A Public Authority Responsible for Ensuring the Resilience of Critical Infrastructure in Ukraine's Healthcare Sec

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Abstract. The article examines the legal characteristics and competence of public authorities responsible for critical infrastructure resilience in Ukraine's healthcare sector. Its purpose is to define this category, distinguish the capacities in which the relevant actors operate and substantiate safeguards against unlawful intervention or inaction. Doctrinal analysis, systematic interpretation and comparison with European Union legislation identify the Ministry of Health's sectoral and functional powers, national coordination and territorial responsibilities. The findings distinguish public authority from infrastructure operation and advisory participation, and connect binding requirements, passport concurrence and registration with their legal bases and effects. The article proposes specifying institutional capacity in administrative records and linking coordination measures to competent implementing bodies. It also distinguishes procedural performance from actual healthcare continuity. These recommendations may inform administrative practice, while their operational effectiveness requires empirical assessment.

Key words: public authority; critical infrastructure; healthcare; resilience; administrative competence; Ministry of Health; judicial review.

INTRODUCTION

The resilience of healthcare infrastructure depends partly on public decisions determining protection requirements, coordinating assistance and supervising preparedness. An institution's participation in these activities does not explain which decisions it may lawfully take. Confusing public authority with ownership, operational management or expert participation obscures responsibility for both intervention and failure to act.

This problem has immediate practical significance. The World Health Organization's assessment of 13.05.2026 identifies electricity disruptions as a threat to essential health services, medical equipment and cold chains, while damage to energy systems also affects water treatment and distribution [20]. These dependencies require decisions across several areas of public administration. Their existence, however, cannot itself confer legal powers on a coordinating institution.

Previous research explains important aspects of this relationship. L. Kirina and A. Lyha examine the legal support of urban medical infrastructure resilience and connect it with continuing investment, planning and adaptation [6, p. 494]. V. Loiko, V. Teremetskyi and their co-authors analyse utility networks as infrastructure supporting essential needs [7, p. 279]. The latter study predates the framework Law "On Critical Infrastructure"; its functional analysis remains useful, whereas its description of the legislative framework requires that historical qualification.

V. Teremetskyi and his co-authors link access to specialised medical services during war and recovery with infrastructure, financing and appropriate legal support [12, p. 1]. V. Teremetskyi's research on proportionality identifies lawful purpose, necessity and the balance between intervention and protected interests as criteria for assessing restrictions [11, pp. 343–344]. These contributions address the conditions and limits of public action. The present study examines the distinct question of how a legally assigned function determines an actor's capacity and responsibility within the healthcare critical infrastructure protection system.

The purpose of this article is to define a public authority responsible for healthcare critical infrastructure resilience, identify its distinguishing characteristics and substantiate safeguards governing its competence. The singular term denotes a legal category encompassing several institutions. The proposed analytical approach connects the legal source and scope of competence, the capacity in which an actor acts, and the legal consequences of its conduct with an identifiable responsible authority.

METHODS

The study applies doctrinal legal analysis to Ukrainian legislation in force as of 30.10.2026. Systematic interpretation connects the Constitution, the Code of Administrative Justice and the Law "On Critical Infrastructure" with regulations governing healthcare administration, categorisation, registration and security passports. Particular attention is paid to the temporal and territorial scope of competence, wartime provisions and the distinction between statutory requirements and proposals for improving their implementation.

A functional comparison with Directive (EU) 2022/2557 examines competent authorities, institutional resources and support for critical entities. The Directive serves as a comparative benchmark, not a directly applicable source of Ukrainian powers. Public WHO and government materials provide documentary illustrations. Restricted registers, security passports and individual administrative files were not examined; consequently, the study does not measure actual compliance or attribute particular failures to public bodies.

RESULTS

The defining characteristics of public authority

Public authority in this field concerns the lawful organisation of conditions under which essential healthcare functions can continue and recover. Article 1 of the Law "On Critical Infrastructure" defines resilience through normal operation, adaptation, resistance and rapid recovery following threats [18]. This understanding extends the administrative task beyond guarding premises, while retaining a distinction between healthcare infrastructure generally and facilities falling within the statutory critical infrastructure regime.

The starting point is Article 4, paragraph 1, subparagraph 7 of the Code of Administrative Justice. Its definition covers state bodies, including those without legal personality, local self-government and military command bodies, their officials, and other actors exercising public administrative powers under legislation, including delegated powers, or providing administrative services [15]. Accordingly, institutional affiliation alone is insufficient: the public function performed in the disputed or regulated relationship must also be established.

We define a public authority responsible for healthcare critical infrastructure resilience as a body, official or other actor legally empowered to exercise public administrative powers aimed at maintaining, adapting or restoring vital healthcare functions through critical infrastructure protection. Four elements identify that capacity: the legal basis of the power; its substantive, territorial and temporal scope; the sectoral, functional or coordinating role in which it is exercised; and the legal effects and accountability attached to its exercise. This doctrinal definition describes the application of existing competence to resilience tasks.

Article 14 of the framework Law includes operators and other organisations among participants in the national protection system, while Article 21 imposes protection, planning and information duties on operators [18]. Membership in that system therefore has a broader meaning than the exercise of public authority. Providing medical care, managing equipment or preparing a protection plan does not, by itself, constitute delegated public administration.

Public ownership or financing of a hospital does not automatically make its clinical and operational decisions exercises of public powexclude a legally delegated public function. The same organisation may therefore act in different er. Conversely, private legal personality does not exclude a legally delegated public function. The same organisation may therefore act in different legal capacities, which must be assessed separately.

The Ministry of Health as a sectoral and functional authority

The Ministry of Health's position derives from its mandate under the Regulation approved by Cabinet of Ministers Resolution of 25.03.2015 No. 267 and its designation as the healthcare sectoral body under Resolution of 09.10.2020 No. 1109 [1; 2]. This responsibility covers the activities within the designated sector and is not confined to hospitals administratively subordinate to the Ministry.

Article 19 of the framework Law assigns sectoral bodies categorisation with operators, preparation of sectoral lists, protection requirements, threat-related planning, security passport concurrence, protection assessments and information exchange [18]. These powers have different legal forms and addressees. The Ministry's authority to organise sectoral protection does not confer unrestricted operational control over every healthcare provider or over external electricity and water suppliers.

The procedure approved by Resolution No. 818 of 04.08.2023 demonstrates the significance of institutional capacity. Paragraphs 5 and 6 determine the relevant functional bodies by reference to design-basis threats and include the Ministry of Health among them. Paragraph 13 separately requires sectoral concurrence with the security passport; paragraph 3 assigns its development and approval to the operator [4]. Here, "concurrence" translates the public body's statutory endorsement, as distinct from the operator's approval. Neither function should be confused with licensing medical practice.

A concrete exercise of this functional role appears in Ministry Order of 17.11.2023 No. 1972, which approves the protection-plan form and preparation recommendations for the national-level design-basis threat "Epidemic". The Order relies on paragraph 5 of the passport procedure [8]. It links the Ministry's function to a specified threat, demonstrating why functional competence and responsibility for the healthcare sector must be distinguished.

These functions can belong to one institution while remaining legally distinct. Paragraphs 9 and 15 require reasoned comments within the respective functional or sectoral competence. Paragraph 15 prohibits sectoral comments on an already endorsed protection plan, title-page formatting and editorial corrections [4]. Administrative records should therefore identify the capacity and precise subject of examination, allowing the operator to distinguish a lawful comment from an attempt to repeat another body's assessment.

Expert participation also requires a clear legal classification. Ministry Order of 08.09.2025 No. 1399 revised the composition and governing provisions of the categorisation working group established by Order No. 601 of 10.04.2024 [9]. Membership of that group does not itself confer independent external decision-making authority. Responsibility for a binding measure must be attributed to the body or official legally empowered to adopt it, with due regard to the group's preparatory role.

National and territorial competence

Articles 13 and 16 of the framework Law distinguish the Cabinet of Ministers' powers to organise the national system from the authorised body's policy, coordination and other statutory functions. Paragraph 5-1 of the final and transitional provisions entrusts the authorised body's powers to the State Service of Special Communications and Information Protection of Ukraine during martial law and for twelve months after its termination or cancellation [18]. This temporary allocation must be used when identifying the competent national institution.

Functional competence addresses particular protection and response systems. Articles 17 and 18 connect the participation of civil protection bodies, the Security Service, the National Police and other specified actors with their respective statutory mandates [18]. The relevance of an incident to healthcare does not transfer their specialist powers to the Ministry. Likewise, those bodies' participation does not remove the Ministry's obligation to exercise its own sectoral powers.

Registration illustrates the separation of national and sectoral responsibility. Paragraph 18 of the procedure approved by Resolution of 28.04.2023 No. 415 requires the public registrar to check the completeness of the submission and the justification of its criticality category. The sectoral body remains responsible for the accuracy, timeliness and completeness of the information submitted [3]. Paragraph 16 connects acquisition of critical infrastructure status with assignment of a unique registration number. Registration is therefore a legally significant action, distinct from preparing the sectoral submission or providing assistance to a healthcare facility.

Territorial competence has its own statutory foundations. Article 20 of the framework Law assigns local executive bodies the development of resilience programmes and interaction and recovery plans. Article 22 addresses local programmes for maintaining vital functions [18]. Separately, Article 38, paragraph 1, point (b), subparagraph 2-1 of the Law "On Local Self-Government in Ukraine" identifies delegated powers of the executive bodies of village, settlement and city councils concerning infrastructure protection, recovery and community resilience [14]. These provisions should not be replaced by a general reference to local ownership of hospitals.

Military administrations require distinct treatment. Articles 4 and 15 of the Law "On the Legal Regime of Martial Law" govern their establishment and powers [17]. They must not be conflated with military-civil administrations expressly mentioned in the framework Law. The competent actor in a particular territory depends on the applicable statutory arrangement and legally assumed powers. Neither wartime urgency nor a general coordinating role supplies an unlimited authority to alter the sectoral allocation.

Article 3 of the framework Law distinguishes its general peacetime regulation from the special rules governing extraordinary regimes, including martial law [18]. Its institutional provisions must consequently be read together with the relevant special legislation and express transitional arrangements. An authority relying on wartime powers should identify the particular provision authorising the measure and its territorial and temporal conditions, rather than cite the existence of martial law alone.

Legal forms and limits of intervention

Legal forms determine both the addressee's obligations and the available safeguards. Article 19, paragraph 1, subparagraph 9 of the framework Law distinguishes recommendations from binding requirements to eliminate causes and conditions that undermine resilience [18]. Their legal effects cannot be inferred merely from a document's heading. A passport concurrence letter, a registration action and a coordination plan likewise require separate examination of their statutory basis and effects. Article 19 of the Constitution requires public bodies to act within their powers and in the legally prescribed manner [13].

Public support has a different legal function. Supplying equipment through an assistance programme may improve continuity but does not, by itself, authorise the supplier to impose regulatory requirements. Assistance also leaves the operator's statutory protection duties in place. The applicable rules and agreements must identify responsibility for installation, maintenance and use of the equipment without displacing the allocation of public powers.

Proportionality limits the exercise of an existing power. Teremetskyi's analysis supports examining the necessity and justification of interference [11, pp. 343–344]. Article 2, paragraph 2, subparagraph 8 of the Code of Administrative Justice expressly includes proportionality among the criteria for reviewing public decisions and actions [15]. A binding resilience requirement should therefore explain its connection to the identified threat and protected healthcare function, and justify the burden imposed. Proportionality cannot supply a missing competence or justify departure from mandatory statutory provisions.

Information restrictions must also have a legal basis. Resolution No. 818 identifies security passport information as restricted, while Article 6 of the Law "On Access to Public Information" establishes cumulative conditions for limiting access [4; 16]. Paragraph 7 of that Article distinguishes restricted information from the document containing it. Any disclosure decision must therefore separate protected operational details from information that may lawfully be released. Secrecy does not remove the duty to act within competence or prevent judicial scrutiny.

Procedural accountability and judicial protection

The Law "On Administrative Procedure" requires a separate scope assessment. Article 1, paragraph 2, subparagraph 2 excludes relationships arising from the application of national security and defence legislation, and the preamble to the Law "On Critical Infrastructure" expressly places it within national security legislation [18; 19]. General procedural rules cannot therefore be assumed to govern a particular infrastructure protection procedure. Its subject matter and special provisions must be examined. The

exclusion neither extends automatically to every healthcare administrative matter nor displaces constitutional guarantees and judicial review.

Articles 55 and 56 of the Constitution provide guarantees of judicial protection and compensation for unlawful public action [13]. Articles 5 and 19 of the Code of Administrative Justice connect access to administrative justice with alleged infringement of rights or lawful interests and a dispute within administrative jurisdiction [15]. Thus, an operator's challenge to a binding requirement differs from an abstract objection to healthcare policy. The proper defendant is the authority responsible for the contested act or omission; general sectoral responsibility does not make the Ministry the defendant in every infrastructure dispute.

An allegation of unlawful inaction requires an identifiable duty, the circumstances triggering it and the applicable deadline. Resolution No. 818 makes this inquiry concrete: paragraphs 7 and 13 establish periods of no more than ten working days from registration for concurrence with protection plans and security passports, respectively [4]. Assessment must also consider any lawful return of documents under that procedure. A general resilience objective cannot substitute for establishing which duty became due and which authority failed to perform it.

In cases challenging the lawfulness of a public authority's decision, action or omission, Article 77, paragraph 2 of the Code generally places the burden of proving its lawfulness on the defendant [15]. Administrative records should preserve the legal basis, material facts, reasons and communication with the addressee. Whether a preparatory opinion or procedural letter can be challenged independently depends on its legal effects and the applicable procedural rules; its title alone does not resolve that question.

DISCUSSION

The findings favour differentiation of institutional capacities within the existing system. Directive (EU) 2022/2557 provides a comparable approach: Article 9 permits several competent authorities but requires clear tasks, cooperation and adequate resources; Article 10 provides for support to critical entities, including guidance, training and, under the specified conditions, financial assistance [5]. Its relevance lies in linking competence to capacity and separating support from the entity's own obligations. It does not prescribe one institutional design for Ukraine.

A documented support programme illustrates the practical context. On 14.09.2026, the Ministry of Health reported that more than 100 healthcare facilities in 23 regions were generating electricity through the Ray of Hope project, a joint initiative of the European Commission and Ukraine's health and energy ministries, implemented through the Ukraine Energy Support Fund and coordinated by the Energy Community Secretariat [10]. The report evidences cooperation supporting continuity. It does not establish the facilities' critical infrastructure status or demonstrate compliance with all applicable protection requirements.

The infrastructure and financing emphasis in Teremetskyi and his co-authors' research reinforces the need to consider resources when analysing the provision of medical services [12, p. 1]. Nevertheless, the provision of resources and the exercise of public powers involve distinct legal relationships. Assessing a programme's contribution to resilience requires identifying both the authority responsible for public decisions and the operator responsible for maintaining the supported infrastructure.

Three improvements follow from the legal analysis. First, sectoral records should identify the statutory provision, the capacity in which the Ministry acts, the matter examined and the legal effect of the resulting document. This would implement the competence limits already contained in Resolution No. 818 without adding another approval stage.

Second, coordination plans should assign each measure to a competent implementing body, specify the necessary legal instrument and information exchange, and provide a procedure for addressing inter-agency disagreement. These are proposals for implementing existing planning duties. Redistribution of statutory powers would require amendment of the relevant legislation and cannot be accomplished through an internal instruction or coordination agreement.

Third, evaluation should distinguish procedural performance from healthcare continuity. Timely decisions and reasoned responses indicate how administrative duties are performed. Continuity requires additional evidence of the actual availability of services, alternative capacity and supporting resources. Neither document counts nor uninterrupted operation alone establish that an authority acted lawfully and effectively. The proposed indicators require empirical testing and adjustment to facility characteristics and information protection requirements.

CONCLUSIONS

A public authority responsible for healthcare critical infrastructure resilience is identified through the legally assigned function exercised in a particular relationship. The proposed definition connects legal authorisation, the scope of competence, institutional capacity and legal effects with responsibility for public action. This approach distinguishes public powers from an operator's management duties and from expert or financial participation in protection measures.

The Ministry of Health is the healthcare sectoral body and also performs functional tasks relating to particular threats. Those capacities remain distinct from national coordination and territorial responsibilities. The analysis of protection requirements, passport concurrence and registration demonstrates why the legal basis and effects of each action must be identified separately. Existing duties to provide reasons and comply with competence limits, together with

administrative judicial review, constrain and enable examination of unlawful inaction.

Improvement should focus on documenting the capacity in which an authority acts, assigning coordination measures to legally competent bodies and distinguishing procedural performance from actual service continuity. These proposals specify implementation of existing duties; any transfer of statutory powers requires legislative change. Further research should test their practical effect through lawful examination of administrative records and documented healthcare continuity outcomes.

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