

SECTION 1. PUBLIC ADMINISTRATION UNDER CONDITIONS OF COUNTERING THE SPREAD OF THE COVID PANDEMIC-19

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APPLICATION OF ADMINISTRATIVE DISCRETION IN CONDITIONS OF COUNTERACTION THE SPREAD OF THE COVID-19 PANDEMIC

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INTRODUCTION

The threat of a COVID-19 pandemic is a challenge for the entire international community that needs to be addressed urgently. In the Ukrainian state, there is a process of reaching a consensus between the implementation of selected instruments of public administration to regulate public relations, determined by the response to the COVID-19 pandemic and ensuring fundamental human and civil rights and freedoms. Under such conditions, the lack of a clear algorithm for the use of public administration tools is absolute and leads to the fact that the most important management decisions are made on the basis of administrative discretion, in particular the implementation of executive and administrative activities in various areas of public relations freedoms of man and citizen in general.

The process of application of administrative discretion by a public administration entity in counteracting the spread of the COVID-19 pandemic should be based on its intellectual and volitional activities to determine the most correct and accurate in its legal nature option for exercising human and civil rights to receive services in the field health care regardless of financial situation¹ and ensuring respect for human rights, which provides for the possibility of any manifestations of discrimination, racism and xenophobia². Moreover, to act in this way for the subjects of public administration is an obligation imposed on them by the people and enshrined

¹ Political declaration of the high-level meeting on universal health coverage (2019). Resolution adopted by the General Assembly on 10 October 2019. URL: <https://undocs.org/en/A/RES/74/2>.

² Глобальная солидарность в борьбе с коронавирусным заболеванием 2019 года (COVID-19). Резолюция, принятая Генеральной Ассамблеей 2 апреля 2020 года. URL: http://ombudsmanspb.ru/files/00002020/COVID_19/OON_Rezol_%20COVID-19.pdf.

in law. For example, if the main tasks of the Cabinet of Ministers of Ukraine include taking measures to ensure human and civil rights and freedoms, creating favourable conditions for free and comprehensive development of the individual, the Cabinet of Ministers may perform this task through the exercise of its powers in the field of legal policy, legality, ensuring human and civil rights and freedoms. However, the list of these powers is not clearly defined (taking measures to protect the rights and freedoms, dignity, life and health of man and citizen from unlawful encroachments, protection of property and public order, fire safety, crime, prevention and combating corruption, implementation of measures to ensure the execution of court decisions by executive bodies and their heads, etc³.), and therefore the Cabinet of Ministers of Ukraine in accordance with the law and within the powers granted to it may use administrative discretion in selecting the necessary tools of public administration to regulate specific public relations with their specific composition, in the absence of a single option for the implementation of its competence. Such public relations are those formed during the counteraction to the spread of the COVID-19 pandemic.

The reformatting of the public administration system into a system of public administration, which is characterized by prompt solutions to emerging problems, such as the COVID-19 pandemic, mediates the need to study the theoretical and legal foundations of public administration on the basis of administrative discretion, as evidenced by Council of Europe recommendations⁴.

1. Theoretical and legal principles of administrative discretion

Reason is a category in administrative law that reflects the specifics of the activities of public administration. In general, the concept of discretion is defined as the choice of an alternative course of behaviour that is most acceptable in certain social relations for a certain subject of these relations. The application of administrative discretion in the activities of public administration entities is possible only if the principle of the rule of law is observed. Subjects of public administration are obliged to strictly comply with the legislation of Ukraine, to act exclusively in accordance with the formula of legal regulation «everything is prohibited, except as expressly permitted by law», which reflected in Art. 6 of the Constitution of Ukraine: «Bodies of legislative, executive and judicial

³ Про Кабінет Міністрів України: Закон України від 27.02.2014 р. № 794-VII. *Відомості Верховної Ради України*. 2014. № 13. Ст. 828.

⁴ Дотримання демократії, верховенства права та прав людини під час санітарної кризи, спричиненої COVID-19. Інформаційні документи. Рада Європи. 7 April 2020 SG/Inf(2020)11. URL: <https://www.coe.int/en/web/congress/covid-19-toolkits>.

power exercise their powers within the limits established by this Constitution and in accordance with the laws of Ukraine» and in Part 2 of Art. 19 of the Constitution of Ukraine, public authorities and local governments, their officials are obliged to act only on the basis, within the powers and in the manner prescribed by the Constitution and laws of Ukraine⁵. This provision applies to any activity of a public administration entity, regardless of whether administrative discretion has been applied. Thus, in the exercise of powers by a subject of public administration, which are not provided by law, discretion is impossible. In other cases, the application of administrative discretion will have the character of uncontrollability, which is a violation of the principles of law. The absence of legal norms regulating the use of administrative discretion can lead to arbitrary and improper use of powers by public administration entities.

There is no consensus among scholars on the understanding of administrative discretion. The term «discretion» means «to establish, discover, recognize», which in legal science reflects a certain freedom of choice, which is limited by law. In Soviet science of administrative law, the concept of «administrative discretion» was practically not used. It was mainly about the bylaws of government bodies and officials and the strengthening of the rule of law. As of now, public authorities have broad discretion. The meaning of the notion of «administrative discretion» at different stages of development of social relations is different and is sometimes quite the opposite, for example, administrative discretion is defined as a manifestation of absolute power, which is possible in the presence of civil society, and as a manifestation of public arbitrariness that justifies its actions by the needs of citizens.

The possibility and necessity of the application of administrative discretion is related to a certain level of development of law. In this context, the opinion of V.S. Nersesyants, who argued that in the concept of «reason» should pay attention to two important points. First, the discretion recognizes the normative nature of the law, and secondly, that the law can be specified not «any arbitrarily taken content, but only defined in its essence content (i.e. freedom)»⁶.

Based on the analysis of disparate doctrinal interpretations of the concept of «administrative discretion», which are proposed by domestic and foreign scholars, it is possible to distinguish the following approaches to its definition:

1) administrative discretion is a measure of freedom, the competence of an official of the state, which is expressed in the exercise of powers in

⁵ Конституція України: Закон України від 02.10.1996 р. Із змінами, внесеними Законом України від 08.12.2004 р. № 2222-IV. Дата оновлення 01.01.2020 р. URL: <http://zakon2.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>.

⁶ Нерсесянц В.С. Право и закон. Москва, 1983. С. 353.

a particular case in order to adopt its optimal solution (supporters of this concept include: A.P. Korenev⁷, V.V. Lazaryev⁸, V.O. Omelyan⁹);

2) administrative discretion is a specific type of activity, the essence of which is the ability to independently resolve a controversial legal issue on the basis of analytical, creative, intellectual work in accordance with law, based on the goals set by the legislator in specific circumstances, as well as reasonableness, honesty, justice and the foundations of morality (supporters of this concept include: O.A. Papkova¹⁰, O.M. Semenyi¹¹, O.S. Lahoda¹²);

3) administrative discretion is a choice made in the process of creative activity for the adoption of lawful decisions and actions by an authorized entity within its competence to perform the tasks (supporters of this concept include: Yu.O. Tykhomyrova¹³, Yu.N. Starylov¹⁴, A. Barak¹⁵ and a number of others).

Each of these approaches to the definition of «administrative discretion» is correct, and the difference between them is the choice of the feature that is fundamental in defining the essence of the concept. It is advisable to use a comprehensive approach to the definition of administrative discretion, which combines all the above features.

The use of administrative discretion in the activities of public administration is a manifestation of the exercise of the powers of these entities. That is, the result of the activity should be the settlement of specific social relations, the achievement of a state in which the rights and freedoms of man and citizen are respected and ensured.

Signs of administrative discretion in the activities of public administration include the following:

⁷ Корень А.П. Нормы административного права и их применение. Москва, 1978. С. 73.

⁸ Лазарев Б.М. *Компетенция органов управления* Москва: Юрид. лит., 1971. 280 с. С. 102, 143.

⁹ Омелян В.О. Сутність адміністративного розсуду в діяльності публічної адміністрації. *Адміністративне право і процес*. 2018. С. 23–33.

¹⁰ Папкина О.А. Понятие судебного усмотрения. *Журнал российского права*. 1997. № 12. С. 47–50.

¹¹ Семеній О.М. Проблема зловживання адміністративним розсудом в діяльності публічної адміністрації: аналіз та узагальнення зарубіжного досвіду. *Право і суспільство*. 2016. № 3. С. 132–136.

¹² Лагода О.С. Адміністративний розсуд та межі його застосування. *Право України*. 2006. № 12. С. 109–113.

¹³ Тихомиров Ю.О. Современное публичное право: монографический учеб. / Ю.А. Тихомиров. Москва: ЭКСМО, 2008. С. 188.

¹⁴ Стариков Ю.Н. Административное право. История. Наука. Предмет. Нормы. В 2-х частях. Ч. I. Воронеж. 1998. С. 328.

¹⁵ Барак А. Судейское усмотрение. Перевод с англ. / А. Барак. Москва: Изд-во НОРМА, 1999. С. 13.

- 1) the application only subject to the principle of the rule of law;
- 2) the application only in the absence of a single option for the implementation of the competence of public administration in relation to specific public relations and their specific composition;
- 3) the application exclusively by subjects of public administration, which are authorized to do so by law within the limits of their powers, as such subjects act in the performance of their duties and represent the public interest;
- 4) the application is carried out on the basis of intellectual, analytical, creative activity, as the subject of public administration chooses the most optimal option for using public administration tools to regulate specific public relations with a specific composition;
- 5) the application is carried out in accordance with the proper purpose of public administration, without the presence of third-party intentions, personal gain, and the influence of other factors that are contrary to the principles of public administration.

The concept of «administrative discretion in the activities of public administration» is closely related to the concept of «discretionary powers», because they reflect the same thing – the way of exercising the competence of public administration. The relationship of these concepts can be characterized by such legal categories as form and content. Administrative discretion in the activities of public administration determines the content of discretionary powers. Discretionary powers, which are a set of rights and responsibilities of public administration that allow you to determine in whole or in part one of several options for public administration is an external form of expression of administrative discretion.

There is no definition of the concept of administrative discretion in the legislation of Ukraine. The order of the Ministry of Justice of Ukraine «On approval of the Methodology of anti-corruption expertise» of June 23, 2016 recorded an attempt to interpret the concept of «discretionary powers» as a set of rights and responsibilities of public authorities and local governments, persons authorized to perform state or local government functions, providing the opportunity at its discretion to determine in whole or in part the type and content of the management decision, or the ability to choose at its discretion one of several options for management decisions provided by the normative legal act, draft normative legal act.

Discretionary powers may be enshrined in regulations, draft regulations in such ways as:

- 1) with the help of evaluation concepts, for example: «if there are good reasons, the body has the right to provide...», «in exceptional cases, a person

authorized to perform the functions of state or local government may allow...», «a decision may be made if it does not contradict public interests...», etc.;

2) by listing the types of decisions made by the body (a person authorized to perform the functions of the state or local self-government), without specifying the grounds for a decision or by partially determining such grounds;

3) by granting the right to a body (a person authorized to perform the functions of the state or local self-government) in identifying certain circumstances (occurrence of specific legal facts) to make or not make management decisions depending on its own assessment of these facts;

4) with the help of normative prescriptions that contain only certain elements of the hypothesis or disposition of the legal norm, which do not allow to make an unambiguous conclusion about the conditions of application of the normative prescription or the legal consequences of the application of such a prescription¹⁶.

The authority of the subject of public administration to apply discretion is enshrined in regulations without a direct indication to this effect. For example, in accordance with Art. 19 of the Law of Ukraine «On Citizens' Appeals», public authorities and local governments, enterprises, institutions, organizations regardless of ownership, associations of citizens, the media, their leaders and other officials within their powers are obliged to effectively, comprehensively and timely verify statements or complaints¹⁷. However, the law does not specify which powers will be exercised by these entities. The authorized subject of public administration must choose them independently, taking into account the factual circumstances related to the appeal and its existing powers, which are enshrined in law. In addition, the notion of «objective verification» is evaluative, so the authorized entity has an alternative to choosing the powers that will ensure its objectivity.

Another example is the norm of the Law of Ukraine «On Administrative Services». According to Art. 7 of this legal act, the subject of administrative services (it may be a subject of public administration) has the right to issue organizational and administrative acts on the establishment of its own requirements for the quality of administrative services (determination of the number of reception hours, maximum waiting time in queues and other parameters for assessing the quality of administrative services)¹⁸.

¹⁶ Про затвердження Методології проведення антикорупційної експертизи: наказ Міністерства юстиції України від 23 червня 2016 р. URL: <https://zakon.rada.gov.ua/laws/show/v1380323-10>.

¹⁷ Про звернення громадян: Закон України від 02.10.1996 р. Дата оновлення 01.01.2020 р. URL: <https://zakon2.rada.gov.ua/laws/show/393/96-%D0%B2%D1%80>

¹⁸ Про адміністративні послуги: Закон України від 06.09.2012 р. № 5203-VI. *Відомості Верховної Ради України*. 2013. № 32. Ст. 1705.

The exercise of this power is not obligatory for the subject of administrative services, but only a possible measure of conduct. As a result of the application of administrative discretion, the authority will be exercised or not.

In general, the application of administrative discretion is based on the totality of all forms of legal consolidation and organizational support of universally binding rules of conduct in the aggregate of their relationships, which objectify the regulations governing the exercise of public administration competence on the basis of administrative discretion.

The normative legal acts that form the basis for the application of administrative discretion include:

1) those that regulate the functioning of the subject of public administration (for example, the Laws of Ukraine «On the Cabinet of Ministers of Ukraine»¹⁹, «On central executive bodies»²⁰, «On the National Police»²¹, «On the National Bank of Ukraine»²², «On the management of state property»²³, «On local state administrations»²⁴, etc.);

2) those that regulate the implementation of administrative procedures and the adoption of administrative acts based on their results in specific legal relations (for example, the Law of Ukraine «On state registration of real rights to immovable property and their encumbrances»²⁵, «On citizens' appeals»²⁶, etc.);

3) those that regulate the legality of the application of administrative discretion (for example, the Constitution of Ukraine, in particular Article 55 and Article 124, which establishes the legal basis for judicial control over the activities of public administration²⁷, the Code of Administrative

¹⁹ Про Кабінет Міністрів України: Закон України від 27.02.2014 р. № 794-VII. *Відомості Верховної Ради України*. 2014. № 13. Ст. 222

²⁰ Про центральні органи виконавчої влади: Закон України від 17.03.2011 р. № 3166-VI. *Відомості Верховної Ради України*. 2011. № 38. Ст. 385.

²¹ Про Національну поліцію: Закон України від 2.07.2015 р. № 580-VIII. *Відомості Верховної Ради України*. 2015. № 40–41. Ст. 379.

²² Про Національний банк України: Закон України від 20.05.1999 р. № 679-XIV. *Відомості Верховної Ради України*. 1999. № 29. Ст. 238.

²³ Про управління об'єктами державної власності: Закон України від 21.09.2006 р. № 185-V. *Відомості Верховної Ради України*. 2006. № 46. Ст. 456.

²⁴ Про управління об'єктами державної власності: Закон України від 21.09.2006 р. № 185-V. *Відомості Верховної Ради України*. 2006. № 46. Ст. 456.

²⁵ Про державну реєстрацію речових прав на нерухоме майно та їх обтяжень: Постанова Кабінету Міністрів України від 25.12.2015 р. № 1127. *Офіційний вісник України*. 2016. № 2. Ст. 721.

²⁶ Про звернення громадян: Закон України від 02.10.1996 р. Дата оновлення 01.01.2020 р. URL: <https://zakon2.rada.gov.ua/laws/show/393/96-%D0%B2%D1%80>.

²⁷ Конституція України: Закон України від 02.10.1996 р. Із змінами, внесеними Законом України від 08.12.2004 р. № 2222-IV. Дата оновлення 01.01.2020 р. URL: <http://zakon2.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>.

Proceedings of Ukraine, in particular Part 2 of Art. 2, which establishes the power of administrative courts to check the decisions, actions or omissions of the subjects of power for whether they are adopted (committed) in compliance with the principles of good faith, impartiality, prudence²⁸, etc.).

Thus, administrative discretion in the activities of public administration is a way to implement the competence of public administration, which is carried out only in compliance with the rule of law and in the absence of a single option for exercising the powers of public administration in relation to specific public relations in order to ensure the appropriate level of law enforcement activities.

A separate vector of research on the application of administrative discretion in the activities of public administration is the separation of its types. Depending on the chosen criterion, administrative discretion can be classified depending on the content of the wording of the administrative law, which provides for the possibility of applying administrative discretion; depending on the subject of public administration to which the administrative discretion is applied, it is possible to single out; depending on the tools of public administration, which are used as a result of the implementation of the subject of public administration administrative discretion.

2. Manifestation of administrative discretion in terms of preventing the spread of the COVID-19 pandemic

In Ukraine, the legal provision of health care is provided by Art. 49 of the Constitution of Ukraine and is defined through such powers as: the right to health care, the right to medical care and the right to health insurance. Health care is provided by state funding of relevant socio-economic, health and health prevention programs. As for medical care, the state creates conditions for effective and accessible medical care for all citizens. Medical care is provided free of charge in state and municipal health care facilities. Also, the responsibilities of the state in the management of health include supporting the development of physical culture and sports, ensuring the sanitary and epidemiological well-being of the population²⁹.

In order to carry out its tasks, the state, represented by the authorized bodies, must take all necessary measures, including the introduction of quarantine if necessary on the basis of the application of administrative

²⁸ Кодекс адміністративного судочинства України: Закон України від 06.07.2005 р. № 2747-IV. URL: <https://zakon2.rada.gov.ua/laws/show /2747-15>.

²⁹ Конституція України: Закон України від 02.10.1996 р. Із змінами, внесеними Законом України від 08.12.2004 р. № 2222-IV. Дата оновлення 01.01.2020 р. URL: <http://zakon2.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>.

discretion. The legal regime of quarantine is a set of rules enshrined in legal norms, which determine the content of the legal regime of quarantine, the procedure for its introduction and termination, the peculiarities of public authorities and local governments, enterprises, institutions and organizations in quarantine, human rights and freedoms and the citizen, as well as the rights and legitimate interests of legal entities and liability for violation or non-compliance with the requirements and measures of the legal regime of quarantine.

The specificity of the introduction of quarantine in the state as a kind of extreme situation is that the prerequisite for its introduction is confirmed by the central executive body, which ensures the formation of state policy in the field of health the need to prevent the spread of particularly dangerous infectious diseases. The legal regime of quarantine reflects the set of established necessary preventive, anti-epidemic and other administrative measures, their executors and terms of implementation, temporary restrictions on the rights of individuals and legal entities and additional responsibilities imposed on them, the grounds and procedure for mandatory self-isolation. observatory (observations), hospitalization in temporary health care facilities (specialized hospitals)³⁰.

At the same time, it is important to note that the definition of the essence of quarantine in formalized national sources of law took place long before the practical need to apply regulations. Thus, quarantine is defined as a set of administrative and health measures used to prevent the spread of particularly dangerous infectious diseases. Accordingly, the danger of a COVID-19 pandemic was mediated by the introduction of quarantine related to a specific infectious disease. Such a course of public administration corresponds to such a condition for the exercise of discretionary powers by an administrative authority as the pursuit of a specific legitimate goal while ensuring the coherence of the application of administrative law³¹.

Executive and administrative activities in the field of ensuring a set of administrative and health measures used to prevent the spread of the COVID-19 pandemic are carried out by:

1) the highest body of executive power: the Cabinet of Ministers of Ukraine³²;

³⁰ Про захист населення від інфекційних хвороб: Закон України від 06.04.2000 р. № 1645-III. Дата оновлення: 23.05.2020. URL: <https://zakon.rada.gov.ua/laws/show/1645-14>.

³¹ Рекомендації від 11.03.1980 р. № R(80)2 Комітету Міністрів Ради Європи URL: <http://zakon.rada.gov.ua>.

³² Про Кабінет Міністрів України: Закон України від 27.02.2014 р. Дата оновлення: 20.03.2020. URL: <https://zakon.rada.gov.ua/laws/show/794-18>.

2) health care bodies of national importance, which include: the Ministry of Health of Ukraine³³, which includes 3 departments, 10 departments, 3 divisions and 5 sectors³⁴, the National Health Service of Ukraine, which is the central executive body, whose activities are directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Health, which implements state policy in the field of state financial guarantees of medical care³⁵;

3) health care bodies of local significance, which include: local state administrations within the powers provided by law³⁶, village, settlement, city councils and their executive bodies, as well as district and regional councils representing the common interests of territorial communities of villages, settlements, cities in the field of health care³⁷.

4) health care institutions (legal entities of any form of ownership and organizational and legal form or its separate subdivision, providing medical care to the population on the basis of the relevant license and professional activity of medical (pharmaceutical) workers³⁸;

5) public associations that act to preserve and restore physiological and psychological functions, optimal performance and social activity of man at the maximum biologically possible individual life expectancy in the face of the COVID-19 pandemic³⁹;

6) enterprises, institutions and organizations acting as subjects of delegated powers to counter the spread of the COVID-19 pandemic;

7) central executive bodies: the Ministry of Internal Affairs of Ukraine, the National Police and the National Guard of Ukraine as law enforcement agencies authorized to monitor compliance with

³³ Про затвердження Положення про Міністерство охорони здоров'я України: Постанова Кабінету Міністрів України від 25.03. 2015 р. № 267. Дата оновлення: 04.03.2020. URL: <https://zakon.rada.gov.ua/laws/show/267-2015-%D0%BF>.

³⁴ Офіційний сайт Міністерства охорони здоров'я України (МОЗ України) URL: <http://moz.gov.ua>.

³⁵ Положення про Національну службу здоров'я України: Постанова Кабінету Міністрів України від 27.12.2017 р. Дата оновлення 26.12.2019 р. URL: <https://zakon.rada.gov.ua/laws/show/1101-2017-%D0%BF>.

³⁶ Про місцеві державні адміністрації: Закон України від 09.04.1999 р. Дата оновлення: 02.04.2020. URL: <https://zakon.rada.gov.ua/laws/show/586-14>.

³⁷ Про місцеве самоврядування в Україні: Закон України від 21.05.1997 р. Дата оновлення: 14.05.2020. URL: <https://zakon.rada.gov.ua/laws/show/280/97-%D0%B2%D1%80>.

³⁸ Основи законодавства України про охорону здоров'я: Закон України від 19.11.1992 р. Дата оновлення 19.05.2020 р. URL: <https://zakon.rada.gov.ua/laws/show/2801-12>.

³⁹ Про забезпечення участі громадськості у формуванні та реалізації державної політики: Постанова Кабінету Міністрів України від 3 листопада 2010 р. № 996. Дата оновлення: 07.15.2019. URL:.

quarantine legislation related to countering the spread of the COVID-19 pandemic⁴⁰.

The danger in the form of the COVID-19 pandemic has made significant adjustments to the regulatory framework for quarantine. Moreover, the existing institutional and legal gaps require the development and application of reformatted public administration tools. As of now, the introduction of quarantine is marked by the adoption of the relevant decision by the Cabinet of Ministers of Ukraine of March 11, 2020⁴¹. Among the administrative measures that have been introduced to prevent the spread of the COVID-19 pandemic are the following: a ban on visiting educational institutions by its recipients, a ban on holding mass events involving more than 10 people; prohibition of work of business entities, which provides for the reception of visitors (these include: catering establishments, shopping and entertainment centers, other entertainment establishments, fitness centers, cultural institutions, establishments of trade and consumer services), except in certain cases; prohibition of transportation in suburban, long-distance, intra-regional and inter-regional communication within the established limits; ban on transportation of passengers by subways and rail transport; introduction of an electronic service for monitoring compliance with self-isolation and / or observation, etc.

Among the health measures implemented to prevent the spread of the COVID-19 pandemic, quarantine measures that are not related to security and law enforcement measures should be singled out⁴², namely: the establishment of mandatory and periodic preventive medical examinations of certain professions, industries and organizations⁴³; the obligation to observe and self-isolate persons who fall under the criteria set out in the quarantine decision; commitment to mandatory testing for COVID-19 in accordance with the standards of the Ministry of Health of patients receiving medical care in connection with the

⁴⁰ Про встановлення карантину з метою запобігання поширенню на території України гострої респіраторної хвороби COVID-19, спричиненої коронавірусом SARS-CoV-2, та етапів послаблення протиепідемічних заходів: Постанова Кабінету Міністрів України від 20.05.2020 р. № 392. URL: <https://zakon.rada.gov.ua/laws/show/392-2020-%D0%BF>.

⁴¹ Про запобігання поширенню на території України гострої респіраторної хвороби COVID-19, спричиненої коронавірусом SARS-CoV-2: Постанова Кабінету Міністрів України від 11.03.2020 р. № 211. URL: <https://zakon.rada.gov.ua/laws/show/211-2020-%D0%BF>.

⁴² Международные медико-санитарные правила: Правила ВООЗ від 23.05.2005 р. URL: https://zakon.rada.gov.ua/laws/show/897_007.

⁴³ Про забезпечення санітарного та епідемічного благополуччя населення: Закон України від 24.02.1994 р. № 4004-XII. URL: <https://zakon.rada.gov.ua/laws/show/4004-12>.

planned hospitalization activities⁴⁴ approval of clinical routes of patients at all levels of medical care; establishing special rules for medical examination and treatment of persons suspected of having COVID-19⁴⁵, etc.

Each country, including the Ukrainian state, should implement a comprehensive set of measures appropriate to its capabilities and situation in order to slow down virus transmission and reduce COVID-19-related mortality, with the ultimate goal of achieving and/or maintaining a stable level of virus transmission or absence of new cases of infection. Based on model legislation⁴⁶, the strategy at the national level should reflect a comparison of measures to reduce direct mortality associated with COVID-19, indirect mortality associated with health system congestion and disruption of other priority medical and social services, and minimization of dangerous and long-term negative consequences for health and well-being due to the socio-economic effect of certain retaliatory measures.

Special attention should be paid to the challenges related to the problems of ensuring normal mental health, which are mediated by the implementation of quarantine measures⁴⁷. The lack of consideration of global problems related to the mental health of the population leads to the fragmentation of the implementation of national public administration in this area. It is considered expedient to establish the Mental Health Support Service at the Ministry of Health of Ukraine, as a central executive body, whose activities are directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Health, which implements state policy in the field of mental health. public health.

Adaptation to the conditions of counteraction to the COVID-19 pandemic has significantly affected the alternative choice of forms of internal organization of public administration entities, first of all, the use of tools and the implementation of administrative procedures. As a result, the procedure has changed, including entering the civil service, electronic declaration, administrative services, and so on.

⁴⁴ Про встановлення карантину з метою запобігання поширенню на території України гострої респіраторної хвороби COVID-19, спричиненої коронавірусом SARS-CoV-2, та етапів послаблення протиепідемічних заходів: Постанова Кабінету Міністрів України від 20.05.2020 р. № 392. URL: <https://zakon.rada.gov.ua/laws/show/392-2020-%D0%BF>.

⁴⁵ Організація надання медичної допомоги хворим на коронавірусну хворобу (COVID-19): Наказ Міністерства охорони здоров'я України від 28.03.2020 р. № 722. URL: <https://zakon.rada.gov.ua/rada/show/v0722282-20#n65>.

⁴⁶ Обновленная стратегия борьбы с COVID-19. ВООЗ, 2020. URL: https://www.who.int/docs/default-source/coronaviruse/covid19-strategy-update-2020-ru.pdf?sfvrsn=29da3ba0_19.

⁴⁷ Официальный сайт Всемирной организации здравоохранения (ВООЗ): URL: <https://www.who.int/home>.

The change in the procedure for entering state service positions was a suspension of the provisions of the Laws of Ukraine «On State Service» and «On Central Executive Bodies» in terms of competitions for civil service positions and appointment to civil service positions based on the results of competitions and cancellation of competitions on the issues of the higher corps of the state service or the competition commission, no candidates have been proposed to determine the winner by the subject of appointment or the head of the state service and the competition, the results of which have not been made public⁴⁸. Due to this, the right of access to the civil service of persons who participated in such competitions was restricted. Instead, a new mechanism for selection for vacant civil service positions for the period of quarantine established by the Cabinet of Ministers of Ukraine to prevent the spread of acute respiratory disease COVID-19 caused by coronavirus SARS-CoV-2, and within 30 days from the date of cancellation quarantine⁴⁹.

This temporary mechanism for selecting vacant civil service positions for the quarantine period provides for two options: the first is to complete competitions in which the Senior State Service Commission or the Competition Commission proposes candidates to determine the winner – by interviewing candidates, including h remotely by videoconference, subject to technical feasibility and determination of the winner of the competition, the second – appointment to the position of state service by concluding a contract, the term of which is set for the quarantine period and until the day of determining the subject of appointment or head of state service in accordance with the law. And in accordance with the terms of the Standard contract for state service for the period of quarantine, established to prevent the spread of acute respiratory disease COVID-19 caused by coronavirus SARS-CoV-2 in Ukraine, the maximum period of a person in this state service position is not more four months after the abolition of quarantine established by the Cabinet of Ministers of Ukraine.

The main changes in the electronic declaration procedure are the postponement of the declaration by a declaring entity of a person authorized to perform state or local government functions until June 1 (as a general rule – by April 1 of the year) and release from liability for late submission

⁴⁸ Про внесення змін до Закону України «Про Державний бюджет України на 2020 рік»: Закон України від 13.04.2020 № 553-IX. Дата оновлення: 13.04.2020 р. URL: <https://zakon.rada.gov.ua/laws/show/553-20>.

⁴⁹ Деякі питання призначення на посади державної служби на період дії карантину, установленого з метою запобігання поширенню на території України гострої респіраторної хвороби COVID-19, спричиненої коронавірусом SARS-CoV-2: Постанова Кабінету Міністрів України від 22.04.2020 № 290. Дата оновлення: 22.04.2020 р. URL: <https://zakon.rada.gov.ua/laws/show/290-2020-%D0%BF>.

of a declaration by a person authorized to execute functions of the state or local self-government or notification of significant changes in property status during the period of quarantine and restrictive measures⁵⁰.

With the establishment of a quarantine regime by the Cabinet of Ministers of Ukraine, in order to prevent the spread of coronavirus disease, the number of administrative services provided through administrative service centres was limited to 19 administrative services. For comparison, it should be noted that the number of administrative services that are generally provided through the centre of administrative services is 136⁵¹. In this case, on the basis of agreed decisions with the subjects of administrative services through the centre of administrative services may provide other administrative services⁵². It is also important to note that the period of quarantine or restrictive measures related to the spread of coronavirus disease (COVID-19) has been suspended⁵³.

At the same time, it should be noted the rather rapid development of electronic administrative services: during the quarantine regime, the provision of electronic services was introduced or significantly improved, for example: acquisition of unemployment status and registration of unemployment benefits⁵⁴; registration of sick leaves; submission of documents for enrollment in educational institutions⁵⁵, etc.

CONCLUSIONS

In the context of counteracting the COVID-19 pandemic, the administrative and legal mechanisms of the quarantine regime were implemented in practice, which became possible due to the lack of a clear procedure for

⁵⁰ Про запобігання корупції: Закон України від 14.10.2014 № 1700-VII. Дата оновлення: 19.04.2020. URL: <https://zakon.rada.gov.ua/laws/show/1700-18>.

⁵¹ Деякі питання надання адміністративних послуг органів виконавчої влади через центри надання адміністративних послуг: розпорядження Кабінету Міністрів України від 16.05.2014 № 523-р. Дата оновлення: 29.08.2019 р. URL: <https://zakon.rada.gov.ua/laws/show/523-2014-%D1%80>.

⁵² Про адміністративні послуги: Закон України від 06.09.2012 № 5203-VI. Дата оновлення: 19.04.2020 р. URL: [show/5203-17](https://zakon.rada.gov.ua/laws/show/5203-17).

⁵³ Про внесення змін до деяких законодавчих актів України, спрямованих на запобігання виникненню і поширенню коронавірусної хвороби (COVID-19): Закон України від 17.03.2020 № 530-IX. Дата оновлення: 18.04.2020 р. URL: <https://zakon.rada.gov.ua/laws/show/530-20>.

⁵⁴ Про реалізацію експериментального проекту щодо застосування відображення в електронному вигляді інформації, що міститься у паспорті громадянина України у формі картки, та відображення в електронному вигляді інформації, що міститься у паспорті громадянина України для виїзду за кордон: постанова Кабінету Міністрів України від 15.04.2020 № 278. Дата оновлення: 15.04.2020 р. URL: <https://zakon.rada.gov.ua/laws/show/278-2020-%D0%BF>.

⁵⁵ Про повну загальну середню освіту: Закон України від 16.01.2020 № 463-IX. Дата оновлення: 16.01.2020 р. URL: [laws/show/463-20](https://zakon.rada.gov.ua/laws/show/463-20).

the subject of public administration. In the context of the application of administrative discretion by a subject of public administration, the principles of its activity and the principles of law in general acquire special meaning. In exercising its administrative discretion, the public administration entity must strictly adhere to the rule of law, including: legality, legal certainty, prohibition of arbitrariness, access to an independent and impartial court, respect for human rights, non-discrimination and equality before the law; principles of good governance, etc.

It seems necessary to implement measures to develop a strategy to combat the spread of the COVID-19 pandemic; creation of subjects of public administration, the competence of which will include ensuring the state policy in the field of ensuring the proper condition and maintaining the mental health of the population; implementation of the concept of electronic justice (electronic court) as the only possible mechanism to ensure effective protection of the rights, freedoms and interests of man and citizen in the face of the COVID-19 pandemic.

SUMMARY

The article is devoted to the study of theoretical and legal principles of administrative discretion in counteracting the spread of the COVID pandemic – 19. It is established that administrative discretion in public administration is a way to implement the competence of public administration, which is carried out only in the rule of law, the implementation of the powers of public administration entities in relation to specific public relations and their specific composition in order to ensure the appropriate level of law enforcement activities.

Emphasis is placed on the fact that the danger in the form of the COVID-19 pandemic was mediated by the introduction of quarantine related to a specific infectious disease, while the course of public administration meets the condition of exercising discretionary powers by an administrative authority – the pursuit of a specific legitimate goal while ensuring consistency in the application of administrative law. The basic tools of public administration, which were introduced to prevent the spread of the COVID-19 pandemic, are analyzed.

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