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Proceedings in Cases of Violation of the Quarantine Rules

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Abstract

The relevance of the study lies in the formulation of scientifically established recommendations for improving the effectiveness of proceedings in cases of violation of the quarantine rules and maximising the achievement of the principles of fairness and objectivity in this process based on the study of judicial practice and foreign experience. The purpose of the study is to clarify the main problems arising in cases of violation of the quarantine rules based on the analysis of relevant court decisions and to provide proposals for their elimination. The study uses a set of scientific methods, namely: comparative-legal, system-structural, and formal-logical document analysis. The theoretical basis of the study consists of the papers of Ukrainian and foreign researchers, the provisions of the Code of Ukraine on Administrative Offenses, and the practice of their application. The results of the study formulated the following conclusions: 1) the practice of using Art. 44-3 of the Code of Ukraine on Administrative Offenses indicates the presence of substantial deficiencies in the bringing to administrative responsibility for violation of the quarantine rules; 2) part of them are related to deficiencies in Art. 44-3 of the Code of Ukraine on Administrative Offenses: a) the presence of blanket disposition of the article, hence the need to specify the regulation, providing for the offence committed by the person, relevant articles, parts, and points in the protocol; b) excessively strict uncontested sanctions are likely to induce the court to close the case in relation to insignificance; 3) another part of the problems associated with the deficiencies in the units of the National Police of Ukraine drawing a protocol on administrative offence and gathering the necessary evidence: failure to submit required evidence of the commission of administrative violations, errors in drawing a protocol on administrative offence, incorrect interpretation of Art. 44-3 of the Code of Ukraine on Administrative Offenses; 4) these and other shortcomings deprive the court of the ability to make the necessary decision in the case and to reach a definite legitimate and reasoned conclusion about the presence or absence of fault of the particular person in the violation or cause the court to close the proceedings; 5) the problems identified can be overcome in a complex manner: on the one hand, by improving the legal standards under Art. 44-3 of the Code of Ukraine on Administrative Offenses, and on the other by increasing the skill level of the police

Keywords:

administrative responsibility; proceeding; quarantine; COVID-19; administrative offence; infectious diseases; quarantine rules; police; protocol

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Introduction

The unprecedented spread of the acute respiratory disease COVID-19 caused by the SARS-CoV-2 coronavirus has demonstrated the scale of both real and potential harm to life and health not only to the population of a particular country but the entire world community. From the very beginning of the pandemic, public authorities have been taking active measures to prevent the rapid spread of this disease, eliminate the causes that cause it, and the conditions and factors that contribute to it. In such circumstances, it is important to clarify the role of judicial and law enforcement agencies in this process. At the forefront of the fight against COVID-19, in addition to doctors, there are police officers who were put on duty by the state to ensure compliance with quarantine. However, with the expansion of such powers of law enforcement officers, problems have arisen in the field of citizens' rights and freedoms. They can be clearly traced in cases of violation of the quarantine rules.

It is true that the effectiveness of police response to administrative and criminal offences, in particular violations of the rules of quarantine, is impossible without several key elements: knowledge, skills, and abilities to implement the powers of the police to ensure public safety, detection, and suppression of administrative offences, implementation of preventive activities to identify and eliminate the causes and conditions that contribute to the commission of violations of the quarantine rules, as an administrative offence [1].

The problem is aggravated by the shortcomings of the construction of the administrative and legal provision of Art. 44-3 of the Code of Ukraine on Administrative Offenses. In this regard, S.S. Kovaleva rightly notes that the current legislation of Ukraine on determining responsibility for violation of quarantine and sanitary rules and norms for the prevention of COVID-19, in general, ensures proper resolution of this problem. However, considering the need for timely and prompt adoption of relevant regulations on this issue in the context of the rapid spread of COVID-19 in Ukraine, there is now a situation in which a number of provisions of these acts contain a complex of legal conflicts, contradictions, and gaps [2]. Some of them are caused by forced restrictions on the rights and freedoms of citizens, as evidenced by relevant Ukrainian and international studies [3-5]

In the theory of administrative law, these issues were investigated by the following researchers: S.S. Kovalyova [3], V.V. Krykun [4], Ye.V. Kurinnyi [5] and others.

However, there are problematic issues that arise in cases of violation of the quarantine rules that need to be resolved, which determines the relevance of the study.

The purpose of the study is to identify the main problems arising during proceedings on violations of the quarantine rules based on the analysis of court decisions and provide suggestions for their elimination.

Results and Discussion

The analysis of court decisions in cases of administrative offences under Art. 44-3 of the Code of Ukraine on Administrative Offenses outlines certain problems faced by employees of the National Police of Ukraine: incorrect qualification of the acts committed; flaws in drawing protocols on administrative offences; lack of appropriate and acceptable evidence. Therewith, even if the police respond professionally to these administrative offences, the courts quite often close cases due to insignificance, resorting to verbal comments for offenders. It is advisable to take a closer look at these questions.

Many problems in bringing people to administrative responsibility for violating the quarantine rules arise at the stage of preparing for consideration of a case of an administrative offence under Art. 44-3 of the Code of Ukraine on Administrative Offenses.

At this stage of preparation for consideration of an administrative offence case, the judge resolves the following issues:

- whether it is within their competence to consider the case;
- whether the protocol and other materials of the administrative offence case were drawn correctly;
- whether the persons taking part in the consideration of the case were notified of the time and place of its consideration;
- whether the necessary additional materials have been requested;
- whether the application of the person brought to administrative responsibility, the victim, their legal representatives, and a lawyer are subject to approval (Art. 278 of the Code of Ukraine on Administrative Offenses).

Many questions are related to the incorrect drawing a protocol for an administrative offence. A large number of them is due to the blanket disposition of Art. 44-3 of the Code of Ukraine on Administrative Offenses.

In practical application, there are cases when the protocol on an administrative offence does not indicate which norm of the law was violated. When formulating the essence of an offence, law enforcement agencies must indicate the normative act, its articles, parts, paragraphs, and requirements that have been violated. This is due to the fact that the disposition of Art. 44-3 of the Code of Ukraine on Administrative Offenses is a blanket norm, as researchers have repeatedly noted.

According to V.V. Krykun [6], this negatively affects the differentiation of the competence of those

bodies that, according to the law, have the right to draw protocols on administrative offences under the above-mentioned article of the Code of Ukraine on Administrative Offenses.

In turn, S.S. Kovaleva [3] claims that the norm of Art. 44-3 of the Code of Ukraine on Administrative Offenses is blanket, that is, it refers to a substantial number of regulations regarding the quarantine, sanitary-hygienic, and sanitary-anti-epidemic rules and norms both national and issued by local self-government bodies, which later led to substantial difficulties in the process of qualifying this type of offence.

Ye.V. Kurinnyi [5] rightly notes that it is necessary to consider the blanket nature of the content of the disposition of Art. 44-3 of the Code of Ukraine on Administrative Offenses, which substantially complicates the independent acquaintance of most citizens with the current prohibitions, which contain several normative regulations, including the bylaw level.

Therewith, A.A. Voznyuk & S.S. Chernyavskiy [7] emphasises on the problem of constant changes in relevant regulations, primarily due to changes and additions to certain articles. The rules that were in force at the beginning of the quarantine were constantly changing during the restrictive measure, therefore, taking a balanced approach to bringing violators to legal responsibility is necessary, since they may have been unaware of the modification of a certain ban.

The disposition of Art. 44-3 of the Code of Ukraine on Administrative Offenses provides for liability for violation of the quarantine, sanitary-hygienic, and sanitary-anti-epidemic rules and norms provided for by the Law of Ukraine "On the protection of the population from infectious diseases", other legislative acts, and decisions of local self-government bodies on the fight against infectious diseases.

The norm of Art. 44-3 of the Code of Ukraine on Administrative Offenses has a blanket character, and therefore among the signs of the essence of such an administrative offence must be a reference to the article of the Law of Ukraine "On the protection of the population from infectious diseases", which establishes the relevant quarantine, sanitary-hygienic, and sanitary-anti-epidemic rules and norms, or a reference to other legislative acts (normative regulations of the highest legal force, the subject of adoption (or authorisation) of which is the parliament as a legislative body of state power), or a reference to the decision of local self-government bodies on the fight against infectious diseases, which was not observed by the person held administratively liable [8].

The absence in the protocol of information about what rules a certain person violates and what normative regulation establishes these rules determines that these materials on bringing to administrative responsibility for committing an offence under Art. 44-3 of the Code of Ukraine on

Administrative Offenses are sent for revision to the National Police of Ukraine.

Art. 44-3 of the Code of Ukraine on Administrative Offenses deprive the court of the opportunity to make a decision on the case and make an unambiguous legal and reasonable conclusion about the presence or absence of guilt of a particular person in the specified violation or force the court to close the proceedings on the case.

Competent persons of the National Police of Ukraine also make mistakes in the interpretation of Art. 44-3 of the Code of Ukraine on Administrative Offenses. Given the blanket nature of the prohibition norm, it is difficult to determine which decisions are subject to the decisions of local self-government bodies on the fight against infectious diseases. Therefore, for example, in case No. 587/572/20, the police mistakenly included the Sumy Regional Commission on Technogenic and Environmental Safety and Emergencies in local self-government bodies [9].

In certain cases, the police do not attach evidence of the offence to the protocol, as a result of which the administrative material is returned to the police for proper registration. For example, in the decision of the judge of the Kivertsivsky District Court of the Volyn region on August 5, 2020, it is indicated that the Kivertsivsky District Court of the Volyn region received materials on bringing to administrative responsibility PERSON_1 for committing an offence under Art. 44-3 of the Code of Ukraine on Administrative Offenses. According to the results of the examination of these materials, it was established that the inspector of the patrol police response team of the Kivertsivsky Police Office in the Volyn region did not add any proper and admissible evidence regarding the commission of PERSON_1 of an administrative offence under Art. 44-3 of the Code of Ukraine on Administrative Offenses, and characterising data on the latter. Judicial consideration of a case on an administrative offence is conducted within the limits defined in the protocol of circumstances on an administrative offence. The court is deprived of the opportunity to independently eliminate the above-mentioned shortcomings of the police officer, which they made while drawing the protocol on an administrative offence. Their elimination by the court will lead to an independent establishment of the circumstances of the case, which are not defined in the protocol on an administrative offence, and consideration of the case outside the limits defined in the protocol of circumstances on an administrative offence, which is an actual charge of committing an administrative offence, which is unacceptable.

Such circumstances indicate the incorrectly drawn protocol on an administrative offence, which the court cannot independently eliminate during

the trial, and therefore the case materials were returned for revision [10].

Sources of evidence in the case of an administrative offence under Art. 44-3 of the Code of Ukraine on Administrative Offenses are the protocol on an administrative offence; explanations of the person held administratively liable, witnesses; photos; documents confirming that a certain person is a business entity or an employee of the business entity; an identification document of the person held administratively liable, based on which the protocol on an administrative offence was drawn up, etc. Some courts also require proof of the level of epidemic danger experienced by a certain area during the commission of this administrative offence [10].

Quite often, the courts, considering the circumstances and nature of the committed offence, the identity of the violator, the degree of their guilt, property status, considering the admission of guilt, remorse, bringing to administrative responsibility for the first time, non-occurrence of socially harmful consequences in connection with the commission of an administrative offence, recognise the committed administrative offence as insignificant, and release the person from administrative responsibility, resorting to a verbal comment in accordance with Art. 22 of the Code of Ukraine on Administrative Offenses. Others believe that this is sufficient to provide educational influence and prevent the commission of new offences [11].

Based on judicial practice, researchers note that mostly the conclusions of judges regarding the insignificance of the act are established on the availability of information about mitigating circumstances, in particular, the sincere remorse of the offender, the commission of an administrative offence for the first time, the nature of the act and the circumstances of the case, etc. [9].

Staying without personal protective equipment, transporting more passengers than the number of seats provided for in the technical characteristics of the vehicle, or staying on the street without identity documents is considered insignificant.

It can be assumed that the closure of proceedings in administrative cases under Art. 44-3 of the Code of Ukraine on Administrative Offenses is to a certain extent due to the shortcomings of the sanctions of this article. This has been repeatedly noted by researchers. Ye.V. Kurinnyi [5] rightly notes that the current amount of the fine for this offence is unfair, given the number of citizens below the poverty line, and the size of the subsistence minimum at this time. For instance, R. Filippov & A. Tymchyshyn [12] believe that this is a substantial amount for an ordinary Ukrainian, but it is impossible to resort to just a verbal comment. Ultimately, it is quite logical to assume that a substantial amount of the fine is commensurate with the amount of possible public dam-

age of the offence, even with the formal composition.

Given the groundlessness of the sanctions of Art. 44-3 of the Code of Ukraine on Administrative Offenses, the courts mostly impose administrative penalties for violating the quarantine rules within the minimum limits.

The scientific originality of the results obtained consists in the formulation of scientifically based recommendations for improving the efficiency of proceedings in cases of violation of the quarantine rules, based on the study of judicial practice and foreign experience, and maximising the achievement of the principles of fairness and objectivity in this process [13; 14].

The scientifically based theoretical provisions, conclusions, and proposals formulated in the study can serve as a basis for further research on the problems of administrative responsibility for violating the quarantine rules.

Conclusions

The practice of applying Art. 44-3 of the Code of Ukraine on Administrative Offenses indicates the presence of substantial shortcomings that prevent people from being brought to administrative responsibility for violating the quarantine rules.

A part of them is related to flaws of the Art. 44-3 of the Code of Ukraine on Administrative Offenses: 1) the presence of a blanket disposition of the article, which makes it necessary to state in the protocol a normative regulation that provides for an offence committed by a person, and indicate the relevant articles, their parts, paragraphs; 2) excessively strict non-alternative sanctions, which are likely to push the court to close the proceedings due to insignificance.

Another part of the problems is related to shortcomings in the work of the National Police of Ukraine when drawing the protocol on an administrative offence and collecting the necessary evidence: failure to provide the necessary evidence of an administrative offence, errors in drawing the protocol on an administrative offence, misinterpretation of Art. 44-3 of the Code of Ukraine on Administrative Offenses.

These and other shortcomings deprive the court of the opportunity to make the necessary decision on the case and come to an unambiguous legal and reasonable conclusion about the presence or absence of guilt of a particular person in the specified violation or force the court to close the proceedings on the case.

Thus, the problems can be overcome in a complex manner: on the one hand, by improving the legal provision of Art. 44-3 of the Code of Ukraine on Administrative Offenses, and on the other – by improving the level of qualification of police officers.

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Провадження у справах про порушення правил щодо карантину людей

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Анотація

Метою статті є з'ясування основних проблем, які виникають під час провадження у справах про порушення правил щодо карантину людей, на підставі аналізу відповідних судових рішень, а також надання пропозицій щодо їх усунення. У статті використано комплекс наукових методів, а саме: порівняльно-правовий, системно-структурний, формально-логічний, аналізу документів. Теоретичне підґрунтя дослідження становлять праці українських та іноземних учених, положення Кодексу України про адміністративні правопорушення, а також практика їх застосування. Наукова новизна отриманих результатів полягає у формулюванні на підставі вивчення судової практики й іноземного досвіду науково обґрунтованих рекомендацій щодо підвищення ефективності провадження у справах про порушення правил щодо карантину людей, а також максимального досягнення принципів справедливості й об'єктивності в цьому процесі. За результатами здійсненого дослідження сформульовано такі висновки: 1) практика застосування ст. 44-3 Кодексу України про адміністративні правопорушення свідчить про наявність значних недоліків, які перешкоджають притягненню до адміністративної відповідальності за порушення правил щодо карантину людей; 2) частина їх пов'язана з вадами конструкції ст. 44-3 Кодексу України про адміністративні правопорушення: а) наявність бланкетної диспозиції статті, що зумовлює необхідність зазначати в протоколі нормативно-правовий акт, у якому передбачено правопорушення, вчинене особою, а також відповідні статті, їхні частини, пункти; б) надмірно суворі безальтернативні санкції, що ймовірно спонукають суд до закриття провадження у зв'язку з малозначністю; 3) інша частина проблем пов'язана з недоліками в роботі підрозділів Національної поліції України під час складання протоколу про адміністративне правопорушення та збору необхідних доказів: ненаданням необхідних доказів вчинення адміністративного проступку, помилками в складанні протоколу про адміністративне правопорушення, неправильним тлумаченням ст. 44-3 Кодексу України про адміністративні правопорушення; 4) ці та інші недоліки позбавляють суд можливості прийняти необхідне рішення у справі та дійти однозначного законного й обґрунтованого висновку щодо наявності чи відсутності вини конкретної особи в зазначеному порушенні або ж змушують суд закривати провадження у справі; 5) окреслені проблеми можна подолати комплексно: з одного боку, шляхом удосконалення правової норми, передбаченої ст. 44-3 Кодексу України про адміністративні правопорушення, а з іншого – шляхом підвищення рівня кваліфікації поліцейських

Ключові слова:

адміністративна відповідальність; провадження; карантин; коронавірус; адміністративне правопорушення; інфекційні хвороби; правила карантину людей; поліція; протокол