and differences in quarantine practices in different countries. These factors are compensated for by the use of multi-source data, their cross-checking and interpretation in the absence of verified information.

RESULTS

The issue of quarantine is relevant both in medical and legal terms, as it protects public health and regulates people's behaviour in emergency epidemic situations. In order to understand its essence, it is useful to consider the historical origin of the term. The term quarantine comes from the Latin word 'quadraginta', which means 'forty'. Its use dates back to the school of Hippocrates (5th century BC), where it was noted that the symptoms of the most dangerous disease – the plague – manifest themselves within 40 days. If the disease was detected later, it was not considered plague and did not pose such a serious threat. Thus, the number forty became a symbolic period of isolation and medical observation [6]. Therefore, since ancient times, quarantine has had not only medical but also regulatory significance, as it determined the order of people's behaviour in the event of an epidemic threat. However, there is no doubt that over time this concept has taken on a multidimensional character, ranging from a hygienic measure to a complex socio-legal phenomenon.

Modern lexicography reveals the concept of quarantine primarily through its sanitary and protective essence. The Great Explanatory Dictionary defines quarantine as: the isolation for a certain period of time of persons suffering from a contagious disease, or those who have had contact with such patients, or a set of administrative and medical-sanitary measures to stop the spread of a contagious disease [22, p. 522].

The Legal Encyclopaedia, edited by Yu. S. Shemshuchenko, emphasises that quarantine is a legal regime governing the activities of state bodies, local self-government bodies, enterprises, institutions and organisations with regard to the localisation and elimination of the causes of quarantine of objects. It allows for temporary restrictions on the rights of citizens and legal entities, and also imposes additional obligations on them [10]. Thus, unlike the medical interpretation, the legal approach emphasises the legal nature of quarantine as a special regime that provides for the use of legal means of

influence and coercion in emergency sanitary and epidemiological circumstances.

The understanding of quarantine is not limited to national boundaries. According to the International Health Regulations of the World Health Organisation, quarantine is the restriction of activities and/or separation of persons who are not ill but are suspected of being infected, or luggage, containers, means of transport or goods suspected of being infected, in such a way as to prevent the possible spread of infection or contamination [7]. It is a public health tool implemented within national borders to protect the population from dangerous epidemic diseases [16]. Thus, quarantine is not only a medical tool, but also a socio-legal tool aimed at reconciling the interests of the state, society and the individual.

A logical continuation of the evolution of the concept of 'quarantine' is its transition into the realm of administrative law. In this sphere, quarantine is considered a special legal regime with its own system of norms, procedures, and enforcement measures. The Law of Ukraine 'On the Protection of the Population from Infectious Diseases' dated 6 April 2000 and the Law of Ukraine 'On the Public Health System' dated 6 September 2022 define infectious diseases as disorders of human health caused by living pathogens (viruses, bacteria, fungi, etc.) that are transmitted from infected persons to healthy ones and are prone to mass spread [14; 15]. Accordingly, quarantine is an integral part of the system of state measures aimed at preventing such spread.

As noted by O. L. Dzyubenko, quarantine has the following characteristics: comprehensiveness of measures, their limitation in time and space, the presence of a specific goal – to prevent the spread of disease, as well as the isolating nature of its impact [4, p. 91]. Based on the complexity of quarantine as a legal and organisational phenomenon, researchers identify its specific components – quarantine measures as special administrative, medical, sanitary and anti-epidemic measures, mainly of a restrictive and coercive in nature, which are applied in the relevant territory of the state within clearly defined time and quantitative limits in order to counteract the spread of infectious diseases, stop epidemics, and prevent mortality and harm to the health of the population of Ukraine [11, p. 492].

In accordance with the Law of Ukraine 'On the Public Health System' and Resolution of the Cabinet of Ministers of Ukraine No. 392 of 20 May 2020, quarantine measures can be classified according to the following criteria:

1. By level of population coverage – individual (wearing masks, self-isolation, prohibition of staying without documents), group (quarantine in educational institutions, prohibition of mass events with more than 10 people) and nationwide (restrictions on passenger transport, suspension of international flights). However, some prohibitions have exceptions.
2. By focus – restrictive (restrictions on movement and economic activity), preventive (observation, self-isolation, sanitary inspection, disinfection) and control (medical examination, testing, control of self-isolation).
3. By form of implementation – administrative and legal (regulation of entry, movement, economic activity), medical and biological (observation, testing, self-isolation) and socio-economic (state support for business and the population).

The multi-level structure of quarantine measures

indicates their systemic nature, which requires a clear legal definition. In this context, quarantine should be considered as an administrative and legal regime that establishes the grounds, procedure for application and restrictions on the rights and freedoms of citizens to ensure public safety. I. V. Mishchuk defines quarantine as a special administrative and legal means of responding to a pandemic, characterised by a specific procedure for its introduction; it is based on a set of specific rules and restrictions; quarantine has its own purpose and scope of application, and is enforced by means of coercive measures [12, p. 165]. Similarly, O. Ostapenko and M. Tsivok interpret quarantine as an officially established special procedure of administrative and legal regulation, the elements of which are a set of legal and organisational measures applied to ensure proper sanitary and hygienic conditions among people in order to eliminate, eradicate and prevent the consequences of infectious diseases [16, p. 189].

Thus, quarantine in the administrative law system is a legal instrument that combines preventive, control and restrictive functions.

Having considered the concept of quarantine and its key features, it should be emphasised that one of them is ensuring compliance with restrictions through measures of state coercion, in particular by establishing liability under Article 44-3 of the Code of Administrative Offences. Similar rules exist in other countries. Germany has a catalogue of administrative offences related to violations of quarantine rules, for which the court determines the amount of the fine. In Italy (Law No. 13/2020), imprisonment for 3 to 18 months or a fine of €500-5,000 is provided for. In France, the Public Health Code establishes a fine of €135 to €3,750. In Poland (Article 116 of the Code of Administrative Offences), a fine of PLN 20 to PLN 5,000 is imposed for violating isolation or quarantine [1].

DISCUSSION

For legal liability measures to be effective, they must be based on legally established systemic principles and be equally applicable to all entities. However, in practice, the application of Article 44-3 of the Code of Administrative Offences is accompanied by numerous difficulties. Y. V. Nechval draws attention to the problems of qualifying violations of quarantine restrictions, which lead to the closure of proceedings due to the impossibility of establishing all the circumstances of the case [13]. Similar conclusions are made by Yu. Kolos and D. Derkach, emphasising the risks of excessive discretion by authorities, ambiguity in the interpretation of the objective side of the offence, and the lack of clarity in the relationship between general and special norms, which may create corruption risks [9]. At the same time, judicial practice illustrates these problems. For example, the Zhovtnevy Court of Mariupol closed a case due to a violation of jurisdiction [19], and the Lebedinsky District Court of Sumy Region released the offender from liability due to insignificance [20]. The main reasons are the vagueness of the article's disposition, the excessive severity of the sanctions under Article 44-3 of the Code of

Administrative Offences, and the lack of alternative types of penalties, which forces courts to apply insignificance to avoid disproportionate consequences [23]. At the same time, judicial practice is inconsistent: some courts recognised violations such as being without documents, without protective equipment or visiting parks as minor, while others brought similar actions to justice. Thus, court decisions show that in practice, the objectives of administrative liability for violations of quarantine rules have not been achieved [5].

The effectiveness of applying the provisions of Article 44-3 of the Code of Administrative Offences also depends to a large extent on the clarity and consistency of terminology. At the same time, scholars point out problems with the existing regulation: it would be advisable to rename the article 'Violation of quarantine rules,' since the current laws do not contain the concept of 'quarantine of people,' and the Law 'On the Public Health System' defines it more broadly, covering infectious, biological, chemical and radiation threats [4]. Therefore, it seems most reasonable to revise the title of Article 44-3 of the Code of Administrative Offences, which will allow the Code to be harmonised with the basic laws in the field of public health, increase the level of legal certainty and ensure uniformity in the application of the law.

O. Drozd and M. Motyl emphasise the excessive generality of the disposition of Article 44-3 of the Code of Administrative Offences due to numerous references to normative acts, which complicates its application and understanding of violations by citizens [3]. However, it is not advisable to completely exclude references to acts, because: firstly, this would deprive citizens of sources for understanding the rules; secondly, the Law of Ukraine 'On the Public Health System' of 06.04.2022 grants the Cabinet of Ministers of Ukraine the right to establish, extend and cancel quarantine; thirdly, local authorities may introduce additional measures in their territories. Thus, the vagueness of Article 44-3 of the Code of Administrative Offences is due not only to the wording of the article, but also to the regularity of delegating powers for rapid response to epidemics. The problem can be solved not by changing the wording of the provision, but by reviewing the powers of the authorities, which would allow anti-epidemic measures to be implemented immediately, without waiting for changes to be made to the legislation.

In addition to the vagueness of Article 44-3 of the Code of Administrative Offences, which complicates understanding of the objective side of the act, there are also other opinions regarding the structure of this provision. According to Y. V. Burchenko, it would be advisable to exclude Part 2 of Article 44-3 of the Code of Administrative Offences [2, p. 173] altogether, since it was introduced for the conditions of COVID-19, does not currently reflect the extraordinary epidemiological situation, is limited only to masks and respirators, and its practical effectiveness is low. However, this provision should be retained, as even with minor sanctions, it has a preventive effect, ensures discipline during quarantine and reduces public risks. In addition, its existence brings Ukrainian legislation into line with international practice in combating pandemics. In view

of the above, it is advisable to amend Part 2 of Article 44-3 of the Code of Administrative Offences as follows: "Staying in public buildings, structures, public transport and other public places during quarantine without using the personal protective equipment specified by the Cabinet of Ministers of Ukraine".

Scientists also propose to review the sanctions of Article 44-3 of the Code of Administrative Offences, ensure their proportionality to the offence and introduce alternative measures (community service, warnings, administrative arrest), which will allow for a flexible response to specific circumstances and the personality of the offender [23]. It should be noted that in foreign countries, the rules establishing liability for quarantine violations also provide for fines, but these are differentiated according to the subjects and circumstances. For example, in Georgia, fines increase during a state of emergency or martial law, which, according to O. M. Reznik, should be taken into account in Ukraine [18, p. 246]. In particular, N. O. Kolomoets considers the absence of information about the repetition of unlawful actions by the subject in the protocols on administrative offences to be one of the problems in the implementation of Article 44-3 of the Code of Administrative Offences [8, p. 95]. In France, for example, a repeat offence within a month is punishable by a fine of €3,750 instead of €115 for a first offence [1]. This practice enhances the preventive effect and demonstrates the social danger of systematic violations and, in our opinion, it can be used in Ukraine to improve administrative liability for violations of quarantine rules.

Thus, the current version of the article does not fully comply with the principles of proportionality and

expediency, which limits the effectiveness of administrative coercion as a means of enforcing quarantine.

CONCLUSIONS

Quarantine has evolved from a medical measure to a comprehensive socio-legal institution combining medical, administrative and legal mechanisms for protecting the population. Ukrainian legislation defines it as a special administrative and legal regime aimed at preventing infectious diseases.

comparative analysis shows that administrative liability for violating quarantine rules is a characteristic feature of the legislation of most European countries (in particular, Germany, France, Italy, Poland, etc.), but differs in terms of the content of provisions, types of sanctions, and their severity, which is determined by national legal traditions and models of public administration.

An analysis of Article 44-3 of the Code of Administrative Offences revealed regulatory ambiguity and disproportionate sanctions. Despite the certainty of quarantine as an administrative and legal regime with coercive measures, the current legal imperfection complicates the implementation of its provisions and requires improvement of the norms and practice of applying Article 44-3 of the Code of Administrative Offences to ensure uniformity of law enforcement and effective protection of public health. It is advisable to further clarify the provisions of the article, harmonise it with existing laws and introduce differentiated measures of responsibility, which will contribute to improving the effectiveness of the administrative and legal mechanism of quarantine.

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