

Administrative Mechanisms for Public Health Protection During the Spread of COVID-19 and Their Impact on the Development of Legal Regulation of Social Relations

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Summary

The study examines the legal nature of administrative measures to curb the COVID-19 pandemic and their impact on the development of law. The recognition of the global spread of COVID-19 as a pandemic by the World Health Organization led to the adoption of large-scale administrative measures around the world to minimize the effect of the pandemic on public health. In the Russian Federation, these measures are expressed in the form of a special legal regime – a high-readiness regime. The purpose of the paper is to reveal various aspects of the impact of administrative measures for the protection of public health during the pandemic on the trends in the development of law as a regulator of public relations. To achieve the set goal, the study addresses the following objectives: the concept of public health is examined as a category that requires comprehensive support on the part of the state, the dynamics of law-making activities of Russian authorities in the course of the pandemic are analyzed; the measures adopted to preserve public health in the spread of COVID-19 that are associated with the restriction of certain constitutional rights of citizens are examined. A comparative study of anti-COVID restrictions in different countries of the world is carried out, their categories depending on the degree of severity are identified. The influence of the restrictions on the development of legal regulation of social relations is studied. An argument is presented that the imperative method of permissive type of regulation is predominant in the fight against the pandemic. The problem of admissibility of limitation of certain constitutional rights of citizens when introducing anti-COVID restrictions is analyzed. Based on the results of the study, proposals are formulated to bring in line the fundamental acts on human rights and the new legislation on the protection of public health.

Keywords:

Pandemic, public health protection, restrictive measures, right to life, freedom of movement, legal regulation.

1. Introduction

The current stage of human life is marked by the emergence of a “new reality” shaped by the spread of the

novel coronavirus infection, which by the end of December of 2021 has affected 288 million people worldwide [1].

The COVID-19 pandemic has revealed to mankind the critical problems of not only the modern healthcare system, but also the role of the state in managing socio-economic processes, of the institutions of power and their ability to ensure the safety and well-being of the population given the practical shutdown of the economy, self-isolation of citizens, and ultra-high mobilization of state administrative resources to ensure a full-scale fight against the spread of the virus [2, 3]. The COVID-19 pandemic has become a kind of test for the leadership of almost every country in the world on the ability to carry out effective public administration under the critical conditions faced by almost every state [4, 5]. Since the World Health Organization (WHO) declared the pandemic, many countries have started to take action to prevent its spread. These measures were often justified by the rapidly aggravating situation that needed just as quick of response [6]. The lack of reliable information on the disease and its treatment and the corresponding uncertainty were sometimes of a truly panic-stricken nature reinforced by the messages of some mass media [7]. Thus, the measures adopted in a rush were often not coordinated organizationally or legally and did not have a clear legal basis. Undoubtedly, by the start of 2020, many countries had enacted a complex of measures regulating the issues of ensuring biological (including epidemiological) security, including normative legal acts regulating the matters of citizens’ sanitary and epidemiological well-being and protecting the population and territories from natural and man-made disasters, etc. Nevertheless, the explosive spread of the novel coronavirus infection around the world required public authorities of the world to adopt a number of new regulations establishing the measures to counteract the spread of COVID-19, as well as the measures to minimize the negative consequences of the pandemic on the economic and social development of world countries. It can be stated that at the start of the pandemic, many states

turned out to be organizationally and legally unprepared to control the spread of the disease, which later necessitated the development of an organizational and legal foundation, the presence of which brings profound changes to the understanding of particular spheres of law and law as altogether.

The scale and novelty of the adopted measures, as well as the uncertain perspectives of the fight against the pandemic, pose a number of questions concerning the future of legal institutions and, in a broader sense, the development of the system of legal regulation of social relations. Many of these issues are being discussed as part of the debate among legal scholars who study individual rights around the world.

At present, many problems that have emerged in legal regulation due to the pandemic already appear quite thoroughly studied. Researchers address mainly the problem of observing human rights, caused by the need to limit them due to the onset of the pandemic (N.N. Tarusina [8], T.V. Prikhodko [9], G.A. Vasilevich [10], K. Bennoune [11], etc.). However, other important aspects of legal regulation, such as the emergence of new trends in the development of law, are not examined by scientists as closely. Meanwhile, such studies and their results and provisions may become a contribution to legal science, as well as lawmaking and law enforcement in the post-COVID era. The present work is devoted to the legal analysis of the set of anti-COVID measures deployed in various countries of the world and the consequences of their adoption for the state of legal regulation of public relations. Study hypothesis. The employment of restrictive anti-COVID measures caused by the need to protect public health is not always aligned with the existing doctrine of human rights and leads to the predominance of the permissive type of legal regulation.

2. Methods

The study uses a set of general and specialized methods of scientific research composed of the systemic-structural method, the historical method, the statistical method, analysis and synthesis, and some others. The informational legal base of the study is formed by normative legal acts of the Russian Federation and a number of other countries, as well as international laws. To test the hypothesis of the study, information is collected from official websites of international organizations, government bodies, and reliable mass media.

3. Results

Public health is a complex medical and demographic and social concept that covers the physical, mental, and social well-being of people, the stability of their interaction,

and the state of connections within society as a single organism [12]. Public health is majorly affected by various factors including the state of the healthcare system and the capabilities of contemporary medical science, which employs medical workers with more and more effective means of diagnostics and testing [13]. For this reason, since the first days of the adverse epidemiological situation in the People's Republic of China, a significant part of the "anti-viral" measures taken by the Russian state aimed at adapting the Russian healthcare system to work in the conditions of the pandemic. The protection of public health under the COVID-19 pandemic, according to WHO, is facilitated by the following measures:

- social distancing, including the cancellation of mass gatherings, the closing of schools, the termination of public transportation, etc. [14];
- "quarantine, which includes the restriction on movement or isolation of people who may have been exposed to the virus from the rest of the population for the purpose of monitoring symptoms and early detection of cases" [15], as well as other response and containment measures designed to reduce the rate of infection;
- preventing social stigma and infodemic misinformation and rumors related to the COVID-19 pandemic [16];
- other extraordinary measures not deployed in regular circumstances.

The Russian Federation realized these WHO recommendations within the framework of a high-readiness regime. Under the Federal Law № 68-FZ "On Protection of the Population and Territories in Case of Natural or Man-made Disasters" of December 12, 1994 [17] (hereinafter referred to as Federal Law № 68-FZ) and the by-laws specifying it, the high-readiness regime may be introduced throughout the country or in a certain part of it under the threat of an emergency situation in order to prepare the population to act in the emerging emergency, conduct preparatory activities, and ensure the stable operation of public administration bodies. In the case of the spread of the novel coronavirus infection, the high-readiness regime was introduced also in order to localize the hotbed of infection, reduce the rate of contagion [18]. The primary elements of this special legal regime are as follows: 1) additional prohibitions and obligations in combination with the permissive way of not only the implementation of economic and other activities, but also of the implementation of the rights and freedoms of citizens, including some constitutional rights; these prohibitions, obligations, and other prescriptions together form the regime rules; 2) special administrative measures aimed at enforcing these regime rules; 3) the system of control and supervision over the implementation of regime requirements by citizens, organizations, and officials of public authorities and local governments; 4) measures of responsibility for non-compliance with regime rules by individuals and legal entities. For non-compliance with the requirements of the

high-readiness regime, the Russian legislation provides for both administrative and criminal liability.

In response to the pandemic, many states also used similar measures by introducing the so-called lockdowns, the severity of which was determined based on the government's understanding of the situation unfolding. For instance, Italy, the country that suffered the most in the first wave of the pandemic, on February 23, 2020, adopted the Decree № 6, which granted the government the opportunity to take action to curb the virus [19]. This decree prohibited meetings; restricted the movement of people (except for grocery shopping, doctor visits, and work-related necessities); granted police the right to stop people on the move and demand written explanations; stopped retail trade (except for the sale of basic necessities), banking, financial, and insurance services; closed restaurants, museums, theaters, hair salons, sports halls, schools, and universities; canceled sports and cultural events; banned religious and civil ceremonies; restricted church activities; suspended prison visits; recommended that workers be transferred to remote work or be given paid leave. Violation of the relevant rules was made a crime punishable by imprisonment for up to three months or a fine of up to 206 euros (Art. 650 of the Italian Penal Code); those who tested positive and failed to comply with quarantine could be prosecuted under Art. 438 or 452 (up to life imprisonment) [20]. Some countries have gone beyond lockdown: Spain has nationalized private hospitals, the Philippines, the USA, and the EU have considered doing so. Some rights were not directly restricted, but their use was severely hampered. Some restrictions were criticized. For example, after India imposed a lockdown that included the termination of transportation, large numbers of migrants were forced to walk home, the threat of starvation emerged. In some countries, authorities used the pandemic as an excuse to persecute their opponents [11].

We now have the opportunity to compare the restrictive anti-COVID measures used in various states and give a preliminary assessment of their results in the table below.

Table 1

Country	Anti-COVID measures regime and its brief characteristic	Overall results of the restriction regime (as of mid-November 2021)
China	Full quarantine in selected regions (Wuhan)	Isolated cases of infection
Italy, Israel, Spain	Hard lockdown	A much lower number of detected cases of infection (compared to the first wave of COVID-19)
Russia, USA, UK, Germany, Japan, South Korea, etc.	Soft lockdown	The number of detected cases of infection is of the same order as in the first wave of COVID-19
Sweden	Recommendatory measures	The number of cases of infection detected per day is close to the peak values of the first wave of COVID-19 [21]

The data provided in the table show that the severity of anti-COVID measures directly correlates with the effectiveness of the fight against the pandemic. However, it can be assumed that the example of China is unlikely applicable to the modern Western democracies, where measures as harsh as a full quarantine may cause a serious public outcry, to which the leadership of Western countries will probably not be prepared.

The measures described above have been of great concern to international organizations that monitor human rights almost from the very beginning of the pandemic. UN Secretary-General A. Gutierrez in his Report "COVID-19 and Human Rights: we are all in this together" (April 2020) [22] puts human rights at the center of the global response to the pandemic.

UN experts have formulated human rights standards for dealing with the pandemic: emergency measures should be publicly announced; they should also be reported to treaty bodies; states of emergency should not be a pretext for repression; restrictions should not be imposed to suppress dissent; they should be narrowly focused and as lenient as possible; in countries where the epidemic is on the decline, authorities should help people return to normal life [23].

4. Discussion

The use of restrictive measures and the many events associated with it have sparked serious discussions among legal scholars and human rights activists. The most popular platforms for these discussions were the blog of the European Journal of International Law EJIL:Talk!, the specialized international law blog *Opinio Juris*, and the electronic journal *Just Security* [24]. Russian legal scholars hardly participated in the discussion, although the Center for International and Comparative Legal Studies (Moscow) prepared four digests of the Western press [24]. These digests point to the lack of responsiveness on the part of international and national structures: 1) the documents developed are often general in nature; 2) mechanisms for monitoring the actions of authorities are lacking, as are the mechanisms of redress; 3) authoritarian regimes use the pandemic to consolidate power and harass opponents (El Salvador, Bangladesh, China, South Sudan); 4) some states are unable to take deterrent measures (for example, Bangladesh – to ensure social distancing); 5) Some States invoke Article 4 of the Covenant on Economic, Social and Cultural Rights to justify measures affecting the obligations of non-discrimination, progressive realization, etc. (violating the precautionary principle, applicable by analogy) [24].

Furthermore, the pandemic poses the questions related to misinformation (which restricts access to truthful

information and can be regarded as the violation of the freedom of speech) [25], the relative advantages of democratic and totalitarian regimes [26, 27], and the deficit of social support measures [28]. Later on, there arose the question of mandatory vaccination and immunity passports, the possession of which would exclude individuals from the scope of restrictions; this measure is considered by Chile, Germany, Italy, the UK, and the USA. The problem, however, lies in the fact that, according to WHO, the presence of antibodies does not guarantee protection against reinfection [24]. Moreover, the issuance of immunity passports implies artificial division of citizens into those who can and cannot participate in public life (i.e., discrimination that undermines the right to health) and may encourage people to contract the virus (to later obtain the immunity passport). From a political point of view, it relieves governments of responsibility for fighting the virus and can create preconditions for corruption [29].

The problems raised in the above discussion can lead to a revision of the traditionally established axiology of Western society, based on the primacy of individualism and the atomization of society. The theses about the gradual reduction of the role of the state in organizing the regulation of socio-economic processes against the background of the strengthening of civil society institutions have also lost their significance since only the state has been able to organize a centralized mobilization of resources to counteract the mass threat to public health [30, 31]. Many of the inalienable, especially for Western societies, human rights and freedoms were restricted to effectively counter the coronavirus infection, something that would have been difficult to imagine even a few months before the pandemic began. At the same time, it needs to be noted that most authors comprehend the phenomenon of the pandemic in the existing frame of reference, i.e. use the pre-existing conceptions and regimes and consider the derogation of states from their obligations as falling under the various exceptions provided for in these regimes. Few question the appropriateness of such a harsh global response and voice radical criticism; instead, the shortcomings of individual measures are noted and suggestions are made to improve their effectiveness [24].

The experience of combating the pandemic also proves that it is precisely and only the state that has been able to take the most urgent and decisive measures to curb the pandemic, reducing the alarming level of its spread and the severity of its consequences for society. However, these measures have also caused a significant change in the balance of methods and techniques in the legal regulation of social relations. Let us turn to the theory of law, which traditionally distinguishes three main ways of regulating social relations: permission, positive obligation, and prohibition. Permission as “a method of legal regulation is expressed in granting participants of legal relations subjective rights (empowerment). It is manifested in the

delegation of a set of permissions to an authorized person to perform certain actions” [32]. This method has long been one of the fundamental ones in legal regulation. In the midst of the pandemic, almost every state was forced to employ restrictions on the fundamental rights and freedoms of citizens. On the basis of the ways of legal regulation, two main types of legal regulation are built. The first type is “everything is allowed, except what is expressly forbidden in the law”. This formula defines the prohibitive type of legal regulation. This type of legal regulation of social relations is characterized by strict and clearly established prohibitions. It is worth noting that the volume of these prohibitions in this type of legal regulation is small, and the volume of permissions is not defined: it is everything that is not prohibited [32]. The prohibitive type of legal regulation contributes to the independence, activity, and initiative of participants in social relations [33]. The second type of legal regulation is phrased as “everything which is not allowed is forbidden”. Under this type of regulation, participants in legal relations may only perform the actions that are explicitly permitted by law. All the rest is forbidden. “This type of legal regulation is called permissive regulation. An example of a branch of law characterized by this type of regulation is administrative law. Since in the legislation the scope of powers of public authorities is defined by their competence. Anything that goes beyond the competence is categorically forbidden” [34]. To draw a summary, we can conclude that in the context of the pandemic, states introduce major restrictions on the fundamental rights and freedoms of subjects of law, in addition, the main ways of regulating social relations become prohibition and positive obligation [35]. In this regard, we can argue that the permissive type of legal regulation of public relations, which is based on the principle “everything is prohibited, except for that which is expressly permitted by law”, is beginning to dominate in many branches of law.

The above vividly illustrates the clear transformation of legal regulation in the fight against the pandemic, which has been for over two years and starts to generate new trends in the development of legal regulation of social relations that differ from the former ones.

5. Conclusion

At present, in the midst of the COVID-19 pandemic, the legal regulation of social relations is undergoing major transformations. These changes are due to the predominance of public interest over private interest, which is necessary in the conditions of the pandemic to preserve public health at the expense of individual rights. Overall, the logically justified but not always legally grounded predominance of the permissive type of legal regulation of social relations, expressed in the form of administrative restrictive mechanisms to combat the

pandemic, can give rise to new trends in the law. These trends, in turn, can involve the reevaluation of legal norms determining the status of the individual. Accordingly, this will call for a number of clarifying amendments to the fundamental documents on the protection of individual rights and freedoms.

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