

UDC 342.95  
DOI: 10.33270/04202002.8

# Violation of the Quarantine Rules: Analysis of the Composition of the Offence

Oleksiy Voluyko, Oksana Voluyko

National Academy of the National Guard of Ukraine  
61000, 3 Maidan Zahysnykiv Ukrainy, Kharkiv, Ukraine

## Abstract

The relevance of the study lies in the fact that it defines the object, objective side, subject, subjective side of an administrative offence under Art. 44-3 of the Code of Ukraine on Administrative Offences, which is a necessary condition for the effective application of this norm as a measure of administrative coercion. Some flaws in the composition of this offence, primarily related to its objective side, are identified, and ways to eliminate them are proposed. The purpose of the study is to identify problematic issues of qualification of violation of the quarantine rules, structural flaws of Art. 44-3 of the Code of Ukraine on Administrative Offences and determine ways to eliminate them. The study used a set of scientific methods: terminological, system-structural, formal-logical, and comparative-legal. The theoretical basis of the study consists of the works of Ukrainian and foreign researchers, the provisions of the Code of Ukraine on Administrative Offences, and the practice of their application. According to the results of the study, the following conclusions were formulated: 1) the direct object of an administrative offence under Art. 44-3 of the Code of Ukraine on Administrative Offences should be recognised as public relations in the field of public health protection from infectious diseases; 2) from the objective side, this offence has the following forms: a) violation of the quarantine rules; b) violation of sanitary-hygienic, sanitary-anti-epidemic rules and norms provided for by the Law of Ukraine “On the protection of the population from infectious diseases”, other acts of legislation; c) violation of decisions of local self-government bodies on the fight against infectious diseases; 3) given such a variety of forms of the objective side, the name of Art. 44-3 of the Code of Ukraine on Administrative Offences needs to be clarified since it concerns only one act – violation of the quarantine rules, and therefore does not cover others; 4) from the name and disposition of Art. 44-3 of the Code of Ukraine on Administrative Offences, the word “people” should be excluded, since, in all normative regulations defining the rules of quarantine, the term “quarantine” is used, and not “quarantine of people”; 5) in the disposition of Art. 44-3 of the Code of Ukraine on Administrative Offences, the concepts of “sanitary-hygienic rules and norms” and “sanitary-anti-epidemic rules and norms” should be replaced with sanitary norms due to the fact that sanitary-hygienic and sanitary-anti-epidemic rules and norms are not clearly differentiated, they are a type of social norms; 6) administrative offences provided for in Art. 44-3 of the Code of Ukraine on Administrative Offences belong to offences with formal composition, so harm from such violations is not a mandatory feature 7) subjects of administrative offences provided for in Art. 44-3 of the Code of Ukraine on Administrative Offences may be both general subjects and officials

## Keywords:

administrative responsibility; quarantine; COVID-19; administrative offence; infectious diseases; quarantine of people

## Article's History

Received: xx.xx.2021

Revised: xx.xx.xxxx

Accepted: xx.xx.xxxx

## Suggest Citation:

Voluyko, O., & Voluyko, O. (2021). Violation of the quarantine rules: analysis of the composition of the offence. *Law Journal of the National Academy of Internal Affairs*, 20(2), 46-55

\*Corresponding author

## Introduction

Threats and risks associated with COVID-19 have led to the need to take measures aimed at protecting citizens from the spread of this disease. One of these measures was the development and submission to the Verkhovna Rada of Ukraine of a draft law on amendments to certain legislative acts of Ukraine aimed at preventing the occurrence and spread of coronavirus disease (COVID-19), which provided for the addition of the Code of Ukraine on Administrative Offences (hereinafter referred to as the Administrative Code) by Art. 44-3 "Violation of the rules on quarantine of the people" [1]. Administrative liability was established for violation of the quarantine rules, sanitary-hygienic, sanitary-anti-epidemic rules and norms provided for by the Law of Ukraine "On protection of the population from infectious diseases", other legislative acts, and decisions of local self-government bodies on the fight against infectious diseases.

In practice, law enforcement agencies have faced a number of problematic issues related both to the qualification of administrative offences under this article and to bringing those guilty to administrative responsibility. This study shares the position of researchers who believe that the legality and effectiveness of the application of this norm depend on the quality of the relevant legislative provisions and their correct interpretation by law enforcement agencies. Considering the above, it is necessary to focus on the flaws of the structure of this legal prohibition, and problematic issues that arise during its implementation in practice [2].

A.A. Voznyuk, M.Yu. Gavrilyuk, V.V. Krykun, S.S. Kovalyova, S.M. Kozina, A.V. Pogoriletska, Ya.I. Rogovska, M.A. Sambor, S.S. Chernyavskiy, and others.

Given the fact that there is little scientific progress on liability for committing an administrative offence under Art. 44-3 of the Administrative Code and considering the scale of the pandemic not only in Ukraine but worldwide, it is appropriate to investigate this issue.

*The purpose of the study* is to identify problematic issues of qualification of violations of the quarantine rules, composition flaws of Art. 44-3 of the Administrative Code, and determine ways to eliminate them.

## Results and Discussion

The spread of COVID-19 in the world forces national and local government agencies to introduce social restrictive measures to stop the spread of this virus [3]. Such measures include the introduction of quarantine of people, and the establishment of sanitary-hygienic, sanitary-anti-epidemic rules and regulations.

Quarantine and isolation can be extremely effective in protecting or restoring public health. Those

are two measures that can be used to prevent or minimise the impact of infectious disease outbreaks [4]. The use of quarantine is most useful when there is substantial asymptomatic transmission [5].

Liability for violation of the quarantine rules, sanitary-hygienic, sanitary-anti-epidemic rules and norms is established in Art. 44-3 of the Administrative Code of Ukraine.

Effective application of this provision as a measure of administrative coercion requires the correct definition of the elements of the composition of this offence – the object, objective side, subject, subjective side. Therewith, a correct understanding of the signs of violation of the quarantine rules is a necessary condition for observing the principle of legality in the proceedings on an administrative offence.

***The direct object of an administrative offence.*** It is necessary to determine the object of the crime to identify what damage or threat of its occurrence is caused by its occurrence.

V.V. Krykun defines the direct object of an administrative offence under Art. 44-3 of the Administrative Code as social relations for protecting the population from infectious diseases and ensuring its sanitary and epidemic well-being [6]. This study does not share the position of the researcher. According to the disposition of the article under study, liability is established for violation of the quarantine rules, sanitary-hygienic, sanitary-anti-epidemic rules and norms provided, first of all, by the Law of Ukraine "On protection of the population from infectious diseases". This law defines the legal, organisational, and financial basis for the activities of executive authorities, local self-government bodies, enterprises, institutions, and organisations aimed at preventing the occurrence and spread of human infectious diseases, localisation, and elimination of their outbreaks and epidemics, establishes the rights, duties, and responsibilities of legal entities and individuals in the field of protecting the population from infectious diseases [7]. Analysis of the provisions of the disposition of Art. 44-3 of the Administrative Code and the Law of Ukraine "On protection of the population from infectious diseases" gives grounds to assert that this administrative offence encroaches on public relations in the field of public health protection from infectious diseases. The inclusion in the composition of the object of ensuring its sanitary and epidemic well-being, which is defined as the state of health of the population and the human environment, in which the incidence rates are at an established level for this territory, living conditions are favourable for the population, and the parameters of environmental factors are within the limits defined by sanitary standards [8], seems excessive.

The position of M.A.Sambor, who is convinced that the direct object of the offence under Art. 44-3

of the Administrative Code is precisely public relations for the protection of the population from infectious diseases, preventing the occurrence and spread of such human infectious diseases, localising and eliminating their outbreaks and epidemics, which are associated with violations of the quarantine rules, sanitary-hygienic, sanitary-anti-epidemic rules and norms is more balanced [9]. However, this definition is not without certain drawbacks. Evidently, the protection of the population from infectious diseases provides for measures to prevent the occurrence and spread of such infectious human diseases, localisation, and elimination of their outbreaks and epidemics, and therefore it is impractical to single out such measures.

Considering the above, the direct object of this administrative offence should be recognised as public relations in the field of protecting the health of the population from infectious diseases.

**The objective side of an administrative offence.** On the objective side, the offence under Art. 44-3 of the Administrative Code has three forms:

- violation of the quarantine rules;
- violation of sanitary-hygienic, sanitary-anti-epidemic rules and norms provided for by the Law of Ukraine “On protection of the population from infectious diseases”, other legislative acts;
- violation of decisions of local self-government bodies on the fight against infectious diseases.

Analysis of the content of these forms of the objective side of this administrative offence shows that the main scientific and expert department rightly focuses on the fact that the title of the article is narrower than its content and does not cover such forms of the objective side of the offence as violation of sanitary-hygienic, 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 [10].

The disposition of Art. 44-3 of the Administrative Code is blanket since it does not contain rules of conduct for which a person can be held accountable. It only summarises violations, but to specify them, it is necessary to refer to the regulations defining the rules of quarantine, the Law of Ukraine “On protecting the population from infectious diseases”, other legislative acts, and decisions of local self-government bodies on the fight against infectious diseases.

It is necessary to consider the provisions of regulatory regulations to find out the content of violations for which liability is established in Art. 44-3 of the Administrative Code:

- what are the rules for quarantining people;
- Law of Ukraine “On protection of the population from infectious diseases”;

- other legislative acts that establish sanitary-hygienic, sanitary-anti-epidemic rules and regulations;
- decisions of local self-government bodies on the fight against infectious diseases.

**Violation of the quarantine rules.** Quarantine – administrative and medical-sanitary measures used to prevent the spread of particularly dangerous infectious diseases. According to Art. 29 of the Law of Ukraine “On protection of the population from infectious diseases”, quarantine is established and cancelled by the Cabinet of Ministers of Ukraine. The decision to establish a quarantine, and to cancel it, is immediately brought to the attention of the population of the relevant territory through the mass media. In the decision to establish quarantine, they indicate the circumstances that led to this determine the boundaries of the quarantined territory, approve the necessary preventive, anti-epidemic, and other measures, their performers and dates, establish temporary restrictions on the rights of individuals and legal entities, additional duties assigned to them, the grounds and procedure for mandatory self-isolation, the person's stay in the observation, hospitalisation in temporary health care institutions (specialised hospitals). Quarantine is established for the period necessary to eliminate an epidemic or outbreak of a particularly dangerous infectious disease. During this period, the working hours of enterprises, institutions, and organisations can be adjusted, and other necessary changes regarding the conditions of their production and other activities can be made [7].

During the period of spread of acute respiratory disease COVID-19 caused by the SARS-CoV-2 coronavirus, the Cabinet of Ministers of Ukraine adopted several resolutions concerning quarantine:

- “On preventing the spread of the COVID-19 coronavirus on the territory of Ukraine” dated March 11, 2020, No. 211;
- “On establishing quarantine to prevent the spread of acute respiratory disease COVID-19 caused by SARS-CoV-2 coronavirus on the territory of Ukraine, and stages of easing anti-epidemic measures” dated May 20, 2020, No. 392;
- “On the establishment of quarantine and introduction of enhanced anti-epidemic measures in the territory with a substantial spread of acute respiratory disease COVID-19 caused by the SARS-CoV-2 coronavirus” dated July 22, 2020, No. 641 [11].

Analysis of the provisions of the resolution of the Cabinet of Ministers of Ukraine of July 22, 2020, No. 641 certifies that violations of the quarantine rules from August 1 to December 31, 2020, which relate to the entire territory of Ukraine, include, for example: a) stay in public buildings and structures, public transport without wearing personal protective equipment, in particular respirators or

protective masks covering the nose and mouth, also self-made; b) stay on the streets without identity documents confirming citizenship or its special status, without a certificate of registration of a homeless person, a certificate of applying for protection in Ukraine; c) unauthorised leaving of the place of self-isolation, observation, etc. [11].

Therewith, this resolution of the Cabinet of Ministers of Ukraine also provides for the establishment of certain rules depending on the level of epidemic danger: “green”, “yellow”, “orange”, and “red”. For example, on the territory of a region (administrative-territorial unit) where the “green” level of epidemic danger is set, it is prohibited:

- holding mass (cultural, sports, social, religious, advertising) events involving over 50 people (in the case of events with a number of participants below 50, the organiser ensures that the participants maintain a physical distance of at least 1.5 m), and the activities of cinemas, cultural institutions, and other subjects of activity in the field of culture with the fullness of cinema halls or halls of over 50 per cent of the seats in each individual cinema hall or hall;

- implementation of regular and irregular transportation of passengers by road, in particular transportation of passengers on city bus routes in the mode of the fixed-route taxi, in electric (tram, trolleybus), railway transport, in urban, suburban, intercity, intra-regional, and inter-regional communication, in an amount greater than the number of seats provided for by the technical characteristics of the vehicle, defined in the registration documents for this vehicle.

The carrier is responsible for providing drivers with personal protective equipment, in particular respirators or protective masks, and controls the use of personal protective equipment, in particular, respirators or protective masks by passengers during transportation, including self-made;

- conducting discos, operating entertainment venues (nightclubs), catering establishments with leisure activities (restaurants, cafes, bars, eateries, canteens, cafeterias, buffets, etc.);

- visiting pre-school, general secondary, extra-curricular and specialised art education institutions when over 50% of applicants and staff of the educational institution are in self-isolation due to contact with a patient with a confirmed case of COVID-19;

- work after 22 and before 7 hours of business entities providing public catering services without organising leisure activities (restaurants, cafes, bars, eateries, canteens, cafeterias, buffets, etc.), except for activities providing public catering services with targeted delivery of orders and takeaway orders.

Therewith, in the territory of the region (administrative-territorial unit) where the “yellow” level of epidemic danger is established, in addition

to the anti-epidemic restrictions established for the “green” level of epidemic danger, it is prohibited:

- visits by unauthorised persons to institutions of social protection where elderly citizens, war and labour veterans, persons with disabilities, persons with persistent intellectual or mental disabilities temporarily or permanently reside/stay, institutions that provide social services to families/persons in difficult life circumstances, except for institutions that provide social services in an emergency;

- activities of hostel hotels;

- holding mass (cultural, sports, social, religious, advertising) events involving over 30 people (in the case of events with a number of participants below 30, the organiser ensures that a physical distance of at least 1.5 m is maintained between participants) [11].

This dynamic change in quarantine rules negatively affects law enforcement. Under these circumstances, even law enforcement agencies authorised to draw up reports for committing an administrative offence under Art. 44-3 of the Administrative Code, are unable to remember all the rules of quarantine in a certain territory, not to mention ordinary citizens.

These acts are not clearly defined, they can be supplemented or reduced, since they are adopted by state and local government bodies [9]. Therefore, the position of researchers that it is necessary to differentiate responsibility for offences provided for in this article is correct [12].

The main scientific and expert department rightly emphasises that the concept of “quarantine of people” it is legally incorrect. Ultimately, the current legislation of Ukraine (primarily in the field of protecting the population from infectious diseases) does not use this term. Therewith, the draft does not provide for any changes to the Law of Ukraine “On protection of the population from infectious diseases”. The law deals with the concept of “quarantine”, which is interpreted as administrative and medical-sanitary measures used to prevent the spread of particularly dangerous infectious diseases (paragraph 17 of Art. 1 of the Law) [10]. Considering the above, appropriate changes should be made to the name and disposition of Art. 44-3 of the Administrative Code and the word “people” should be deleted from them.

***Violation of sanitary-hygienic standards, sanitary-anti-epidemic rules and norms provided for by the Law of Ukraine “On protection of the population from infectious diseases” and other legislative acts.*** State sanitary, sanitary-hygienic, sanitary-anti-epidemic, sanitary-epidemiological, anti-epidemic, hygienic-anti-epidemic rules and norms, state sanitary-epidemiological standards, sanitary regulations (hereinafter – sanitary standards) – mandatory normative regulations of the central executive authority, ensuring the development of national policy in the field of healthcare, establishing medical safety

requirements for the environment and its individual factors, non-compliance with which poses a threat to the health and life of a person and future generations, and also, the threat of the occurrence and spread of infectious diseases and mass non-communicable diseases (poisoning) among the population (Art. 1 of the Law of Ukraine “On ensuring the sanitary and epidemic well-being of the population”) [8].

Sanitary-anti-epidemic rules and norms – legal regulations (orders, instructions, rules, regulations, etc.) of the central executive authority that ensures the development of national policy in the field of healthcare, the requirements of which are aimed at preventing the occurrence and spread of infectious diseases (Art. 1 of the Law of Ukraine “On the protection of the population from infectious diseases”) [7].

The analysis of these types of sanitary standards shows that sanitary-hygienic and sanitary-anti-epidemic rules and norms are not clearly differentiated. Considering the above, in the disposition of Art. 44-3 of the Administrative Code, it is advisable to replace the concepts of “sanitary-hygienic rules and norms” and “sanitary-anti-epidemic rules and norms” with sanitary standards. The disposition of Art. 44-3 of the Administrative Code states that sanitary standards are enshrined in the Law of Ukraine “On the protection of the population from infectious diseases”. For example, in accordance with Art. 20 of this law, persons who suffer from infectious diseases or are bacterial carriers are required to:

- take measures recommended by health professionals to prevent the spread of infectious diseases;
- comply with the requirements and recommendations of medical professionals regarding the procedure and conditions of treatment, observe the working hours of healthcare institutions and scientific institutions where they are treated;
- pass the necessary medical examinations within the established time frame [7].

In this case, the term “other legislative acts” should be interpreted in an expanded way and refer not only laws to such acts, but also other normative regulations, in particular one of the Verkhovna Rada of Ukraine, the President of Ukraine, and the Cabinet of Ministers of Ukraine.

Therewith, the definitions of sanitary-hygienic, sanitary-anti-epidemic rules and norms indicate that these norms and rules are established by legal regulations (orders, instructions, rules, regulations, etc.) by the central executive authority, which ensures the development of national policy in the field of healthcare. Currently, such a body is the Ministry of Health of Ukraine

Regarding this, V.V. Krykun [6] rightly notes that the scope of such rules and regulations is too broad and may relate to sanitary requirements for

various fields of public activity. For example, the order of the Ministry of Health of Ukraine “On approval of state sanitary norms and rules sanitary-anti-epidemic requirements for healthcare institutions providing primary medical (medical-sanitary) care” dated April 2, 2013, No. 259 establishes state sanitary norms and rules for the placement, arrangement, equipment, operation of healthcare institutions providing primary medical (medical-sanitary) care. Order of the Ministry of Health of Ukraine “On approval of State sanitary norms and rules hygienic requirements for printed products for children” dated January 18, 2007, No. 13 defines requirements in the field of printing. Another order of the Ministry of Health of Ukraine “On approval of State sanitary norms and rules” On the safety and protection of employees from the harmful effects of asbestos and asbestos-containing materials” dated October 1, 2012, No. 762 defines sanitary requirements in the field of labour protection [6].

S.S. Kovaleva [13] correctly states that the multiplicity and dispersion of these norms in numerous normative regulations with the simultaneous need for special knowledge when interpreting their content led to difficulties in implementing the legal structure of Art. 44-3 of the Administrative Code in practice.

The approach of the legislator to the definition of a socially dangerous act under Art. 44-3 of the Administrative Code of administrative offences, in blanket form, according to V.V. Krykun [6], negatively affects the differentiation of competence of those bodies that, according to the law, have the right to draw up reports on administrative offences under this article of the Administrative Code.

**Violation of decisions of local self-government bodies on the fight against infectious diseases.** Local self-government is conducted by territorial communities of villages, towns, cities both directly and through village, town, city councils and their executive bodies, and through district and regional councils that represent the common interests of territorial communities of villages, towns, cities (part 2 of Art. 2 of the Law of Ukraine “On local self-government in Ukraine”) [14].

The Law of Ukraine “On local self-government in Ukraine” gives local self-government bodies certain powers to combat infectious diseases. For example, according to paragraph 2 of part 3 of Art. 43 of the Law of Ukraine “On local self-government in Ukraine”, only at plenary sessions of regional councils such issues as making decisions on combating natural disasters, epidemics, epizootics are decided within the limits defined by laws, which provide for administrative liability for their violation [14]. In accordance with subparagraph 2 of paragraph “b” of part 1 of Art. 38 of this law, the executive bodies

of village, town, city councils have the function of taking necessary measures in case of emergencies based on the law to ensure state and public order, the activities of enterprises, institutions, and organisations saving people's lives, protecting their health, and preserving material values [14].

Such powers are also enshrined in Art. 5 of the Administrative Code. According to part 1 of this article, village, town, city, regional councils have the right to make, within the limits defined by laws, decisions on the fight against natural disasters and epidemics, which provide for administrative liability for their violation, and decisions on the fight against epizootics, for the violation of which responsibility is established in Art. 107 of the Administrative Code. Part 2 of Art. 5 of the Administrative Code stipulates that village, town, and city councils establish rules in accordance with the legislation, for violation of which administrative liability is provided for in Art. 152, 159, and 182 of the Administrative Code.

M.A. Sambor [9] focuses on the need to maintain the consistency of administrative and tort legislation. Evidence of this is the failure to amend Art. 5 of the Administrative Code, and the consequence is the impossibility of applying administrative liability under Art. 44-3 of the Administrative Code, for violating restrictions established by local self-government bodies, since the norm of part 1 of Art. 5 of the Administrative Code imperatively defines that administrative liability for such restrictions can occur exclusively under Art. 107 of the Administrative Code. In turn, the norm of Art. 443 of the Administrative Code contains an indication that these rules can be established by local self-government bodies.

It is important to understand the content of the composition of an administrative offence under Art. 44-3 of the Administrative Code to comply with the fundamental principles of law and legislation, such as: respect for human and civil rights and freedoms, the rule of law, legality in the activities of state bodies, local self-government bodies, and their officials. This can be achieved if, firstly, the unification of the norms of the general and special parts of the Administrative Code, in particular, the introduction of amendments to Art. 5 of the Administrative Code, namely in part 1 of Art. 5 of the Administrative Code, which should be set out in the following wording: "Village, town, city, regional councils have the right to make decisions on the fight against natural disasters and epidemics, which provide for administrative responsibility for their violation, and decisions on the fight against epidemics, epizootics, for the violation of which responsibility is established by Art. 44-3 and 107 of this Code", and in part 2 of Art. 5 of the Administrative Code, after the word "articles", add "443", and then by the text [9].

Art. 44-3 of the Administrative Code, in fact, establishes liability for several offences. All of them relate to administrative offences with a formal composition, so the harm from such violations is not a mandatory feature of these administrative offences. Such violations can only create conditions for its occurrence. Based on the absence of mandatory consequences, an administrative offence differs from a criminal offence under Art. 325 of the Criminal Code, which is characterised by consequences in the form of causing or creating a threat of deliberately causing epidemic and other infectious diseases, and mass non-communicable diseases (poisoning) [9].

Representatives of the Central Scientific Experts Office do not approve the draft proposal to establish administrative responsibility for violating the quarantine rules, sanitary-hygienic, sanitary-anti-epidemic rules and norms provided for by "other legislative acts, and decisions of local self-government bodies on the fight against infectious diseases". This position is due to the fact that the objective signs of a certain administrative offence should be clearly stated in the article (part of the article) of the Special part of the Administrative Code and understandable for law enforcement entities. Uncertainty is unacceptable for the legislation on administrative offences [10].

Concluding on the problems of the objective side of an administrative offence under Art. 44-3 of the Administrative Code, the imperfection of the law will negatively affect the regulation of public relations, leading to the dissatisfaction of the population not only with the means of regulating public relations with the norms of the law but also with the subjects of lawmaking and law enforcement [9].

The clarity of the regulation that establishes administrative liability under Art. 44-3 of the Administrative Code of Administrative offences, as M.A. Sambor [9] states, will be provided when the administrative responsibility of individuals and officials, legal entities and individual entrepreneurs is distinguished. Therefore, Art. 44-3 of the Administrative Code should form two parts: part 1 will formulate an objective side, the subject of which is an individual, and part 2 – a legal entity or an individual entrepreneur will be determined as the subject of the act, enabling the establishment of sanctions in a differentiated way.

The subject of an administrative offence. Analysis of the forms of the objective side of an administrative offence under Art. 44-3 of the Administrative Code allow forming a certain idea of the subject of this offence. Such subjects should include not only general subjects of persons who have reached the age of 16 at the time of committing the offence but also officials who, according to Art. 14 of the Administrative Code, are subject to administrative liability

for administrative offences related to non-compliance with the established rules in the field of protection of management order, state, and public order, nature, public health and other rules, ensuring the implementation of which belongs to their official duties. This position is also confirmed by the analysis of the sanction for the corresponding offence, which provides for a differentiated fine for citizens and officials. In addition, M.A. Sambor [9] claims that the subject of administrative responsibility for committing administrative offences, responsibility for which is provided for in Art. 44-3 of the Administrative Code, is a general and special entity – a business entity; officials endowed with appropriate organisational, administrative, and managerial powers. Therewith, Yu. Burchenko [15] believes that the subjects that are held accountable for non-compliance with the quarantine conditions can be individuals and legal entities, in particular individuals-entrepreneurs.

*The subjective side of an administrative offence.* On the subjective side, an offence is characterised by guilt in the form of intent or negligence. This position is also shared by other researchers [9].

The scientific originality of the study lies in the fact that it defines the object, objective side, subject, and subjective side of an administrative offence under Art. 44-3 of the Administrative Code, which is a necessary condition for the effective application of this regulation as a measure of administrative coercion. Individual flaws in the construction of the composition of this offence were identified, primarily related to its objective side, and separate ways to eliminate them were proposed.

## Conclusions

Summarising the results of the study, a number of conclusions should be formulated.

1. The direct object of an administrative offence under Art. 44-3 of the Administrative Code should be recognised as public relations in the field of public health protection from infectious diseases.

2. From the objective side, this offence has three forms: 1) violation of the quarantine rules; 2) violation of sanitary-hygienic, 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; 3) violation of decisions of local self-government bodies on the fight against infectious diseases.

3. Given such a variety of forms of the objective side, the name of Art. 44-3 of the Administrative Code needs to be clarified, since it concerns only one act – violation of the quarantine rules, and therefore does not cover others: a) violation of sanitary-hygienic, 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; b) violation of decisions of local self-government bodies on the fight against infectious diseases.

3. The word “people” should be excluded from the name and disposition of Art. 44-3 of the Administrative Code, since all legal regulations defining quarantine rules use the term “quarantine”, and not “quarantine of people”.

4. In the disposition of Art. 44-3 of the Administrative Code, the concepts of “sanitary-hygienic rules and norms” and “sanitary-anti-epidemic rules and norms” should be replaced with sanitary standards due to the fact that sanitary-hygienic and sanitary-anti-epidemic rules and norms are not clearly differentiated and are a type of social norms.

5. Administrative offences provided for in Art. 44-3 of the Administrative Code of administrative offences relate to offences with a formal composition, so damage from such violations is not a mandatory feature.

6. Subjects of administrative offences provided for in Art. 44-3 of the Administrative Code can be both general subjects and officials.

7. On the subjective side, the offence is characterised by guilt in the form of intent or negligence.

## References

- [1] Burchenko, Yu. (2020). Subjects are held responsible for failure to quarantine conditions. *Legal Bulletin*, 3, 311-318.
  - [2] Day, T., Park, A., Madras, N., Gumel, A., & Wu, J. (2006). When is quarantine a useful control strategy for emerging infectious diseases? *American Journal of Epidemiology*, 163(5), 479-485.
  - [3] Giubilini, A., Douglas, T., Maslen, H., & Savulescu, J. (2018). Quarantine, isolation and the duty of easy rescue in public health. *Developing World Bioethics*, 18(2), 182-189.
  - [4] Kovalova, S.S. (2020). Responsibility for violation of quarantine and sanitary rules and regulations to prevent the spread of coronavirus infection (COVID-19) in Ukraine. *Law. Human. Environment*, 11(2), 158-168.
  - [5] Krykun, V.V. (2020). Objective features of administrative offenses provided for in Article 443 of the Code of Administrative Offenses of Ukraine and their impact on the sphere of authority of the National Police of Ukraine. *Bulletin of Kharkiv National University of Internal Affairs*, 89(2), 153-163.
  - [6] Resolution of the Cabinet of Ministers of Ukraine "On the establishment of quarantine and the introduction of enhanced anti-epidemic measures in the territory with a significant spread of acute respiratory disease COVID-19 caused by coronavirus SARS-CoV-2" No. 641. (2020, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/641-2020-%D0%BF#Text>
  - [7] Pylypiv, R., & Tymchyshyn, A. (2020). Administrative liability for violation of human quarantine rules: problems and prospects. *Legal Bulletin*, 3, 163-169.
  - [8] Sambor, M.A. (2020). The composition of administrative offense shodo violation of the rules of quarantine of people. *Bulletin of Luhansk State University of Internal Affairs named after E.O. Didorenko*, 2(90), 155-170.
  - [9] Shayegh, S., & Malpede, M. (2020). *Staying home saves lives, really!* Retrieved from <https://ssrn.com/abstract=3567394>. doi: <http://dx.doi.org/10.2139/ssrn.3567394>.
  - [10] Vozniuk, A., & Cherniavskiy, S. (2020). Violation of COVID-19 prevention rules and regulations: current issues of criminal and administrative liability. *Law Magazine of the National Academy of Internal Affairs*, 19(1), 8-19.
  - [11] Opinion of the Main Scientific and Expert Department on the draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Aimed at Preventing the Occurrence and Spread of Coronavirus Disease (COVID-19)" No. 3219. (2020, March). Retrieved from [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_2?pf3516=3219&skl=10](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?pf3516=3219&skl=10)
  - [12] Law of Ukraine "About local self-government in Ukraine" No. 280/97-VR. (1997, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/280/97-%D0%B2%D1%80#Text>
  - [13] Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Aimed at Preventing the Occurrence and Spread of Coronavirus Disease (COVID-19)" No. 530-IX. (2020, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/530-20#n22>
  - [14] Law of Ukraine "On ensuring the sanitary and epidemic well-being of population" No. 4004-XII. (1994, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/4004-12#Text>
  - [15] Law of Ukraine "On protection of the population from infectious diseases" No. 1645-III. (2000, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/1645-14>
- curb the coronavirus disease (COVID-19) outbreak in Italy. *Euro Surveill*, 25(13), article number 2000280.

**Список використаних джерел**

- [1] Бурченко Ю. Суб'єкти, які притягаються до відповідальності за невиконання умов карантину. *Юридичний вісник*. 2020. № 3. С. 311–318.
- [2] Day T., Park A., Madras N., Gumel A., Wu J. When is quarantine a useful control strategy for emerging infectious diseases? *American journal of epidemiology*. 2006. Vol. 163. No. 5. P. 479–485.
- [3] Giubilini A., Douglas T., Maslen H., Savulescu J. Quarantine, isolation and the duty of easy rescue in public health. *Developing world bioethics*. 2018. Vol. 18. No. 2. P. 182–189.
- [4] Ковальова С. С. Відповідальність за порушення карантину та санітарних правил і норм щодо запобігання поширенню коронавірусної інфекції (COVID-19) в Україні. *Право. Людина. Довкілля*. 2020. Вип. 11. № 2. С. 158–168.
- [5] Крикун В. В. Об'єктивні особливості адміністративних правопорушень, передбачених статтею 443 Кодексу України про адміністративні правопорушення та їх вплив на сферу повноважень Національної поліції України. *Вісник Харківського національного університету внутрішніх справ*. 2020. Вип. 89. № 2. С. 153–163.
- [6] Про встановлення карантину та запровадження посилених протиепідемічних заходів на території із значним поширенням гострої респіраторної хвороби COVID-19, спричиненої коронавірусом SARS-CoV-2: постанова Кабінету Міністрів України від 22 липня 2020 р. № 641. URL: <https://zakon.rada.gov.ua/laws/show/641-2020-%D0%BF#Text>.
- [7] Пилипів Р., Тимчишин А. Адміністративна відповідальність за порушення правил щодо карантину людей: проблеми та перспективи. *Юридичний вісник*. 2020. № 3. С. 163–169.
- [8] Самбор М. А. Склад адміністративного правопорушення щодо порушення правил карантину людей. *Вісник Луганського державного університету внутрішніх справ імені Е.О. Дідоренка*. 2020. Вип. 2. № 90. С. 155–170.
- [9] Shayegh S., Malpede M. Staying Home Saves Lives, Really! 2020. URL: <https://ssrn.com/abstract=3567394>.
- [10] Вознюк А., Чернявський С. Порушення правил і норм щодо запобігання COVID-19: актуальні проблеми кримінальної та адміністративної відповідальності. *Юридичний часопис Національної академії внутрішніх справ*. 2020. Вип. 19. № 1. С. 8–19.
- [11] Про внесення змін до деяких законодавчих актів України, спрямованих на запобігання виникнення і поширення коронавірусної хвороби (COVID-19): висновок Головного науково-експертного управління на проект Закону України від 16 березня 2020 р. № 3219. URL: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_2?pf3516=3219&skl=10](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?pf3516=3219&skl=10).
- [12] Про місцеве самоврядування в Україні: Закон України від 21 травня 1997 р. № 280/97-ВР. URL: <https://zakon.rada.gov.ua/laws/show/280/97-%D0%B2%D1%80#Text>.
- [13] Про внесення змін до деяких законодавчих актів України, спрямованих на запобігання виникненню і поширенню коронавірусної хвороби (COVID-19): Закон України від 17 березня 2020 р. № 530-IX. URL: <https://zakon.rada.gov.ua/laws/show/530-20#n22>.
- [14] Про забезпечення санітарного та епідемічного благополуччя населення: Закон України від 24 лютого 1994 р. № 4004-XII. URL: <https://zakon.rada.gov.ua/laws/show/4004-12#Text>.
- [15] Про захист населення від інфекційних хвороб: Закон України від 6 квітня 2000 р. № 1645-III. URL: <https://zakon.rada.gov.ua/laws/show/1645-14>.

# Порушення правил щодо карантину людей: аналіз складу правопорушення

Олексій Миколайович Волуйко, Оксана Миколаївна Волуйко

Національна академія Національної гвардії України  
61000, майдан Захисників України, 3, м. Харків, Україна

## Анотація

Метою статті є виявлення проблемних питань кваліфікації порушення правил щодо карантину людей, недоліків конструювання ст. 44-3 Кодексу України про адміністративні правопорушення, визначення шляхів їх усунення. У статті використано комплекс наукових методів, а саме: термінологічний, системно-структурний, формально-логічний, порівняльно-правовий. Теоретичне підґрунтя дослідження становлять праці українських та іноземних учених, положення Кодексу України про адміністративні правопорушення, а також практика їх застосування. Наукова новизна статті полягає в тому, що в ній визначено об'єкт, об'єктивну сторону, суб'єкт, суб'єктивну сторону адміністративного правопорушення, передбаченого ст. 44-3 Кодексу України про адміністративні правопорушення, що є необхідною умовою ефективного застосування цієї норми як заходу адміністративного примусу. Виявлено окремі вади в конструкції складу цього правопорушення, пов'язані насамперед з його об'єктивною стороною, а також запропоновано шляхи їх усунення. За результатами здійсненого дослідження сформульовано такі висновки: 1) безпосереднім об'єктом адміністративного правопорушення, передбаченого ст. 44-3 Кодексу України про адміністративні правопорушення, слід визнавати суспільні відносини у сфері охорони здоров'я населення від інфекційних хвороб; 2) з об'єктивної сторони це правопорушення має такі форми: а) порушення правил щодо карантину людей; б) порушення санітарно-гігієнічних, санітарно-протиепідемічних правил і норм, передбачених Законом України «Про захист населення від інфекційних хвороб», іншими актами законодавства; в) порушення рішень органів місцевого самоврядування з питань боротьби з інфекційними хворобами; 3) з огляду на таке розмаїття форм об'єктивної сторони, потребує уточнення назва ст. 44-3 Кодексу України про адміністративні правопорушення, оскільки вона стосується лише одного діяння – порушення правил щодо карантину людей, а тому не охоплює інші; 4) з назви та диспозиції ст. 44-3 Кодексу України про адміністративні правопорушення слід виключити слово «людей», оскільки в усіх нормативно-правових актах, що визначають правила карантину, ужито термін «карантин», а не «карантин людей»; 5) у диспозиції ст. 44-3 Кодексу України про адміністративні правопорушення поняття «санітарно-гігієнічні правила та норми» і «санітарно-протиепідемічні правила і норми» доцільно замінити на санітарні норми з огляду на те, що санітарно-гігієнічні та санітарно-протиепідемічні правила й норми чітко не розмежовано, вони є різновидом соціальних норм; 6) адміністративні проступки, передбачені ст. 44-3 Кодексу України про адміністративні правопорушення, належать до правопорушень із формальним складом, тому шкода від таких порушень не є обов'язковою ознакою їхніх складів; 7) суб'єктами адміністративних правопорушень, передбачених ст. 44-3 Кодексу України про адміністративні правопорушення, можуть бути як загальні суб'єкти, так і посадові особи; 8) із суб'єктивної сторони правопорушення характеризується виною у формі умислу чи необережності

## Ключові слова:

адміністративна відповідальність; карантин; коронавірус; адміністративне правопорушення; інфекційні хвороби; карантин людей