

Some Problematic Issues in the Implementation of Legal Policy in the Field of Epidemiological Safety (on the Example of COVID-19)

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Abstract: Within this article, the authors reflect on the organization of legal policy in the mechanism of countering the COVID-19 coronavirus infection. Examples of the implementation of such a policy in various countries of the world are given. The definition and essential signs of epidemiological safety are identified. The problem is that such a definition is currently not stated in legislation. Various approaches to the establishment of restrictions and prohibitions in the constituent entities of the Russian Federation are analyzed (on the example of the Siberian regions). The authors come to the conclusion that the legal framework regulating the epidemiological safety of the country is characterized by fragmentation and inconsistency, which, of course, significantly complicates the process of law enforcement. It is also noted that it is important to ensure terminological uniformity when improving the regulatory framework of public policy during pandemic, which is currently absent.


1 INTRODUCTION


Currently, the state's legal policy in the field of ensuring epidemiological safety, in particular, in the field of combating the COVID-19 coronavirus infection, requires more and more scientific understanding for effective implementation. The relevance of legal research in this field is due to the fact that it is this policy that has a significant impact on the functioning of almost all areas of the life of the people of a particular country. Some foreign authors write: "Coherent public policy often balances between retaliation (punishment-based) and assistance measures (solidarity-based) to encourage responsible behavior. However, the uncontrolled spread of the disease has divided public opinion about which interventions are best and has led to significant group inequalities in behavior, potentially exacerbating intergroup relationships, raising the emotions and undermining coordinated international response measures" (Van Assche, J; Politi, E; Van Dessel, P; Phalet, K, 2020).


It is also worth noting that the history of the formation and development of legislation in this area is currently practically not the subject of special research on the part of lawyers, except for the traditional attention to some prohibitions and restrictions. An analysis of domestic and foreign literature shows that the authors mainly pay attention to the measures that the respective states have taken in connection with the threat of the spread of such an infection.

It should be kept in mind that the legal policy of the state in this area can be an effective way to combat coronavirus infection if it qualitatively regulates public relations that arise in countering the spread of coronavirus infection. This, first of all, depends on the high quality of regulations and management acts that will be adopted and implemented. Whether they adequately meet the threats posed by COVID-19. Evidently, any legislative error that can be made in these acts can cause irreparable damage.

In this regard, the relevance of this study is due to the fact that it allows assessing the measures taken by the state in the field of prevention of the spread of

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COVID-19 coronavirus infection, in particular in Russia and in the regions.

2 RESEARCH METHODOLOGY

The research methodology is due to the specifics of the legal regulation of the mechanism for preventing the spread of COVID-19 coronavirus infection. A complex of general scientific (dialectical, analysis and synthesis, systemic and structural approach) and special methods of cognition was used for this work. The formal legal method is justified by the need to analyze the provisions of normative legal acts regulating various aspects of the mechanism under consideration. The comparative legal method made it possible to compare the tendencies of legal regulation of the studied field in foreign countries, to identify general and specific features, and also to determine the directions of development of Russian legislation. A statistical method was also used, involving the comparison of qualitative indicators in this field.

3 RESEARCH RESULTS

It can be noted that the legal policy of the state in one area or another allows you to effectively achieve the set goals, justifying the relevance of the topic presented. It is worth saying that the authors of this article within the framework of various scientific conferences have repeatedly presented their reports lately on the problematic issues of the implementation of state policy in the field of preventing the new coronavirus infection (COVID-19). (Samusevich A.G., 2020).

In this regard, the question arises quite logically: what is the relationship between legal means and methods in the mechanism of preventing the spread of coronavirus infection?

Let us briefly describe the essence of legal policy and epidemiological safety to answer this question.

In the context of the COVID-19 pandemic, the issues of ensuring the epidemiological safety of the population are of particular relevance. The practice has shown that the regulatory framework in this area of security is not fully formed, and is characterized by fragmentation and contradictions.

The issues of implementation of the state policy to ensure the sanitary and epidemiological well-being of the population at the federal and regional levels also deserve special attention. In addition, it should be noted that foreign authors also paid attention to the

implementation of state policy in the matter of preventing coronavirus infection. Thus, for example, the government of Mongolia activated the State Committee for Emergency Situations in January 2020 based on the 2017 Law on Protection from Natural Disasters. As a result, various public health measures have been taken that have delayed the first confirmed case of COVID-19 until March 10, 2020 and without admission to intensive care or death until July 6, 2020. These measures included the promotion of universal personal protection and preventive measures such as the use of face masks and hand washing, restricting international travel, suspending all educational and pedagogic activities from kindergartens to universities, and prohibiting major social events such as the National New Year celebrations. These measures were accompanied by active infection surveillance and self-isolation guidelines (Erkhembayar, Ryenchindorj; Dickinson, Emma; Badarch, Darmaa; Narula, Indermohan; Thomas, Graham Neil; Ochir, Chimedsuren; Manaseki-Holland, Semira, 2020).

Another example is the management of the coronavirus crisis in Germany. The first reaction of the German execution authority was the rapid concentration of decision-making power at the top of the political hierarchy. Approving the prerogatives of the executive power included a radical simplification of the relationship between politics, law, and science. State actors took extraordinary measures, resorting to a single piece of legislation, the Infections Protection Act (Infektionsschutzgesetz), which took precedence over other elements of the legal order (Dostal, JM , 2020).

Nevertheless, let us focus on the organization of the legal policy of ensuring epidemiological safety in Russia, both at the federal and regional levels.

It should be said that it is important to ensure terminological uniformity when improving the regulatory framework of public policy during pandemic, which is currently absent.

For example, the Federal Law of March 30, 1999, No. 52-FZ "On the Sanitary and Epidemiological Well-Being of the Population" contains a definition of the sanitary and epidemiological well-being of the population, which means "the state of health of the population, the human environment, in which there is no harmful effect of environmental factors on man and favorable conditions for his life are provided". At the same time, there is currently no legal definition of the term "epidemiological safety".

When studying the question posed, it seems that one can agree with the position of domestic authors, who note that the sanitary and epidemiological well-

being of the population is covered by the concepts of "safety" and "national safety" (Anikina S.B., Permyakova A.I., 2020).

In turn, the analysis of the National Security Strategy of the Russian Federation (hereinafter - the "Strategy") indirectly confirms the relationship between these categories. When listing the types of safety, epidemiological safety is not mentioned, but the list remains open, and clause 23 of the Strategy emphasizes that epidemics are spreading in the world, many of which are caused by new, previously unknown viruses.

Thus, the emergence of epidemics and pandemics is qualified as threat to the national security of Russia in the field of protecting the health of citizens. Therefore, in its most general form, epidemiological safety can be defined as the state of protection of the population and the environment from the harmful effects of biological and other factors that can have a negative impact on human health.

On December 30, 2020, during the pandemic, Federal Law No. 492-FZ "On Biological Safety in the Russian Federation" was adopted, which consolidated its own conceptual apparatus. In this law, biological safety is understood as "the state of protection of the population and the environment from the effects of hazardous biological factors, at which an acceptable level of biological risk is ensured".

The question arises, how are the concepts of "sanitary and epidemiological well-being of the population", "epidemiological safety" and "biological safety" related?

It seems that the first term has the broadest meaning, since it assumes the absence of harmful effects on humans, not only biological, but also other factors of the environment. Biological safety suggests the protection of the population and the environment from biological factors only.

Scientific research emphasizes the importance and timeliness of the adoption of the Federal Law "On Biological Safety in the Russian Federation" (Romanovsky G.B., 2021).

Meanwhile, law enforcement is significantly complicated under the conditions of several federal laws regulating various aspects of ensuring epidemiological or biological safety and are not fully coordinated with each other. Thus, to eliminate threats to the sanitary and epidemiological well-being of the population during a pandemic, the following laws are involved: the Federal Law "On the Protection of the Population and Territories from Natural and Technogenic Emergencies", the Federal Law "On the Sanitary and Epidemiological Well-

Being of the Population" and the Federal Law "On Biological safety in the Russian Federation".

Along with federal laws in this area, there are a large number of bylaws - decrees of the President of the Russian Federation and decrees of the Government of the Russian Federation. All of this testifies to the absence of a unified coordinated approach to the issue of legal regulation of epidemiological safety.

The abovementioned regulatory legal acts are of the federal level only. Meanwhile, restrictive measures during the pandemic were introduced in the regions on the basis of decrees of senior officials of the constituent entities of the Russian Federation. In this regard, the issue of delimiting authority in the field of ensuring biological and epidemiological safety is also important.

In accordance with clause "3" of Article 72 of the Constitution of the Russian Federation, the implementation of measures to combat catastrophes, natural disasters, epidemics, and the elimination of their consequences is under the joint jurisdiction of the Russian Federation and its constituent entities. This provision assumes that when threats arise in the field of sanitary and epidemiological well-being, a complex of regulatory legal acts of the federal, regional and municipal levels is adopted (Anikin S.B., Permyakov A.I., 2020).

Having considered some theoretical aspects of legal policy in the field of ensuring epidemiological safety, let's move on to the issue of organizing measures to prevent coronavirus infection at the regional level. In this regard, it should be noted that with the tendency towards centralization in the executive power system, which is typical of the Russian model of federalism, a serious problem arose in the context of a pandemic, consisting in the concentration of almost the entire scope of authority at the federal level.

Federal Law No. 98-FZ of April 01, 2020 "On Amendments to Certain Legislative Acts of the Russian Federation on the Prevention and Elimination of Emergencies" granted the state authorities of the constituent entities of the Russian Federation the right to establish rules of conduct that are binding on citizens and organizations when introducing a high-alert mode or emergency.

In turn, the Decree of the President of the Russian Federation of April 02, 2020, No. 239 "On Measures to Ensure the Sanitary and Epidemiological Well-Being of the Population in the Territory of the Russian Federation due to the Spread of a New Coronavirus Infection (COVID-19)" unified this practice: it was ordered to the heads of the subjects of

the Russian Federation to introduce restrictive measures on the movement of citizens and the work of organizations to ensure epidemiological safety.

According to the stated problems of the presented materials, it seems interesting to analyze the restrictive measures that were introduced in connection with the spread of coronavirus infection in Siberia, namely: Irkutsk Region, Krasnoyarsk Territory, Republic of Buryatia, and Republic of Sakha (Yakutia).

Initially, let us note that taking into account the sanitary and epidemiological situation, as well as the peculiarities of the spread of coronavirus, restrictive and other measures were independently developed in the constituent entities of the Russian Federation.

Comparison of restrictive measures is proposed to start with the Irkutsk Region. An important regional legal act, in accordance with which the tasks of preventing the spread of coronavirus infection in the territory of the subject are being solved, was the Decree of the Governor of the Irkutsk Region dated March 18, 2020, No. 59-ug "On the Introduction of a High Alert Mode of Operation for the Territorial Subsystem of the Irkutsk Region of the Unified State System for the Prevention and Elimination of Emergencies". Currently, this legal act has ceased to be in force, and the Decree of the Governor of the Irkutsk Region No. 279-ug "On the Functioning of High Alert Mode for the Territorial Subsystem of the Irkutsk Region of a Unified System for the Prevention and Elimination of Emergencies" was issued on October 12, 2020. As it seems, it is necessary to focus on the following provisions of this decree with regard to restrictive measures against individuals (citizens): 1) the duty of everyone living in the Irkutsk Region, as well as those temporarily on its territory, to immediately call a doctor (and this must be done when signs of ARVI appear; 2) the use of personal respiratory protection when visiting stores, organizations whose activities have not been suspended; 3) in the event of testing for COVID-19, the obligation to notify consent or disagreement to exchange information about the testing performed between such entities as an employer, educational organization, medical organization, Rospotrebnadzor. It is noted that during testing, it is necessary to report on those persons with whom the sick citizen was in contact. It is also important that if the person who passed the test for COVID-19 received a positive test result, then such a person is obliged to notify the employer about the presence of coronavirus infection. If an infected person is studying in educational institutions on a full-time basis, then they must also notify this educational

organization; 4) persons from 65 years of age and older, as well as persons who suffer from diseases of the cardiovascular, bronchopulmonary nature, and diseases related to endocrinology are recommended to visit trade organizations in the period from 09.00 AM up to 11.00 AM.

It should be said that at the initial stage of the implementation of epidemiological safety measures in the region, there was a rule according to which citizens arriving in the Irkutsk Region from Moscow or the Republic of Sakha (Yakutia) had to fulfill the isolation requirements for a period of 14 days. In addition, there was a restriction according to which those persons who arrived in the territory of the Irkutsk Region from other constituent entities of the Russian Federation by road must have a digital pass. To date, some of the restrictions have been canceled on the territory of the Irkutsk Region, including the self-isolation, but the face-mask requirements are still in effect.

When it comes to the Krasnoyarsk Territory, it is worth noting that the main regulatory source, according to which such measures are consolidated, is the Resolution of the Government of the Krasnoyarsk Territory No. 188 dated April 01, 2020, No. 188-p "On Approval of the Procedure for Establishing and Compliance with Prescriptions and Restrictions by Citizens of the Self-Isolation During the Period of the Spread of Coronavirus Infection (2019-nCoV) in the Krasnoyarsk Territory". Thus, various restrictions and prohibitions were applied to citizens located in the specified region, which were more or less strict depending on the sanitary and epidemiological situation. But, ultimately, they consisted in the need to be at the place of their residence or stay in order to comply with the self-isolation regime. However, there were exceptions to this prescription in relation to those who went to their place of business and to purchase food, medicine, goods classified as essential, etc. Restrictions were also applied to dog walking, which is allowed within a hundred meters from the place of stay or residence. It is important that when leaving the place of their stay (residence) in emergency cases, persons must have a prepared (written) explanation with them indicating why they left their place of stay during the period of self-isolation.

Interestingly, citizens are obliged to observe the 1.5-meter social distancing, both in public places and in public transport (this restriction does not apply to those who ride in taxis). Moreover, it was established that persons under eighteen years of age outside their place of stay or residence must be accompanied by adults.

Furthermore, restrictions (prohibitions) on the territory of the Krasnoyarsk Territory include: observance of the face-mask requirements (when going out into the street, wearing masks is advisory in nature); citizens aged 65 and over must not leave their place of stay (residence).

Next, it seems relevant to study the restrictive measures introduced during the period of the spread of coronavirus infection in the Republic of Buryatia.

Restrictive measures in this subject were introduced by the Decree of the Head of the Republic of Buryatia dated March 13, 2020, No. 37 "On Additional Measures to Protect the Population and the Territory of the Republic of Buryatia From an Emergency Situation Associated with the Emergence and Spread of Infection Caused by a New Type of Coronavirus (COVID-2019)". With regard to persons who were on the territory of the Republic of Buryatia during the pandemic, the following restrictions and prohibitions were applied: 1) persons who have reached 65 years of age and older and have certain diseases (indicated in the appendix) must comply with the self-isolation regime by July 31, 2021 (with the exception of some cases); 2) it is allowed not to comply with the self-isolation regime for those who have vaccinated against coronavirus with confirmation in the corresponding certificate; 3) it is prescribed to adhere face-mask requirements; 4) the obligation for persons who come to the Republic of Buryatia to inform about their arrival, as well as to undergo PCR testing at home within three days (and this must be agreed with the relevant medical organization, payment for the test is carried out in accordance with the law); 5) those persons who arrive on the territory of the Republic of Buryatia for a work (official) need are provided with sanitary and epidemiological rules with their payment by the receiving party.

In turn, restrictions and prohibitions in the Republic of Sakha (Yakutia) were established by the Decree of the Head of the Republic of Sakha (Yakutia) dated April 27, 2020, No. 1143 "On the Approval of the Rules of Conduct That Are Mandatory for Citizens and Organizations When Introducing a High Alert Mode Due To the Threat of the Spread of a New Coronavirus Infection (COVID-19) in the Republic of Sakha (Yakutia)", as well as by the Decree of the Head of the Republic of Sakha (Yakutia) dated July 01, 2020, No. 1293 "On High Alert Mode in the Republic of Sakha (Yakutia) and Measures to Prevent the Spread of the New Coronavirus Infection (COVID-19)". Restrictions (prohibitions) were manifested in the following: 1) non-working citizens from 65 years of age and older,

as well as those with chronic diseases, weakened immunity who do not work, should self-isolate at their place of residence; 2) observance of the face-mask requirements; 3) persons who came to the territory of the subject for work must self-isolate for 14 days in the place specified by the employer.

Special attention is focused on the fact that in the event of a child moving from one place to another, i.e. if the child arrives and is in a place that is not their permanent place of residence, it is necessary to notify the local administration of such situations.

From the abovementioned examples of the organization and implementation of legal policy in the field of ensuring epidemiological safety in the constituent entities of the Russian Federation, it can be seen that almost all regions adhered to the global and all-Russian tendency to establish prohibitions and restrictions. In some regions it was possible to contain the epidemiological situation, in some it got out of the control of state bodies. Legal literacy and discipline of the population of a particular region played an important role in containing coronavirus infection.

4 CONCLUSIONS

1. The legal framework for ensuring epidemiological safety in the Russian Federation in general has been formed. The conducted research allows us to conclude that there is a sufficient number of laws and by-laws in this area both at the federal and regional levels. But at the same time, the regulatory framework is characterized by fragmentation and inconsistency, which, of course, significantly complicates the process of law enforcement.

2. It should be emphasized that it is important to ensure terminological uniformity when improving the regulatory framework of public policy during pandemic, which is currently absent.

3. Given the tendency toward centralization in the executive power system, typical of the Russian model of federalism, it is important to ensure the implementation of legal policy in the area of ensuring epidemiological safety, taking into account the specific situation in a particular constituent entity of the Russian Federation. Thus, the transfer of power to introduce restrictive and support measures to the level of the constituent entities of the Russian Federation seems to be correct and timely.

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