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CHALLENGES TO THE REALIZATION OF HUMAN RIGHTS UNDER THE PANDEMIC

The law is the measure of the right, and anything that contradicts the measure of the right is wrong (Jus est norma resti; et quicquid est cjntra normam recti est injuria)

(Ancient Roman expression)

Keywords: respiratory disease COVID-19, coronavirus SARS-CoV-2, human rights, anthropocentrism, sociocentrism, State authority limits, quality of legislation, globalization, pandemic.

ABSTRACT: The article deals with the problematic issues of human and civil rights under pandemic on the example of the practice of combating the spread of respiratory disease CO-VID-19 caused by the coronavirus SARS-CoV-2 civil society in Ukraine in 2020. Account has been taken of the fact that the human, his life and health are the highest social value, and that human rights and freedoms determine the content and orientation of State activities. Since

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every State functioned for the human, in order to protect universally recognized rights and freedoms, it was a feature of a modern democratic State governed by the rule of law. At the same time, in legal science in recent years there has been a debate about the problems of human and civil rights against the background of widespread abuse of rights, individual selfishness, conflict of rights of one person and group of people, human and society. That is to say, in the order of the day came an all-civilizational discussion about the appointment of the State, the idea of humanocentrism and sociocentrism as the fundamental foundation and expediency of the State. The problem is posed by the global challenges faced by present-day civilization: climate protection and freshwater, poverty and corruption, terrorism and military conflicts, massive ethnic displacement and pandemics. In one way or another these problems are present on all continents today, both for the world community and for each State in particular, but there is no well-established mechanism for dealing with them. With regard to combating the spread of coronavirus, it is clear that the problem is a global one in the field of medical law, and that it must be addressed both at the level of the novelization of legislation and at the level of philosophy and sociology of law, 'cause that's the kind of system-wide results you can use in complex under the state-creative practice today.

INTRODUCTION

Modern development involves the overlapping of globalization processes, increased cooperation among States and the movement of people, and the need to develop effective methods of exercising power in the face of global challenges, the need to take into account the principles of human and sociocentrism in the activities of the State and the exercise of the powers of the State in the context of pandemics in order to ensure the security of society on the basis of justice and equality of the people. The global problem of interstate cooperation in the context of global pandemics, the morality of power and national security needs to be addressed immediately around the world.

The general theoretical characteristic of the experience of combating the spread of the coronavirus pandemic is studied and given, the laws and other normative legal acts adopted in Ukraine aimed at combating and eliminating the consequences of the coronavirus pandemic are analyzed. To conduct a comprehensive study and classification of the restrictions and prohibitions imposed to prevent the spread in Ukraine of acute respiratory disease COVID-19 caused by coronavirus SARS-CoV-2 in Ukraine. Research material – Legislation pointed at the resisting and overoming the effects of the coronavirus pandemic, foreign and national legal, political and specialized literature on health, medical law, constitutional law, sociology and legal theory, Human and Civil Rights and Freedoms in the context of global risks. While writing the article used the method of comparative law and systematic analysis, structural and functional methods, method of legal statistics, legal modeling.

REVIEW AND DISCUSSION

Modern global challenges have necessitated a revision of the established policy of states in various spheres of public life. This need is particularly acute in the wake of the global COVID-19 pandemic. It is clear that this should be based on the important principles of the rule of law, for which it is important not only to give human rights priority in the policies of the State (Zahalna deklaratsiia prav liudyny vid 10.12.1948 r.; Konventsiia pro zakhyst prav liudyny i osnovopolozhnykh svobod vid 02.10.2013 r.) but also to understand by everyone that the rights of each individual end where the rights of the other begin. Therefore, the practical work of State and local government bodies faces the problem of the choice between ideas of humanocentrism and sociocentrism (Kostytsky, 2019). With the outbreak in Ukraine and the world of acute respiratory disease COVID-19, caused by coronavirus SARS-Cov-2, the human rights problems are quite acute. This includes ensuring the right to health (Konstytutsiia Ukrainy vid 28 chervnia 1996 roku) and the possibility of restricting other human and civil rights, preventing the abuse of power under the guise of anti-quarantine measures. This is the concern of the European Union, the United Nations, international human rights organizations and ordinary citizens today (Orinda, 2018). In the European Union, they reacted by signing a joint declaration against the usurpation of power, human rights violations under the pretext of quarantine actions by 13 EU member countries: Belgium, Netherlands, Luxembourg, France, Germany, Greece, Italy, Portugal, Spain, Ireland, Denmark, Finland and Sweden. The contents of the document concerned the decision of the

Hungarian Parliament of 30 March 2020 to grant absolute powers to Prime Minister Viktor Orban under a state of emergency, but for an unlimited period of time.

At the time of this decision, during the COVID-19 coronavirus outbreak, which affected more than 950,000 people worldwide at that time, including at least 585 people in Hungary, Orbán was given excessive powers under the new emergency legislation, and his right-wing party, Fides, was able to effectively bypass both Parliament and existing laws, and the Government was allowed to issue prison terms for those considered to be spreading disinformation, that many political scientists considered the ideal occasion for the seizure of power, since emergency powers could only be revoked with the support of two thirds of the Parliament (the majority held by Prime Minister V. Orban).

From the Ukrainian experience of counteracting coronavirus, we can say in general that the authorities acted proactively despite the financial, institutional and human resources inadequacies of the health-care management system (suffice it to mention the reckless elimination of public health surveillance), the large-scale spread of coronavirus and the large number of victims has been avoided, which has meant that the situation in our State has not been as dramatic as in other countries.

The measures taken by the state can be divided into several groups:

- 1. Restrictions on entry into and exit from the territory of Ukraine;
- 2. Restricting the movement of people by public transport between urban and intercontinental routes and within human localities;
- 3. Restricting the work of business entities, especially those involved in mass gatherings;
- 4. Restrictions on the holding of public events of a sporting, visual or socio-political identity;
- 5. Restrictions related to self-isolation (restrictions on staying in streets, parks and other recreational areas);
- 6. Restriction of the educational institutions' activity;
- 7. Introduction of a special regime for health-care institutions;
- 8. Increased legal liability for violation of quarantine, sanitary and epidemiological rules and regulations.

These State response teams to the pandemic are more or less concerned not only with environmental and epidemiological safety issues, public health management, but also with health workers and institutions.

The life of all citizens of our State changed radically with the adoption on March 11, 2020 by the Decision of the Cabinet of Ministers of Ukraine 211 «On prevention of the spread in the territory of Ukraine of acute respiratory disease COVID-19, caused by coronavirus SARS-Cov-2» (The Cabinet of Ministers of Ukraine, 2020).

According to Article 29 of the Law of Ukraine «On Protection of the Population against Infectious Diseases» (Zakon Ukrainy vid 6 kvitnia 2000 roku № 1645-III) in order to prevent the spread of acute respiratory disease COVID-19 in the territory of Ukraine, and taking into account the decision of the State Commission on Technogenic and Environmental Safety and Emergency Situations of 10 March 2020, the Cabinet of Ministers of Ukraine decided to establish a quarantine throughout Ukraine from 12 March 2020 to 24 April 2020. A number of restrictions and prohibitions have been established and are classified in this publication according to the following criteria.

1. *Restrictions on entry into and exit from the territory of Ukraine* (established on 13 March by the Decision of the National Security and Defence Council «Urgent measures to ensure national security under the outbreak of acute respiratory disease COVID-19 caused by coronavirus SARS-Cov-2» of 13 March 2020) (Rishennia Rady natsionalnoi bezpeky ta oborony vid 13 bereznia 2020 roku):

- 1) Closure of State border crossings of Ukraine from 0 a.m. to 17 March 2020 for regular passenger traffic;
- 2) Cessation, from 0 a.m. on 16 March 2020, of the entry into the territory of Ukraine of foreigners and stateless persons, with the exception of persons entitled to permanent or temporary residence in the territory of Ukraine, and on individual decisions of the Ministry of Foreign Affairs of Ukraine accredited officials of diplomatic missions, consular offices, missions of international organizations, etc.

2. Restricting the people movement by public transport between urban and intercontinental routes and within human localities.

By the Decree Cabinet of Ministers of Ukraine No.211 (The Cabinet of Ministers of Ukraine, 2020) *with* not suitable subsequent passenger (March 11, 2020):

- regular and irregular transportation of passengers by road in suburban, long-distance, intra-regional and inter-regional communication, except for transportation: by cars; official and/or rented motor vehicles of enterprises, establishments and institutions, provided that drivers and passengers are provided with personal protective equipment during such transportation within the number of seats and only on routes agreed with the National Police, as well as compliance with relevant sanitary and anti-epidemic measures;
 - limited number of people who can be transported in one vehicle with personal protective equipment and appropriate sanitary and anti-epidemic measures;
 - entry of bus stations carrying commuter, intercity, intraregional and intercontinental passenger services and sale of tickets by station owners to road carriers carrying out such services;
- from March 17, 2020 transportation of passengers by subways in Kyiv, Kharkiv and Dnipro in accordance with the decision of the State Commission on Technogenic and Environmental Safety and Emergencies of March 16, 2020;
- 3) from 12 a.m. to 1 p.m. 18 March 2020 passenger transport by rail in all types of inland transport (suburban, urban, regional and long-distance).

3. Restricting the work of business entities, especially those involved in mass gatherings. Such restrictions are in fact prohibitions in the field of economic activity (Such restrictions are, in fact, bans on economic activity (established on 11 March 2020 by the Decree of the Cabinet of Ministers of Ukraine No.211) (The Cabinet of Ministers of Ukraine, 2020):

 To the work of economic entities, which provides for the admission of visitors, including catering establishments (restaurants, cafes, etc.), shopping and entertainment centers, other entertainment establishments, fitness centers and cultural establishments; commercial and consumer services, except for: trade in foodstuffs, fuels, hygienic products, medicines and medical products, veterinary preparations, feed products, pesticides and agrochemicals, seeds and planting material; communications equipment, while ensuring the provision of personal protective equipment to the personnel concerned, as well as appropriate sanitary and anti-epidemic measures;

Banking and insurance activities, as well as medical practices, veterinary practices, the operation of petrol stations, the maintenance and repair of vehicles, the maintenance of payment recorders, computer repair activities, household and consumer goods, postal facilities, while ensuring the provision of personal protective equipment to the personnel concerned, as well as appropriate sanitary and anti-epidemic measures;

trade and catering activities with targeted orders' delivery, while ensuring the provision of personal protective equipment to the personnel concerned, as well as appropriate sanitary and anti-epidemic measures.

4. *Restrictions on the holding of public events of a sporting, visual or socio-political identity.* Such prohibitions were established on March 11, 2020 by the Decree of the Cabinet of Ministers of Ukraine No.211 (The Cabinet of Ministers of Ukraine, 2020) From 1 a.m. to 1 p.m. March 17, 2020 for all mass events (cultural, entertaining, sports, social, religious, advertising and other) in which more than 10 people take part, in addition to measures necessary for the functioning of State and local government bodies,.

5. *Restrictions related to self-isolation (restrictions on being on the streets, in parks and other recreational areas).* Restrictions related to self-isolation (established on March 11, 2020 by the Decree of the Cabinet of Ministers of Ukraine No. 211) (The Cabinet of Ministers of Ukraine, 2020):

- persons who have had contact with a patient with acute respiratory disease COVID-19 caused by the coronavirus SARS-CoV-2, or suffer from this disease and do not require hospitalization, are persons in need of self-isolation.
- 2) COVID-19, SARS-Cov-2 Coronavirus-induced Acute Respiratory Disease Treating Physician, independently determines the period of self-isolation of the patient and persons in need of self-isolation as a result of contact with the patient, based on sectoral health standards.

- 3) persons in need of self-isolation are obliged to refrain from contacting persons other than those with whom they live together and from visiting public places. Emergency visits to places of sale of food, hygiene, medicines, medical supplies and health-care facilities with personal protective equipment and with a distance of not less than 1.5 meters are permitted.
- 4) persons visiting countries/regions with local transmission of the virus in the community (in addition to drivers and service personnel of cargo vehicles, aircrews, sea crews, river crews, train and locomotive crews, if there is no reason to believe that they were in contact with a person suffering from acute respiratory disease COVID-19 caused by coronavirus SARS-CoV-2) are considered to have had contact with the patient with this disease and are subject to mandatory observation (isolation) within 14 days after the state border crossing in specialized institutions, which are determined by the Kyiv and regional state administrations.
- 5) persons who have been assigned quarantine (self-isolation) are obliged to strictly follow the recommendations of physician.

6. *Restriction of the educational institutions' activity.* These restrictions (established on March 11, 2020 by the Decree of the Cabinet of Ministers of Ukraine No. 211) (The Cabinet of Ministers of Ukraine, 2020) in the form of a ban on attendance by applicants.

7. Introduction of a special regime for health-care institutions. Restrictive anti-epidemic measures carried out by health-care institutions independently or in cooperation with the National Police, established by the Cabinet of Ministers Decree «Some issues on the application of restrictive anti-epidemic measures aimed at preventing the spread of acute respiratory disease COVID-19 caused by coronavirus SARS-Cov-2» of 25 March 2020 and the decision of the National Security and Defense Council «On urgent measures to ensure national security in the event of an outbreak of acute respiratory disease COVID-19 caused by coronavirus SARS-CoV-2I» of March 13, 2020) (The Cabinet of Ministers of Ukraine, 2020); Pro nevidkladni zakhody shchodo zabezpechennia natsionalnoi bezpeky v umovakh spalakhu hostroi respiratornoi khvoroby COVID-19, sprychynenoi koronavirusom SARS-CoV-2):

- 1) health care institutions have the right to implement:
 - compulsory medical examination of persons with acute respiratory disease COVID-19 caused by coronavirus SARS-Cov-2 (hereinafter COVID-19) or have symptoms COVID-19 if such persons refuse medical examination voluntarily;
 - compulsory hospitalization, quarantine (self-isolation) for COVID-19 patients or those with COVID-19 symptoms if such persons refuse to be admitted to hospital or quarantine (selfisolation) voluntarily;
 - compulsory hospitalization of the children of persons declared legally incompetent under the established procedure, living together with legal representatives who have been hospitalized for COVID-19 if they cannot be temporarily placed with the families of relatives known to them;
- 2) the referral of the persons referred to in paragraph 1 of this paragraph for compulsory medical examination and/or hospitalization and quarantine (self-isolation) shall be carried out by health-care institutions and individuals; entrepreneurs who provide primary health care in accordance with the established procedure;
- at the written request of health-care institutions, the National Police is obliged to accompany vehicles in the cases provided for by law, as well as to escort them rescue and other special equipment during transportation for compulsory examination and hospitalization;
- medical and preventive institutions should ensure readiness for the provision of medical care to COVID-19 patients and the creation of reserves of medical equipment, medicines and medical supplies, including personal protective equipment; as well as disinfectants.

8. Increased legal liability for violation of quarantine, sanitary and epidemiological rules and regulations, which is provided by the 530-IX Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine aimed at Preventing the Occurrence and Spread of Coronavirus Disease (COVID-19)".» of March 17, 2020, should be considered separately (Zakon Ukrainy vid 17 bereznia 2020 r. № 530-IKh):

The Code of Administrative Offences of Ukraine was supplemented by Article 44–3 «Violation of Human Quarantine Rules», provided for in the

Law of Ukraine «On Protection of the Population against Infectious Diseases», other legislative acts, as well as decisions of local governments on the control of infectious diseases.

Article 325 of the Criminal Code of Ukraine 'Violation of sanitary rules and norms on prevention of infectious diseases and mass poisoning", is stated in the new wording: violation of rules and norms established for prevention of epidemic and other infectious diseases, as well as mass noncommunicable diseases (poisoning) and control if such acts have led to, or are known to have caused, the spread of these diseases, shall be punished by a fine of 1,000 to 3,000 minimum income not covered by the law, or by arrest for up to six months, or by restriction of liberty for up to three years, or imprisonment for the same term. For the same acts, if they have resulted in loss of life or other serious consequences, a penalty of 5 to 8 years' imprisonment may be imposed.

Regulations on pandemic control, both national and local, in the form of decisions of local self-government bodies and decisions of local State administrations, were prepared and adopted under extreme conditions of time scarcity, the risks of the spread of the pandemic, the need for the State to fulfil its responsibilities to society and the individual in a timely manner, therefore their analysis reveals significant strengths and weaknesses that need to be addressed now and in the future.

Let us highlight here some of the problems that have caused a sad smile in their treatment in the context of human rights. For example, the COVID-19 coronavirus regulations placed animal rights above human rights: one person could walk a dog in the park but not two persons, and not allowed to walk by two persons, later, the Chief State Medical Officer of Ukraine, Liashko, explained this as an attempt by the public authorities to exert psychological pressure on civil society to ensure self-discipline and avoid the spread of the coronavirus, which, of course, is an offence.

In Kiev, one and four medical institutions for the treatment of COVID-19 patients have been designated Alexander Hospital on Shelkovychna St. At the same time, by decision of the medical institutions, the treatment of ophthalmological patients was ordered by the medical institutions, despite the risk of the spread of COVID-19 coronavirus, and the Eye Microsurgery Centre, by decision of the Chief State Medical Officer, was able to treat only children.

However, it is particularly important to mention here the great national problems. First of all, as a result of the reaction to the spread of the coronavirus, a national mistake made earlier has been corrected and it is planned to restore the system of anti-epidemic protection, in particular: appointment of chief public health doctors from the relevant administrative and territorial authorities.

The possibility of compulsory hospitalization under the mental health legislation, in which one of the authors participated, was not resolved – prof. Vasyl Kostytsky, previously it was possible only in the case of acute psychiatric disorders of a person by court order. COVID-19 is obviously required to be listed as a serious infectious disease that provides for involuntary hospitalization followed by a court decision, provided that such involuntary hospitalization is terminated by a health-care facility where the person with COVID-19 is based in accordance with the medical recommendations approved by the Ministry of Health.

Pursuant to the above-mentioned regulations, medical personnel, law enforcement personnel and emergency services involved in anti-epidemic activities, as well as persons in contact with COVID-19 patients, must be provided with personal protective equipment. However, the sources of supply and financing of these funds have not kept pace with this task, despite attempts by the State to simplify customs and procurement procedures for medical facilities.

Special attention should be paid to problems related to the rights of health workers. Provision is made in the regulatory documents for the introduction of additional material incentives for medical workers who are involved in anti-epidemic and curative measures to counter COVID-19 were under-resourced and the dedicated work of health workers was not adequately appreciated. The problems of the possibility of infection in the workplace have not been taken into account, and the questions of compensation for the harm caused to the health-care worker in the workplace in the context of the pandemic have not been resolved, The Act of 7 May 2020 on additional guarantees for medical personnel provides for compensation and guarantees only in the event of the death of a person. Ukrainian legislation has also neglected the problem of the protection of medical workers, which should include their compulsory insurance by the State or by an employer in private medical institutions, as well as the issue of treatment protocols.

The legislator has not decided that a person who shows signs of acute respiratory disease COVID-19, caused by SARS-Cov-2 coronavirus, is obliged to inform the community, family members, employer.

Results: In summary, it can be stated that the restrictions and prohibitions imposed on the territory of Ukraine in order to prevent the spread in the territory of Ukraine of the acute respiratory disease COVID-19 caused by the coronavirus SARS-Cov-2, have touched practically all spheres of public life. At the same time, aware of the negative consequences of these restrictions and prohibitions on the country's economy and the well-being of the population, we wish to emphasize the unprecedented attention paid by the State in the history of independent Ukraine to the problems of the medical sector.

The right to a safe environment for life and health provided for in article 50 of the Constitution covers (Konstytutsiia Ukrainy vid 28 chervnia 1996 roku), in our view, the right to sanitary and epidemiological well-being, and is recognized as a duty of the modern State towards civil society. Itis based on the principle of the rule of law, which embodies both the recognition of the human being as the highest social value and the understanding of rights and freedoms, especially the fundamental human right to a healthy and healthy environment (Kostytsky, 2016) such as to determine the content and direction of State action is an important.

CONCLUSIONS

As a result of the study carried out, we consider it advisable to reestablish the institutional system responsible for the sanitary and epidemiological well-being of the population, that is, to establish a renewed system of public health services Epidemiological surveillance of Ukraine in the central apparatus, oblast and city inspectorates. Legislation needs to be further improved and codified, in particular in connection with article 64 of the Ukrainian Constitution, which prohibits restrictions on human and civil rights and freedoms. In the event of martial law or a state of emergency, certain rights and freedoms may be restricted, so it is necessary to introduce legislation on states of emergency, such as the regulation of this issue in environmental legislation, which provides for the possibility of declaring a certain territory as an environmental emergency zone. Thus, the law should also provide for the possibility and procedure of involuntary hospitalization of patients with COVID-19 respiratory disease caused by SARS-Cov-2 coronavirus, the possibility of recognizing a certain territory of the State or of the whole country as an area of emergency sanitary and epidemiological situation and defining the procedure and conditions for restricting the movement of people and the work of business entities; mass events and other constraints based on the experience of the pandemic in 2020.

Besides, we consider it necessary to:

- restore the training of specialists in the specialty «sanitary supervision»;
- provide for increased wages (200–300 per cent) and compulsory insurance (State and employers in private health-care institutions) for health-care workers; Those involved in dealing with pandemics or in the treatment of acute infectious diseases;
- clarify the list of serious infectious diseases and include COVID-19 respiratory disease caused by SARS-Cov-2 coronavirus;
- procedure for compensation of damage caused to the health and property of doctors involved in work during the pandemic, including as a result of infection in the performance of duties in a medical institution.

Both the measures taken by the Parliament and the Government of Ukraine and the law and resolutions adopted by them not only were unpopular, but received a negative assessment by the Constitutional Court of Ukraine, which in its decision as of August 28, 2020 drew attention to the Resolution of the Cabinet of Ministers of Ukraine №392 of May 20, 2020 «On the establishment of quarantine to prevent the spread of acute respiratory disease COVID-19 caused by the coronavirus SARS-CoV-2 in Ukraine and the stages of mitigation of anti-epidemic measures» violat-

ing the Constitution. The government itself lifted unconstitutional restrictions on human and civil rights and freedoms in June and July. These problems are quite relevant and require additional understanding and separate analysis, which could be done in a separate article.

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