

Study of the Practice of Application of Administrative Sanctions to Individuals within Distribution of COVID-19 in the Case of Violation of Sanitary and Epidemiological Requirements: Validity and Legal Conflicts

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Abstract: The article studies the validity and practice of applying administrative sanctions to individuals within the spread of COVID-19 in case of violation of sanitary and epidemiological requirements. It was determined that at present administrative legislation in the field of protecting health and ensuring the epidemiological well-being of the population is being intensively developed due to the changing situation in the world and in the country regarding the spread of coronavirus infection. Amendments were made to the Code of Administrative Offenses that contributed to the restriction of social contacts and, as a result, the virus spread. However, the main problem in this context is not the adoption of legislative acts in the field of administrative and legal relations in the area under consideration regulation, but the return of their interpretation and implementation to the regions. For this reason, we consider it necessary to strengthen control over implementation of administrative and legal regulations related to protecting health and ensuring the sanitary and epidemiological well-being of the population in the regions at the federal level by analyzing the real practice of introducing restrictions, which, judging by the picture of the pandemic development, will be in our country for more than one year.

1 INTRODUCTION

As of the end of October 2021, more than 4.5 million people have died from coronavirus disease 2019 (COVID-19), causing unprecedented economic and social disruption. In Russia, the death rate from this disease amounted to more than 228 thousand people, and this figure is growing daily.

In response to the virus, at the dawn of the pandemic, most epidemiologists and policy makers agreed on the need to restrict freedom of movement, invest in personal protective equipment (PPE) and hospital resources (tests, drugs, ventilators), and increase virus tracking capacity to identify clusters of infections to contain further outbreaks (Sarychev, Arkhiptsev, 2021).


In this regard, in various countries, legislative acts were adopted or changes were made to existing regulations, according to which a number of sanctions

were introduced as part of administrative responsibility in case of non-compliance by individuals with anti-epidemiological safety measures. However, this situation, despite the good message, still had a number of hypertrophied legal manifestations, adjusted over time, but still negatively affecting the legal status of citizens.

The purpose of the paper is to consider the validity and legal conflicts of the practice of applying administrative sanctions to individuals within the spread of COVID-19 in case of violation of sanitary and epidemiological requirements.

2 STUDY METHODS AND METHODOLOGY

In the process of writing the paper, an array of references corresponding to the topic, both from

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foreign and domestic authors, was studied, the resulting material was studied through use of comparative and analytical methods.

3 STUDY RESULTS

In December 2019, coronavirus disease (COVID-19) emerged in China. Within weeks, the disease had spread far beyond China, reaching countries in all parts of the globe. In early March of 2020, most governments, including Europe, closed their borders to international travel. In addition, freedom of movement across countries is significantly limited. This is due to the decision to take immediate action to limit the spread of the COVID-19 virus. Measures taken include stopping the influx of people from abroad and limiting or eliminating the possibility of people joining together in larger clusters and social groups.

The rapid spread among religious groups was the first and most difficult problem the world had to face until the antiviral alert level turned red and the WHO officially announced the start of a new pandemic in the world.

Every country has taken some form of social distancing. Studies have shown that most of the group infections in the workplace developed in dense environments with limited space, which greatly exacerbated the transmission of aerosols. Social distancing has been recognized as one of the most important preventive measures in our country, and people have been advised to minimize contact in everyday life (Sinitsyna, V.A., 2021).

Along with the popularization of social distancing measures, legal consolidation of administrative responsibility for violation of the anti-epidemiological regime introduced in the context of the spread of coronavirus infection was carried out. The reasons for introducing changes to the legislation on administrative offenses were related to the fact that its main task is to protect the life and health of citizens, as well as to ensure the sanitary and epidemiological well-being of the population. For this reason, at a very early stage in the development of the disease, considering the sharp increase in cases and the increase in the death rate, as well as to suppress rumors about the mythical component of the coronavirus infection, certain administrative regulations and restrictions were introduced.

Administrative responsibility in the area under consideration arose due to the fact that amendments were made to the Code of Administrative Offenses in accordance with the adopted Federal Law "On

Amendments to the Code of the Russian Federation on Administrative Offenses". A number of articles of this legislative act were subject to adjustment. Let's take a closer look at the amendments introduced.

1. Art. 6.3 of the Code of Administrative Offenses of the Russian Federation. This article concerns ensuring the sanitary and epidemiological well-being of the population. As an addition to this article, two elements were introduced. According to the first element, penalties are provided if the violation of sanitary rules and hygiene standards occurs "during the period of emergency situations or when there is a threat of the spread of a disease that poses a danger to others or during the implementation of restrictive measures (quarantine) in the relevant territory" (Konev, S.I., 2020).

In the framework of this innovation the responsible persons could be recognized as persons who did not fulfill within a certain period of time the instructions of Rospotrebnadzor, which regulated the implementation of sanitary and anti-epidemic measures.

The Decree of the Government of the Russian Federation dated January 31, 2020 No. 66 "On Amendments to the List of Diseases Dangerous to Others", according to which the coronavirus infection was recognized as a dangerous disease for others.

A review on certain issues of judicial practice related to application of legislation and measures to counteract the spread of a new coronavirus infection (COVID-19) No. 1 in the Russian Federation, approved by the Presidium of the RF Armed Forces on April 21, 2020, outlined the entities that shall have been involved in liability under the sanctions of Part 2, Article 6.3 of the Code of Administrative Offenses of the Russian Federation. The circle of these persons included those who were suspected of having the disease, those who were in contact with patients with coronavirus infection. Also, the persons who evade treatment, and those who arrived in the Russian Federation from countries with an unfavorable epidemiological situation fell under the sanctions of this article.

The considered article of the Code of Administrative Offenses regulated the issues of imposing penalties in accordance with the status of the perpetrator of an administrative offense. Namely, individuals could be punished with a fine of 15 to 40 thousand rubles (Shoronov, O.V., Matveeva, K.S., 2021).

Already in the spring of 2020, due to introduction of restrictions and social distancing, as well as mandatory requirements for wearing PPE, a significant number of cases of administrative offenses

were initiated. Thus, a citizen of the Russian Federation who had a confirmed medical diagnosis of COVID-19 was subjected to an administrative penalty in the form of a fine of 15 thousand rubles for the fact that she arbitrarily left the place of residence, where she was ordered to observe quarantine.

Statistics show that in Russia for the period from April 1 to June 8, more than sixteen thousand administrative cases were initiated under Part 2 of Article 6.3 of the Code of Administrative Offenses of the Russian Federation. A significant part of them - 1/4 of all cases - fell on the Krasnodar Territory, where such anti-epidemiological measures were of a "pronounced" nature. Namely, a system of passes of various colors was introduced in this territory, according to which the inhabitants of the region could move at a certain time and in a certain direction. Violators of this access regime were detained and administrative protocols were drawn up. Wherein, "excesses at places" were also noted, when citizens who decided to visit a store located within the "allowed" 100 m from their house were fined by a patrol whose duties included preventing the free movement of citizens across the territory of settlements.

Another "excess" in this context in the Krasnodar Territory shall be considered the peculiarities of issuing passes for movement of employees of farms and temporary seasonal workers. Namely, there were cases when a farmer who planted a particular crop before winter or early spring simply could not harvest due to the lack of workers who were limited in movement due to lack of passes and could not get to the place of work. In addition, restrictions on the entry of cars into the territory of the Krasnodar Territory also made it impossible for the timely export of finished agricultural products to other regions, as a result of which farmers and large farms suffered significant losses and had to dispose of the crop.

In the article under consideration, as already indicated, such an element was introduced, according to which, administrative responsibility could be more significant. Namely, the actions or omissions of the guilty individuals in infecting a citizen, if as a result of such infection harm to his/her health or death, were punished by a fine in the amount of 150 thousand to 300 thousand rubles (Shumskikh, Yu.L., 2020).

This article also included violations of social distancing of citizens. To maintain social distance at transport facilities, as well as in the premises of shops, shopping centers and other places of mass visitation of people, special markings were applied so that people keep a distance of 1.5 m. In absence of such markings, the persons responsible for its application

shall be held responsible for non-compliance with the rules of social distance. Wherein, in some cases, if violations were detected under this clause, the regional authorities had the right to suspend the work of the guilty organization for a period of 30 to 90 days.

Also, the Code of Administrative Offenses was amended regarding Art. 13.15, which regulated administrative liability for the dissemination of knowingly false information specifically for legal entities, since the punishment for individuals has already been defined in Parts 9 and 10. This article covered the actions of the media that disseminated false and inaccurate information. The punishment under this article was designated in the amount of 1.5 to 3 million rubles, and if such information resulted in the death of a person, harm to human health or property, mass violation of public order, etc., then the amount of the fine is already ranged from 3 to 5 million rubles.

It shall also be said about the supplements made to Chapter 20 of the Code of Administrative Offenses of the Russian Federation: it was supplemented with Article 20.6.1 – failure to comply with the rules of conduct in an emergency or the threat of its occurrence. A feature of this addition was such sanctions as an administrative warning or a relatively small administrative fine: a citizen was obliged to pay to the budget from 1 to 30 thousand rubles.

However, if in this case harm was caused to the health of another citizen, then the amount of the fine may increase and range from 15 to 50 thousand rubles. Under this article, a significant number of protocols were drawn up on the commission of an administrative offense due to the lack of PPE – a protective medical mask, and in some cases – protective gloves by a citizen who is in a public place. Namely, in some cities, already at the very initial stage of the development of the pandemic, raids were carried out, during which citizens were identified who were ignoring the rules for wearing the PPE. If quite often, especially in small towns, citizens managed to avoid punishment, then the management of stores or other organizations where a violation was detected fell under these sanctions, a protocol was drawn up on the head with a fine of 100 to 300 thousand rubles (Shumskikh, Yu.L., 2020).

According to practice, since April 14, 2020, the courts of the Krasnodar Territory have considered more than 130 cases of an administrative offense under Art. 20.6.1 of the Code of Administrative Offenses of the Russian Federation. For 75 of them, the courts decided to impose an administrative fine in the amount of 1,000 to 3,000 rubles. In 45 cases, the

involved persons received a warning. Accordingly, it can be concluded that it is the judge who decides at his own discretion on the amount of the fine to be imposed.

Also, changes were made to Art. 14.4.2 of the Code of Administrative Offenses, to which part 4 was added. According to this change, pharmacy wholesalers and retailers had to comply with the maximum amount of markups on the cost of sold pharmaceuticals. Overpricing of medicines during this period was recognized by the state as unacceptable, in this regard, raids were carried out throughout the country to control the cost of vital drugs in order to ensure their availability to citizens. This factor contributed to the stabilization of prices in pharmacy organizations, which began to rise in the first weeks of the pandemic, as well as prices for PPE, which also rose in price by 10-20 times during the specified period and were not always affordable for ordinary citizens.

Therefore, the administrative measures taken were aimed at preventing the spread of the coronavirus infection and reducing the viral load in society.

4 DISCUSSION

Adoption of the above measures undoubtedly contributed to limiting the spread of the infection, which rapidly spread throughout the world. The practice of individual foreign countries that have taken various steps in the field of administrative restrictions and administrative responsibility in the field of sanitary and epidemiological welfare of the population is also interesting (Martin-Fumadó, C., Aragonès, L., Areste, M.E., Arimany-Manso, J., 2021).

Therefore, in Spain, citizens who received a temporary disability (TD) due to a disease caused by COVID-19 were considered to be carriers of the disease (CD) in accordance with the definitions established by the Royal Decree-Law 6/2020 of March 10, issued to take certain urgent measures in the field of economics and healthcare. Art. 5 of this Law states that "in exceptional cases, periods of isolation or infection by workers caused by the COVID-19 virus will be considered industrial accidents, solely for the economic compensation of temporary disability in the social security system" (Peron, A.E.R., Duarte, D.E., Simões-Gomes, L., Nery, M.B., 2021).

Subsequently, Royal Decree Law 13/2020 of April 8, 2020, in its first final regulation, modified

articles 5 of Royal Decree Law 6/2020. In addition to the general consideration of periods of isolation, infection or restriction of movement outside the municipality in the event of an exceptional situation that can be classified as an industrial accident (IA), this makes it possible to recognize as IA cases of infection of employees, if it is proved that the disease was detected exclusively during performance of production duties.

Legal scholars in Spain opposed such a law, as they believed that it could only apply to medical workers whose activities involve a long time of contact with the infected and, as a result, they are at a very high risk of becoming infected. The reason for the attempts to oppose the adoption and enactment of such a law was the opinion that, in the event of its action, employees who became infected with a coronavirus infection at the workplace could not claim compensation for damage to their health from the employer in court, which, for example, is not always complied with the requirements to ensure the necessary hygiene measures in the framework of counteracting the spread of coronavirus infection. Accordingly, if workers who have had a COVID-19 (SARS-CoV-2) infection and contracted the virus due to an IA situation believe that it was caused by a lack of safety or hygiene measures, or a lack of preventive measures (PPE), they do not have the opportunity to bring claims against the administration, since this diagnosis, in accordance with the decree-law discussed above, allows them to claim exclusively economic compensation for disability (Wright, R., 2020). In absence of the above law, if the employee proved that the cause of the coronavirus infection was the lack of security measures or antiviral protection on the part of the business owner, he/she could prove that he/she was claiming economic compensation, while this compensation could be increased depending on the severity violations from 30 % to 50 %. Responsibility for payment of compensation in this case would fall directly on the company that committed the violation, and compensation could not be covered by any insurance. Compensation could include payment of additional social security services, and criminal or civil liability of the employer could also be initiated in accordance with the degree of violations.

In our opinion, adoption of this decree-law was a necessary measure, since in the case of a mass infection, a huge number of lawsuits against employers could provoke chaos in the country, and at the same time, the interpretation of an industrial accident in this document has the character of force majeure, which, in fact, the coronavirus infection is.

The issues of controlling the movement and social distancing of those infected with coronavirus in order to reduce the spread of the disease were also addressed by many countries at the administrative and legal level (Barbieri, E., Tumour-Robina, A., Armani-Manso, H., 2020).

In response to the COVID-19 outbreak, a host of digital tools have been offered by professionals around the world to help return to business as usual once infection rates are low enough to move on to "testing and tracing". This paper has traditionally been done through manual tracing, but it can be greatly accelerated with so-called contact tracing apps that are typically downloaded on users' smartphones.

The COVID-19 virus is known to be unusual in that it is highly contagious for up to 7 days, even before symptoms appear. As a result, contacts cannot be alerted quickly enough by routine case tracking. This has sparked a global debate about how tracking applications shall be built and what security measures are needed if they are not to jeopardize the privacy of the entire population. In Asia, such apps are seen as a successful part of a strategy to suppress tracking and testing, but in Europe and elsewhere, privacy considerations are seen as vital. Lack of trust in the app will prevent people from downloading and using it. For example, in the UK, in order for an application to achieve its goal, about 80 % of the population using smartphones shall download and use it (Barbieri, E., Tumour-Robina, A., Armani-Manso, H., 2020).

The controversy surrounding contact tracing apps mostly revolves around choosing a centralized or decentralized architecture for them. Centralized systems can collect more data that could be useful for epidemiology as well as simple contact tracing, but there are questions about whether they can ever be considered anonymous enough to protect privacy. In contrast, a decentralized system provides almost complete privacy protection as the collected data remains on users' phones, but some argue that it is less useful in the long-term evolution of the pandemic.

A particular problem for the UK is that it initially opted for a centralized design. This was partly due to limitations imposed by the early lack of testing capacity: User-reported symptoms rather than confirmed test results were entered into the system. Information coming from users was used to generate contact notification cascades. Patient-reported symptoms by their nature generate a high number of false positives that can only be reduced by collecting more contextual data, and, therefore, a centralized risk assessment capability is required. The UK system has since been overhauled so that contact alerts now

only occur if there are actually positive test results (Barbieri, E., Tumour-Robina, A., Armani-Manso, H., 2020).

However, discussion of the legality of the system in the UK has to date been largely technical due to the full exploration of the broader legal, ethical and social implications of such applications. The Coronavirus (Precautions) Act comes from the fact that while the UK already has Privacy and Data Protection (DP) law, it does not currently provide adequate legal safeguards for a contact tracing app.

Privacy isn't the only issue: it ignores how the app will be used, especially given the need for high popularity. Will people carry their phones with them? Will they be forced to install the app? Which organizations (for example, government, employers, public and private business leaders) can force users to show which notifications they have received? What are the consequences for users if they refuse to show their notifications? Which groups of citizens are likely to suffer the most from discrimination? Who will control this tracking system? (10. Barbieri, E., Tumour-Robina, A., Armani-Manso, H., 2020)

To date, UK legal scholars are still inclined to protect the rights of people in an unprecedented emergency. In this regard, a bill was developed, which contained the following provisions:

1. There shall be no compulsion to own a smartphone. No one shall be punished for not having a phone (or other device), leaving home without a phone, refusing to charge their phone, turning off Bluetooth, and etc.

2. There shall be no compulsion to install or use the application. No one shall be forced to install a symptom and contact tracking app or report their status on such an app upon request (for example, to an employer, insurer, or university).

3. Personal data collected by applications must be deleted as soon as possible or no later than 28 days.

4. Certificates shall not become internal passports for anyone other than the police; there shall be no discrimination of citizens on this basis.

5. The Commissioner for Coronavirus Protection shall review the safeguards in emergency laws and an appropriate tribunal shall be appointed to deal with individual complaints.

It shall be noted that this is not just a debate about privacy and data protection, but also about human rights, where the privacy acts as a mediator in public debate; i.e. autonomy, freedom of movement, freedom of work and freedom from discrimination among others.

Clause 1 of the bill builds on the argument that those without a smartphone are often the most

disadvantaged in our society, as they are more likely to live in poverty, grow old, be disabled, or not be tech savvy. Any system that aims to improve the health of the population as a whole cannot further marginalize the disadvantaged population through accessibility restrictions, such as the requirement to own and use a smartphone.

Clause 2 of the bill represents a difficult choice for society. Many argue that employers (for example) shall have the right to take all possible measures to protect their jobs. On the other hand, given the likely high number of false positives, should error-based discrimination be allowed against employees who have good reasons for not wanting to download an app or share their status? Minorities and vulnerable groups may have legitimate concerns about providing authorities with comprehensive traceable information about their social contacts.

The experience of using a contact tracing app poses familiar challenges for anyone involved in data ethics. How to deal with discrimination? How to ensure that only the necessary data is collected and only for the specified purpose? Who is responsible for ensuring that data collection is legal and ethical, and who will protect people who feel they are being treated unfairly? In essence, what is the balance between public good and private rights, especially in an unprecedented emergency?

5 CONCLUSIONS

Currently, administrative legislation in the field of protecting health and ensuring the epidemiological well-being of the population is being intensively developed due to the changing situation in the world and in the country regarding the spread of coronavirus infection. Amendments were made to the Code of Administrative Offenses that contributed to the restriction of social contacts and, as a result, the virus spread. However, the main problem in this context is not the adoption of legislative acts in the field of administrative and legal relations in the area of regulation under consideration, but the assignment of their interpretation and implementation to the regions, where, as we see, “excesses” occur quite often in this regard. The reason for transferring the right to make decisions to the regional level is clear: the heads of regions and municipalities are at the epicenter of events and can always quickly assess the situation in order to take or not take urgent measures to reduce the spread of infection. However, such global measures as an attempt to fine a citizen by arranging a raid on him/her (such cases took place in different cities of

the Krasnodar Territory) in order to impose on him/her the obligation to pay a fine, guided by the regulations of the Code of Administrative Offenses, this contradicts not only the regulations of the rule of law, but also common sense.

For this reason, we consider it necessary to strengthen control over implementation of administrative and legal regulations related to protecting health and ensuring the sanitary and epidemiological well-being of the population in the regions at the federal level by analyzing the real practice of introducing restrictions, which, judging by the picture of the pandemic development, will be in our country for more than one year.

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