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ТЕОРЕТИЧНЕ, ЮРИДИЧНЕ ТА ПРАКТИЧНЕ РЕГУЛЮВАННЯ ГРОМАДСЬКИХ ВІДНОСИН, ЯКІ ВИЗНАЧАЮТЬ І ГАРАНТУЮТЬ ПРАВА ГРОМАДЯН І ДОТРИМАННЯ КОНСТИТУЦІЇ УКРАЇНИ ПРИ ПАНДЕМІЇ

Анотація. Закон є головним аспектом регулювання суспільних відносин. Конституція України зазначає, що всі громадяни України є вільними та рівними у своїй гідності та правах. Обмеження прав громадян у всіх випадках повинні мати чітко визначену мету, яка полягає у пошуку балансу між суспільною необхідністю та інтересами тих, хто має право. В умовах пандемії сформувалися нові структури конституційного регулювання громадських відносин. Для захисту здоров'я та безпеки населення було прийнято ряд жорстких кроків, які обмежують людину на різних рівнях. В цьому випадку виникає питання, чи у повній мірі відповідають прийняті кроки реальній необхідності? Дослідження новосформованих структур здатне висвітлити ефективність механізму дії та повноту конституційного регулювання. Мета цієї роботи полягає у дослідженні явищ регулювання у трьох аспектах: теоретичному, юридичному та в аспекті практичного виконання. У якості методів дослідження було використано аналітичний підхід та індуктивний метод спостереження, а також метод узагальнення і порівняння, та діалектичні принципи для виявлення основних характеристик явищ, що вивчаються. Використовувалися методи системного,

структурного, функціонального та порівняльного аналізу, методи групування та обробки даних. Це дослідження визначило типи обмежень, які застосовуються в Україні для збереження біль-менш стабільної ситуації під час пандемії COVID-19. Описано закони та акти, що контролюють обмеження періоду пандемії. Визначено заходи, необхідні для безпеки життя та здоров'я населення. Було зроблено висновок, що коронавірус в Україні сприяв розвитку нових напрямків теоретичного супроводу та розвитку нового типу зв'язків з громадськістю під час пандемії. Він посприяв формуванню відповідальності, у тому числі юридичної, за ставлення до поширення коронавірусу та розробці чітких вимог для працівників служб охорони здоров'я та робітників прикордонних державних служб.

Ключові слова: права та свободи людини, обмеження прав, карантин, COVID-19, конституційне регулювання.

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THEORETICAL, LEGAL AND PRACTICAL REGULATION OF PUBLIC RELATIONS, WHICH DETERMINE AND GUARANTEE THE RIGHTS OF CITIZENS AND COMPLIANCE WITH THE CONSTITUTION OF UKRAINE DURING A PANDEMIC

Abstract. *The law is the main aspect of regulating public relations. The Constitution of Ukraine states that all citizens of Ukraine are free and equal in their dignity and rights. Restrictions on the rights of citizens in all cases must have a clearly defined goal, which is to find a balance between public necessity and the interests of those who are entitled. In the conditions of the pandemic, new structures of constitutional regulation of public relations were formed. To protect*

the health and safety of the population, a number of tough steps have been taken to limit people at various levels. In this case, the question arises as to whether the steps taken are fully consistent with the real need? The study of newly formed structures can highlight the effectiveness of the mechanism of action and the completeness of constitutional regulation. The purpose of this work is to investigate the phenomenon of regulation in three aspects: theoretical, legal and in the aspect of practical implementation. The analytical methods and the inductive method of observation, as well as the method of generalization and comparison, and dialectical principles were used as research methods to identify the main characteristics of the studied phenomena. Methods of system, structural, functional and comparative analysis, methods of grouping and data processing were used. This study identified the types of restrictions used in Ukraine to maintain a more or less stable situation during a COVID-19 pandemic. Laws and acts controlling the limitation of the pandemic period are described. Measures necessary for the safety of life and health of the population have been identified. It was concluded that the coronavirus in Ukraine contributed to the development of new areas of theoretical support and the development of a new type of public relations during the pandemic. He helped to create responsibilities, including legal ones, for the spread of coronavirus and to develop clear requirements for health care workers and border guards.

Keywords: human rights and freedoms, restrictions on the rights, quarantine, COVID-19, constitutional regulation.

INTRODUCTION

The law is undoubtedly the main aspect in the regulation of social relations in all states. At the same time, social relations are regulated not only by legal norms, but also by other social norms, among which moral, religious and customary norms are distinguished. Researchers in Ukraine claim that the instrument of social management in the vast majority of cases is legal norms [1]. The issue of regulation of social norms in general is quite debatable, because there are different views on social management, especially in business [2], but in most cases no one denies the primacy of law in the regulation of social relations. Law is known to be the regulator of most relations in society, and it has a hierarchical structure. Today, international regulations, such as United Nations conventions, Council of Europe conventions, and a number of other international organizations, are considered major in most legal systems. In Ukraine, these international regulations are prevalent, which has been repeatedly stated in the scientific literature¹. It should be noted that most regulations of Ukraine were adopted and are adopted only on the basis of international law.

However, depending on the political regime and the system of public administration, there are states where international regulations are not recognized as the main ones, we can include countries such as the Russian Federation, North Korea and some others [3-5]. It can also be stated that in most countries the main normative document that defines the system of regulation of public relations is the Constitution. In Ukraine, the Constitution is the main tool for establishing a system of legal regulation of public relations and control over respect for human rights. As in Ukraine, most constitutions in different countries clearly define the rights of citizens, the structure of states, but at the same time there are certain restrictions of human rights [6-8]. There is a

¹ Criminal-Executive Code of Ukraine. (2004, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/1129-15#Text>.

view that the restriction of rights and freedoms is intended both to protect society and to protect the rights and freedoms of others from the wrongful acts of persons who exercise their rights and violate the rights of others. The theory of Ukrainian law provides that the main regulator of all social relations and a guarantee of their observance is the Constitution of Ukraine¹.

The Constitution of Ukraine² states that all citizens of Ukraine are free and equal in their dignity and rights. Human rights and freedoms are inalienable and inviolable³. Thus, the restriction of rights must have the same natural origin as the rights and freedoms themselves. Restrictions on the rights of citizens, researchers argue, should in all cases have a clearly defined purpose, which involves finding a balance between public necessity and the interests of those who have the right. At the same time, restrictions were first applied with the formation of human society, and some researchers argue that they first began to be applied during the primitive communal system⁴. There is a view that the restriction of rights and freedoms is intended both to protect society and to protect the rights and freedoms of others from the wrongful acts of persons who exercise their rights and violate the rights of others. The theory of Ukrainian law provides that the main regulator of all social relations and a guarantee of their observance is the Constitution of Ukraine. The Constitution of Ukraine⁵ states that all citizens of Ukraine are free and equal in their dignity and rights. Human rights and freedoms are inalienable and inviolable⁶. Thus, the restriction of rights must have the same natural origin as the rights and freedoms themselves.

1. RESTRICTIONS ON THE RIGHTS OF CITIZENS IN UKRAINIAN LEGISLATION

Restrictions on the rights of citizens, researchers argue, should in all cases have a clearly defined purpose, which involves finding a balance between public necessity and the interests of those who have the right. At the same time, restrictions were first applied with the formation of human society, and some researchers argue that they first began to be applied during the primitive communal system⁷. In general, some researchers identify several types of restrictions on the rights and freedoms of citizens that can be applied in Ukraine. The first are general restrictions that apply to all citizens and are reflected in the relevant laws adopted to comply with constitutional requirements⁸ [9]. For example,

¹ Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

² *Ibidem*, 1996.

³ Resolution of the Cabinet of Ministers of Ukraine No 211 “On Prevention of the Spread of Coronavirus COVID-19 on the Territory of Ukraine”. (2020, March). Retrieved from <https://www.kmu.gov.ua/npas/pro-zapobigannya-poshim110320rennyu-na-teritoriyi-ukrayini-koronavirusu-covid-19>.

⁴ Law of Ukraine No 1645-III “On Protection of the Population from Infectious Diseases”. (2000, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/1645-14#Text>.

⁵ Constitution of Ukraine. (1996, June), *op. cit.*

⁶ Resolution of the Cabinet of Ministers of Ukraine No 211 “On Prevention of the Spread of Coronavirus COVID-19 on the Territory of Ukraine”, *op. cit.*

⁷ Law of Ukraine No 1645-III “On Protection of the Population from Infectious Diseases”. (2000, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/1645-14#Text>.

⁸ Constitution of Ukraine. (1996, June). Retrieved from

Article 32 of the Constitution of Ukraine¹ stipulates that “the collection, storage, use and dissemination of confidential information about a person without his / her consent is not allowed”². However, the Law of Ukraine “On Operational and Investigative Activities” stipulates that law enforcement agencies are allowed to “monitor a person, thing or place, as well as audio and video surveillance of a place in accordance with Articles 269, 270 of the Criminal Procedure Code of Ukraine” [10]. However, these grounds must be substantiated and they are conducted only with the permission of the court. The next type of restrictions concerns the status of certain categories of citizens. The main reason for such restrictions is the establishment of certain restrictions by the court. If a person has committed a crime and his guilt is proven in court, he has a special status, and his certain rights and freedoms are limited. However, these restrictions are in most cases temporary, except for persons sentenced to life imprisonment³. Another type of restriction provided for in the Constitution of Ukraine is the restriction of the rights of citizens in a state of emergency. A state of emergency, as defined in the Law of Ukraine “On the legal regime of the state of emergency” is a special legal regime that can be temporarily imposed in Ukraine or in some localities in emergencies of man-made or natural nature not lower than the national level⁴.

In accordance with the Constitution and the said law, in the conditions of such a state, in order to ensure the protection of citizens and the constitutional order in accordance with the constitutional law, certain restrictions on rights and freedoms may be established with a specified period of validity. However, it should be noted that the conditions for the introduction of a state of emergency in the law provides for the emergence of particularly severe emergencies of man-made and natural nature [11]. The list includes: natural disasters, catastrophes, especially large fires, the use of means of destruction, pandemics and panzootia. The main condition for the imposition of a state of emergency should be the threat to life and health of large sections of the population⁵. At the same time, the law defines the content of measures of the legal regime of the state of emergency. Such measures include restrictions on the movement of citizens and vehicles, a ban on mass events, strikes and the forcible seizure of property. In connection with emergencies of man-caused or natural nature, such measures as evacuation, housing, i.e. resettlement of evacuees, prohibition of construction of enterprises, establishment of quarantine restrictions, mobilization, change of mode of operation of enterprises, institutions, organizations of all forms of ownership, replacement the heads of state enterprises, institutions and organizations may also be carried out.

Additional conditions of the state of emergency include the imposition of curfew,

<https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

¹ Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

² Resolution of the Cabinet of Ministers of Ukraine No 211 “On Prevention of the Spread of Coronavirus COVID-19 on the Territory of Ukraine”. (2020, March). Retrieved from <https://www.kmu.gov.ua/npas/pro-zapobigannya-poshiml10320rennyu-na-teritoriyi-ukrayini-koronavirusu-covid-19>.

³ Law of Ukraine No 530-IX “On Amendments to Certain Legislative Acts of Ukraine Aimed at Preventing the Occurrence and Spread of Coronavirus Disease (COVID-19)”. (2020, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/530-20#Text>.

⁴ Code of Ukraine on Administrative Offenses. (1984, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/80731-10>.

⁵ Code of Ukraine on Administrative Offenses, op. cit.

verification of documents from citizens, as well as personal inspection, inspection of things, vehicles, luggage and cargo, office space and housing, restriction or temporary ban on the sale of weapons, toxic and potent chemicals, and as well as alcoholic beverages and substances produced on the basis of alcohol, temporary seizure of registered firearms and ammunition, prohibition of production and distribution of information materials that may destabilize the situation, regulation of civilian television and radio centers, establishing special rules of use and communication transmission of information through computer networks, as well as raising the issue of banning the activities of political parties, public organizations in the interests of national security and public order, public health or protection of the rights and freedoms of others¹. At the same time, the legislation does not specify when certain restrictions should be introduced. The law stipulates that a state of emergency may be imposed for a period of no more than 30 days in the country as a whole and no more than 60 days in certain localities. It can be extended for another 30 days. In the situation with the crown viral pandemic in Ukraine, as evidenced by the facts, some elements of the state of emergency were imposed, but the state of emergency was not fully imposed. The analysis showed that the restrictions on citizens' rights imposed in connection with the pandemic, but not the imposition of a state of emergency, were legally a violation of citizens' constitutional rights. To some extent, human rights violations were allowed.

2. LEGAL MEASURES IN UKRAINE DURING A PANDEMIC

The introduction of restrictions in Ukraine began with the Resolution of the Cabinet of Ministers of Ukraine of March 11, 2020 No. 211². It should be noted that the resolution is not about the introduction of a state of emergency, but about the introduction of quarantine with reference to the Law of Ukraine “On protection of the population from infectious diseases” [12]. However, the law itself defines “quarantine” as “administrative and health measures used to prevent the spread of particularly dangerous infectious diseases”, but they have nothing to do with restricting the rights of citizens. Moreover, the law does not provide for an increase in the powers of the Cabinet of Ministers of Ukraine in the field of restriction of citizens' rights. This resolution was adopted on March 11, 2020, and the relevant amendments to the Law of Ukraine “On Protection of the Population from Infectious Diseases”³ were adopted on March 30, 2020 and later on April 13, 2020. Thus, we can talk about illegal restrictions on the rights of citizens by the Cabinet of Ministers of Ukraine, which were carried out in the period from March 11, 2020 to March 30, 2020. At the same time, the mentioned Resolution of the Cabinet of Ministers of Ukraine and other measures has positive aspects. To some extent, they stabilized the situation in Ukraine and reduced the active growth of coronavirus patients at the beginning of the pandemic. However, at the same time, it should be noted that today there is a fairly large increase in patients with coronavirus, but the introduction of certain elements of the state of emergency is not discussed or resolved. In our opinion, it

¹ Law of Ukraine No 1645-III “On Protection of the Population from Infectious Diseases”. (2000, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/1645-14#Text>.

² Criminal Code of Ukraine. (2001, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

³ Law of Ukraine No 1645-III “On Protection of the Population from Infectious Diseases”, op. cit.

is necessary to analyze the restrictions that were introduced by this resolution and determine their significance for the system of rights and freedoms of citizens. These measures included the following restrictions and prohibitions:

- being in public places without appropriate personal protective equipment;
- relocation by groups of more than two persons, except in cases of official necessity and accompaniment of some individuals;
- stay in public places of persons under 14 years of age, unaccompanied by parents or other persons in accordance with the law or adult relatives of the child;
- visits to educational institutions by its applicants;
- visiting parks, squares, recreation areas, forest parks and coastal areas;
- visiting sports and children's playgrounds;
- conducting all mass cultural, entertainment, sports, social, religious, advertising events;
- work of business entities, which provides for the reception of visitors, in particular catering establishments, i.e. restaurants, cafes, shopping and entertainment centers, other entertainment establishments, fitness centers, cultural institutions, trade and consumer services;
- regular and irregular transportation of passengers by road in urban, suburban, intercity and interregional traffic;
- transportation of passengers by subways in Kyiv, Kharkiv and Dnipro;
- transportation of passengers by rail in all types of domestic services
- visits to social protection institutions and establishments in which children, elderly citizens, war and labor veterans, persons with disabilities and other persons temporarily / permanently reside / stay;
- visiting points of temporary stay of foreigners and stateless persons who are illegally staying in Ukraine and points of temporary accommodation of refugees;
- being on the streets without identity documents confirming citizenship or its special status;
- unauthorized leaving of the place of observation (isolation).

From the point of view of law, these restrictions to some extent included certain elements of the state of emergency, but it, as already mentioned, was not imposed. The analysis shows, first of all, that such pandemics have never occurred in the history of mankind and therefore to some extent the actions of the government can be justified [13; 14]. On the other hand, in order to ensure these restrictions, it was necessary to impose severe penalties on those who violated these restrictions. In order to fulfill the requirements of the mentioned Resolution by The Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Aimed at Preventing the Occurrence and Spread of Coronavirus Disease (COVID-19)”¹ amended the Code of Ukraine on Administrative Offenses and the Criminal

¹ New Text of the Constitution of the Russian Federation with Amendments. (2020, July). Retrieved from <http://duma.gov.ru/news/48953/>.

Code of Ukraine¹. Article 44-3 was added to the Code of Ukraine on Administrative Offenses, which defined the responsibility for violating the rules on quarantine of people. The content of the article stipulates that violations of the rules on human quarantine, sanitary and hygienic, sanitary and anti-epidemic rules and norms provided by the Law of Ukraine “On Protection of the Population from Infectious Diseases”², other legislation, as well as local government decisions on infectious diseases, – entails the imposition of a fine on citizens from one to two thousand non-taxable minimum incomes and on officials – from two to ten thousand non-taxable minimum incomes³. In addition, Article 325, “Violation of sanitary rules and regulations for the prevention of infectious diseases and mass poisoning” was added to the Criminal Code of Ukraine⁴. The article stipulates that “violation of the rules and regulations established to prevent epidemic and other infectious diseases, as well as mass non-communicable diseases (poisoning) and control them, if such actions have caused or may have caused the spread of these diseases – shall be punishable by a fine of one thousand to three thousand tax-free minimum incomes, or arrest for a term up to six months, or restriction of liberty for a term up to three years, or imprisonment for the same term. If the acts resulted in death or other serious consequences, they are punishable by imprisonment for a term of five to eight years”⁵. It should be noted that the additions to administrative and criminal legislation are somewhat mild, as statistics show that the number of diseases and deaths in Ukraine is increasing, but there is no active application of both administrative and criminal legislation to stop the spread of the disease.

On the other hand, there has been and still is a tendency among Ukrainians to disobey certain laws, and in some cases legal nihilism. It is these factors that have led to a sharp increase in the incidence of COVID-19. As a result, you can identify the following aspects: the coronavirus pandemic has set the Ukrainian leadership a rather difficult and responsible task. Solving it required quick and extraordinary decisions. The task of making changes to the system of legal regulation of public relations during the pandemic was especially extraordinary. It was necessary to resolve the issue of restricting the rights of citizens to be applied during the introduction of quarantine and their compliance with constitutional requirements [15; 16]. Particular attention should be paid to changes in legislation that formulate new legal relations during emergencies and pandemics, as well as new aspects of developing the theory of legal regulation during emergencies and pandemics. These aspects directly affect society as a whole and each of the citizens, because there is a question about the most important right for citizens – the right to life. However, the implementation of appropriate measures by the government was not always timely and clear, especially with regard to changes in legislation.

¹ Code of Ukraine on Administrative Offenses. (1984, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/80731-10>; Criminal Code of Ukraine. (2001, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

² Law of Ukraine No 1550-III “On the Legal Regime of the State of Emergency”. (2000, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/1550-14#Text>.

³ Law of Ukraine No 1550-III “On the Legal Regime of the State of Emergency”, op. cit.

⁴ Criminal Code of Ukraine. (2001, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

⁵ Law of Ukraine No 2135-XII “On Operational and Investigative Activities”. (1992, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/2135-12#Text>.

CONCLUSIONS

Coronavirus in Ukraine has contributed to some extent to the development of new areas of theoretical support and the development of a new type of public relations during the pandemic. The new areas include the following:

–elimination of legal nihilism, which was instilled in the minds of citizens during the existence of the Soviet Union and to some extent independent Ukraine, who believe that the state should provide everything, and citizens themselves should only consume everything provided by the state;

–formation of responsibility, including legal, for the attitude to the spread of coronavirus and the state of things and the territory in which the citizen lives and the attitude to the threat to life and health of other citizens;

–the formation of responsibility for the state of their health and the health of others, because the infection of a large number of citizens occurred precisely in connection with the irresponsible attitude of some citizens to themselves and to others who were infected through irresponsibility;

–development of new legal norms that would more clearly define the limits of behavior of individuals during emergencies and pandemics, and especially the punishment for irresponsible attitude to the implementation of decisions to prevent infection of other citizens;

–development of new clear requirements for law enforcement officers in the field of protection of life and health of citizens, especially for violations of the quarantine regime;

–development of new standards for employees of the State Border Guard Service, the State Emergency Service and other government agencies that should ensure the protection of life and health of citizens in the country as a whole

–development of clear recommendations and algorithms of actions for medical workers in order to prevent the spread of coronavirus throughout Ukraine.

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