colloquium-journal

ISSN 2520-6990

Międzynarodowe czasopismo naukowe

Jurisprudence
Historical sciences
Public administration
Physical education and sports

№17(104) 2021
Część 4

colloquium-journal

ISSN 2520-6990

ISSN 2520-2480

Colloquium-journal №17 (104), 2021

Część 4

(Warszawa, Polska)

«Colloquium-journal»
Wydawca «Interdruk» Poland, Warszawa
Annopol 4, 03-236
E-mail: info@colloquium-journal.org
http://www.colloquium-journal.org/

CONTENTS

PUBLIC ADMINISTRATION

HISTORICAL SCIENCES

PHYSICAL EDUCATION AND SPORTS

JURISPRUDENCE

JURISPRUDENCE

УДК 342.922

Baboi Anna
senior lecturer at the Department of Law,
Faculty of Management and Law
Vinnytsia National Agrarian University
DOI: 10.24412/2520-6990-2021-17104-33-42

RESPONSIBILITY FOR VIOLATION OF QUARANTINE NORMS IN UKRAINE

Abstract.
The article defines the composition of the administrative offense "Violation of the rules on quarantine of people". The procedure for bringing to administrative responsibility for violation of quarantine requirements has been researched. It is determined what problems arise in the process of bringing people to administrative responsibility for violating the requirements of quarantine, by analyzing the case law on violations of the rules on quarantine. The procedure for appealing the decision to bring to administrative responsibility for violation of quarantine requirements has been studied.

Keywords: *quarantine, covid-19, violation of quarantine, responsibility, quarantine norms.*

Formulation of the problem. Life itself brings new topical issues that require legal regulation and the formation of scientific and theoretical basis for their argumentation. One of such factors was the coronavirus and its spread around the world and in Ukraine. In the process of counteracting such a biological threat, an important component of protection and counteraction is the search for forms, methods that would ensure positive results - reducing morbidity and mortality, creating an effective antiviral agent capable of neutralizing coronavirus infection, as well as effective means of legal influence on public relations, normalization of its.

In the context of the spread in Ukraine of the acute respiratory disease COVID-19 caused by the SARS-CoV-2 coronavirus, the state was forced to take various kinds of measures aimed at neutralizing this disease, eliminating the causes and conditions of its spread. Various public authorities are charged with the responsibility to counteract the spread of coronavirus disease (COVID-19) and protect all life systems of the country from the negative consequences of the pandemic and new biological threats. Therefore, the issue of administrative responsibility for violating quarantine requirements, when the whole world is in quarantine, is especially relevant.

Analysis of recent research. The peculiarities of the response of specialized services and the conduct of emergency rescue operations have become the subject of scientific research by V. I. Mazurenko, M. A. Sambor and A. D. Gudovich, namely, the legal foundations of police tactics in emergency situations [1]. However, the issue of the response of the bodies (divisions) of the National Police in violation of the quarantine of people remains outside the field of vision of researchers, although the situation that has developed in the world and in Ukraine requires close attention to solving this issue, scientific and theoretical justification to ensure the unity and unambiguity of law enforcement by authorized persons.

Presentation of the main material. The new norms of restrictive measures adopted by the Resolution № 211 "On prevention of the spread of COVID-19 acute respiratory disease caused by the SARS-CoV-2 coronavirus in Ukraine" have raised a number of questions among Ukrainians.

The Code of Ukraine on Administrative Offenses [2] (hereinafter - CUAO) The Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Aimed at Preventing the Emergence and Spread of Coronavirus Disease (COVID-19)" [3], the Verkhovna Rada of Ukraine was supplemented by Article 44^3 "violation of the rules of quarantine of people".

Based on the rules of Art. 8 of the Law of Ukraine "On the National Police", Part 2 of Art. 7 of the Code of Administrative Offenses, to exercise their powers solely on the basis, within the powers and in the manner prescribed by the Constitution and laws of Ukraine, the police need knowledge of the essence of an administrative offense under Art. 44^3 of the Code of Administrative Offenses, which cannot be achieved without clarifying the composition of this offense.

Composition is a description of an act in law. A description of what has not yet been done, but only of the foreseeable or possible action. For such a description, only legally significant features are used, which characterize the act as an offense [4, p. 43]. The composition of an administrative offense is a set of the most common, typical features of individual administrative offenses, necessary and sufficient to bring the offender to administrative responsibility.

The composition of an administrative offense consists of the following elements: 1) the subject of the administrative offense; 2) the object of the administrative offense; 3) the objective side of the administrative offense; 4) the subjective side of the administrative offense [5, p. 40].

The need to combat coronavirus infection forces to use all available means, including measures of state coercion, during the application of which it is important to correctly identify the object of the offense, which will guarantee legality in administrative proceedings, as well as maintaining the rule of law. social relations governed by positive law. According to the degree of

generalization, the object is divided into general, generic, direct.

The general object should be considered the whole set of significant public relations, which are protected by law, including administrative. Social relations that define the content of a common object cannot be described as permanent, and therefore it is important to keep in mind that the common object is characterized by changes due to the development of society, its progress. Thus, fundamentally new legal relations arise, which, in turn, may need protection by the state. The whole set of public relations, which constitute a common object of an administrative offense, is enshrined in Art. 9 CUAO. It includes: public order, property, rights and freedoms of citizens, the established order of management.

To understand the generic object, the groups of offenses and the criteria by which they are combined, the public or social values that are encroached upon, play a role. Most often, groups of generic objects coincide with the sections of the codes contained in special parts [6, p. 136]. The practical significance of the general object of administrative misconduct is manifested not only in the course of qualification, but also in the introduction of new administrative-tort rules. Establishing legal responsibility for a certain act, the legislator must first determine what area of public relations it encroaches on and, accordingly, what type of responsibility (administrative, criminal, civil, disciplinary, etc.) it should entail [7, p. 16]. Thus, the general object of an administrative offense, the responsibility for which is provided by Art. 44^3 CUAO, there are rights and freedoms of citizens, property, the constitutional order of Ukraine, the rights and lawful interests of legal entities, the established law and order, legality, crime prevention, public order, the established order of management which is result of understanding of tasks of the administrative tort legislation as a whole. public relations, which are under the protection of prohibitive norms of the Code of Administrative Offenses.

It is obvious that the generic object of an administrative offense, the responsibility for the commission of which is provided for by Art. 44^3 CUAO, are public relations in the field of occupational safety and health of the population, because it was in the head of the KAP with this name that the legislator placed in. 44^3 CUAO. Such an object of an administrative offense, the responsibility for the commission of which is provided for by Art. 44^3 CUAO, is precisely healthcare - a system of measures carried out by public authorities and local authorities, their officials, healthcare institutions, individual entrepreneurs who are registered in the manner prescribed by law and received a license to carry out economic activities in medical practice, medical and pharmaceutical workers, public associations and citizens in order to preserve and restore physiological and psychological functions, optimal working capacity and social activity of a person with the maximum biologically possible individual life expectancy (paragraph 9, part 1 of article 3 of the Law of Ukraine "Fundamentals of Ukrainian legislation on health care" [8]).

According to scientists, the allocation of a specific object is a necessity, since it is precisely such a system of objects that delimits public relations in detail and, as a result, allows the law enforcement officer to better carry out the process of qualifying administrative offenses and effectively impose administrative penalties on guilty persons [9, p. 82].

Understanding that the event referred to in the appeal to the National Police, related to ensuring the preservation of public health, allows you to correctly determine the complex of administrative offenses that can be committed in public relations, combined with the specified object. We are convinced that the direct object of the offense under Art. 44^3 CUAO is precisely public relations to protect the population from infectious diseases, to prevent the emergence and spread of such infectious human diseases, localize and eliminate their outbreaks and epidemics associated with violations of the rules of quarantine of people, sanitary and hygienic, sanitary and anti-epidemic rules and regulations.

The objective side of the offense is an external manifestation of a socially dangerous encroachment on an object that is protected by administrative and legal sanctions. In accordance with this, the objective side of the composition of an administrative offense is formed by signs that characterize the external manifestations of the offense. That is, it is a system of signs provided by the norm of administrative law that characterize the external aspect of the offense.

It is the objective side that is reflected in the norms of the articles of the Special Part of the Code of Administrative Offenses, in particular in Article 44^3 of the Code of Administrative Offenses, and represents 1) violation of the rules of quarantine of people, 2) violation of sanitary and hygienic rules and norms, 3) violation of sanitary and anti-epidemic rules and norms. These actions can be performed in the form of an action - active behavior, when the subject performs actions directly prohibited by law, and inaction of the subject - passive behavior caused by the failure of the subject to fulfill the obligations established by law and determined in decisions of local governments. An obligatory element of the objective side is a reference to the fact that these norms and rules should be contained in the norms:

1) the Law of Ukraine "On protection of the population from infectious diseases" [10];

2) other acts of legislation;

3) decisions of local government bodies on the fight against infectious diseases.

So, the Law of Ukraine "On Protection of the Population from Infectious Diseases" is a completely definite normative legal act, which should define the relevant norms and rules related to the establishment of quarantine. Other acts of legislation include the laws of Ukraine, the current international treaties of Ukraine, the consent to be bound by which was provided by the Verkhovna Rada of Ukraine, as well as resolutions of the Verkhovna Rada of Ukraine, decrees of the President of Ukraine, decrees and resolutions of the Cabinet of Ministers of Ukraine adopted within their powers and in accordance with the Constitution Of Ukraine and the laws of Ukraine. Separately, decisions of local self-

government bodies on the fight against infectious diseases are determined. The adoption of such decisions is in accordance with the norms provided for in paragraph 2 of part 3 of Art. 43 of the Law of Ukraine "On Local Self-Government in Ukraine" [11], which notes that only at plenary meetings of regional councils such issues of adoption, within the limits determined by laws, decisions on combating epidemics, which provide for their violation, are resolved administratively. According to subparagraph 6 of paragraph "B" of Art. 33 of the Law of Ukraine "On Local Self-Government in Ukraine", the jurisdiction of the executive bodies of village, settlement, city councils has delegated powers to take the necessary measures to eliminate the consequences of emergencies in accordance with the law, inform the population about them, involve in these works in the manner prescribed by law enterprises, institutions and organizations, as well as the population. Subparagraph 2 of clause "B" of Part 1 of Art. 38 of the Law of Ukraine "On Local Self-Government in Ukraine" refers to the jurisdiction of the executive bodies of village, settlement, city councils delegated powers to take in emergency situations the necessary measures in accordance with the law to ensure state and public order, the life of enterprises, institutions and organizations, rescue life of people, protection of their health, preservation of material values.

Summing up the analysis, we note that the objective side of the administrative offense under Art. 44^3 CUAO, the following remains: 1) violation of the rules of quarantine of people, 2) violation of sanitary and hygienic rules and norms, 3) violation of sanitary and antiepidemic rules and norms, characterized by the referential nature of their presentation, demanding to indicate those positive obligations established by resolutions of the Cabinet of Ministers of Ukraine regarding the prohibitions: 1) visiting educational institutions by its applicants; 2) holding mass events; 3) the work of business entities related to the reception of visitors; 4) regular and irregular transportation of passengers by road in suburban, intercity intraregional and interregional traffic (except for transportation by cars) 5) transportation of metro passengers; 6) carriage of passengers by rail; 7) being in public places without wearing personal protective equipment, in particular a respirator or protective mask; 8) unauthorized leave places of observation (isolation) 9) stay on the streets without identity documents, proof of citizenship or its special status; 10) visiting institutions and institutions providing palliative care, social protection; 11) visiting points of temporary stay of foreigners and stateless persons illegally staying in Ukraine and the like. The listed actions are not absolutely definite, but can be supplemented or reduced, since the latter are taken by the aforementioned subjects - state authorities and local self-government bodies.

The norm of Art. 12 of the Code of Administrative Offenses defines the general subject of administrative responsibility, namely, it is noted that persons who have reached the age of sixteen by the time of the commission of an administrative offense are subject to administrative responsibility. At the same time, in Art. 14 of the Code of Administrative Offenses contains a rule that determines that officials are subject to administrative responsibility for administrative offenses related to non-compliance with established rules in the field of protection of management order, state and public order, nature, public health and other rules, the enforcement of which is part of their official duties. For violation of sanitary norms, on a general basis, servicemen and other persons subject to disciplinary regulations are subject to administrative responsibility for committing administrative offenses (Article 15 of the Code of Administrative Offenses).

A systematic approach to the analysis of the content of Articles 12-16 of the Code of Administrative Offenses and Art. 44^3 CUAO note that the subject of administrative responsibility for committing administrative offenses, responsibility for which is provided for by Art. 44^3 CUAO, are: 1) a common subject - a person who has reached the moment of committing an administrative offense at the age of sixteen; 2) a special entity - business entities; officials endowed with appropriate organizational, administrative and managerial powers.

The fourth element - the subjective side of an administrative offense indicates the mental state of a person at the time of the commission of an administrative offense. Its content is one of the forms of guilt (intent or negligence) of the subject of the unlawful act, it is a prerequisite for bringing him to administrative responsibility. The subjective side is several components, which include the guilt of the offender, as well as the purpose and motive of his activities. A decisive place in this is occupied by guilt as the most important subjective basis, without which legal responsibility cannot take place [12, p. 26]. Guilt is the main and mandatory sign of the subjective side of an administrative offense. This is the mental attitude of a person to the socially harmful impact he has made and its consequences, which is expressed in the form of intent or negligence [13, p. 12]. In accordance with the provisions of Art. 10, 11 of the Code of Administrative Offenses , an administrative offense can be committed intentionally if the person who committed it was aware of the unlawful nature of his action or inaction, foresaw its harmful consequences and wished them or deliberately allowed these consequences to occur or through negligence, if the person who committed it foresaw the possibility of the onset of harmful consequences of their action or inaction, but frivolously counted on their prevention or did not foresee the possibility of such consequences, although it should and could have foreseen them.

Thus, we argue that an administrative offense under Article 44^3 CUAO can be committed both intentionally and through negligence.

For violation of the rules on quarantine of people CUAO provides for such an administrative penalty as a fine. Fine - the most common type of administrative penalty of a property nature. It is imposed on offenders in administrative or judicial proceedings in cases and within the limits provided by acts of higher bodies of state power and administration. The amount of the fine is determined mainly in relation to the officially established amount of the non-taxable minimum income of citizens or, in some cases in a multiple amount to the cost of travel or goods. As for officials, in contrast to

citizens, the current legislation sets higher fines. In administrative proceedings, the fine is used only as a monetary penalty, although the history of administrative and penal practice in Ukraine is known and its other forms, such as a natural fine (grain, potatoes) in rural areas. Penalty in administrative-jurisdictional practice is the dominant form of administrative liability, as it is provided as the only or alternative measure of recovery for most administrative offenses contained in the Special Part of the Code of Administrative Offenses.We offer to get acquainted with the case law to find out in which cases and to what extent the court imposes a fine on persons guilty of violating the rules of quarantine.

1. The person was found guilty of an offense under Art. 44^3 of the Code of Administrative Offenses , without terminating the work of the institution and the reception of visitors for the sale of goods that do not belong to the means of hygiene. A fine of UAH 17,000 was imposed on the person. Resolution of the Cabinet of Ministers № 211 [14] prohibits trade activities during quarantine, which involves the reception of visitors, any other goods not listed in this list [15].

2. The person was found guilty of committing an administrative offense under Art. 44-3 of the Code of Administrative Offenses and imposed a fine in favor of the state in the amount of 34 thousand UAH. The person sold food and retail alcoholic beverages in the cafeteria, despite the ban [16].

3. The court decided to find the person guilty under Art. 44^3 of the Code of Administrative Offenses and imposed on her an administrative penalty in the form of a fine of one thousand non-taxable minimum incomes, amounting to 17 thousand UAH. The violator was engaged in retail trade of vegetables and fruits on the street [17].

4. The person did not stop the work of the institution, selling hardware. The court decided to find her guilty of committing an administrative offense under Art. 44^3 of the Code of Administrative Offenses and impose an administrative penalty in the form of a fine of 34 thousand UAH [18].

5. The person sold food out of hand, for which the court found him guilty of committing an administrative offense under Art. 44^3 of the Code of Administrative Offenses , and imposed a fine on her in the amount of 17 thousand UAH. [19].

The protocol on an administrative offense is a procedurally document on the commission of an act duly executed by an authorized person, which contains signs of an offense provided by the Code of Administrative Offenses.

Authorized officials are persons who have the right to draw up reports on administrative offenses for violation of quarantine:

• law enforcement agencies (National Police);

• health authorities;

• bodies of the state sanitary-epidemiological service;

• officials authorized to do so by executive committees (and in settlements where no executive committees have been established by executive bodies exercising their powers) of village, settlement, and city councils.

The person who draws up the protocol is obliged in accordance with Art. 1 st. 256 КУпАП enter the following information:

• date and place of its compilation, position, surname, name, patronymic of the person who drew up the protocol;

• information about the person who is brought to administrative responsibility (in case of its detection);

• place, time of commission and essence of the administrative offense;

• normative act, which provides for liability for this offense;

• names, addresses of witnesses and victims, if any; explanation of the person who is brought to administrative responsibility;

• other information necessary to resolve the case. If the offense caused material damage, this is also noted in the minutes.

The protocol is signed by the person who drew it up and the person who is brought to administrative responsibility; in the presence of witnesses and victims, the protocol may also be signed by these persons.

In case of refusal of the person who is brought to administrative responsibility to sign the protocol, a record is made in it. The person who is brought to administrative responsibility has the right to submit explanations and remarks on the content of the protocol, which are attached to the protocol, as well as to state the reasons for his refusal to sign it.

When drawing up the protocol, the person who is brought to administrative responsibility shall be explained his / her rights and obligations provided for in Article 268 of the Code of Administrative Offenses, which shall be noted in the protocol.

When drawing up a report for violation of quarantine, it is necessary to indicate the essence of the violation (object, subject, objective and subjective side), ie who committed, what actions the person committed, their qualifying features, the presence of intent.

The official's obligation to provide this information correlates with the person's right to know what he or she is accused of as part of the constitutional right of the person to be held liable for protection and legal assistance.

The protocol is signed by the person who drew it up and the person who is brought to administrative responsibility; in the presence of witnesses and victims, the protocol may also be signed by these persons.

In case of refusal of the person who is brought to administrative responsibility to sign the protocol, a record is made in it. The person who is brought to administrative responsibility has the right to submit explanations and remarks on the content of the protocol, which are attached to the protocol, as well as to state the reasons for his refusal to sign it. The protocol is drawn up in two copies, one of which is handed over to the person who is brought to administrative responsibility against a receipt.

In accordance with paragraph 7 of the Instructions for registration of materials on administrative offenses

in the police, approved by the order of the Ministry of Internal Affairs of Ukraine 06.11.2015 №1376, it is not allowed to cross out or correct information entered in the protocol on administrative offenses, as well as making additional entries after the protocol on an administrative offense signed by the person in respect of whom it was drawn up [20].

Thus, improper execution of the protocol on an administrative offense in the future may lead to the fact that the court will close the proceedings in connection with the expiration of the administrative penalty under Art. 43-3 of the Code of Administrative Offenses or the proceedings will be subject to closure with the release of the person from administrative liability.

Obtaining a report on an administrative offense does not entail the automatic imposition of a fine and the obligation to pay it. After the report is drawn up, it will be sent to the court, which will decide whether there has been a violation of the rules of quarantine of people and whether there are grounds for imposing a fine on the person for such violation.

As a result of consideration of cases of administrative offenses in accordance with Art. 443 of the Code of Administrative Offenses, judicial practice began to take shape. However, it should be borne in mind that the rules that established the quarantine rules in the period from April to December 2020 changed - from "strict" quarantine (introduction of a wide range of restrictions) to adaptive (mitigation of restrictive measures). So, if in April 2020 "movement by a group of more than two people" was qualified as an administrative offense, then in May - June 2020 such an act was no longer a violation due to changes in legislation.

The current case law on the consideration of administrative protocols drawn up for committing an administrative offense during the quarantine under Article 44-3 of the Code of Administrative Offenses, indicates that courts, as a rule, refuse to prosecute, close cases or release from liability in connection with the insignificance of the committed administrative offense.

As of November 17, 2020, 41,916 cases were considered, of which fines for violations of quarantine legislation were imposed in 3,235 cases.

So, the percentage of cases in which the court confirmed the legality of the fine is about 8%. This indicator is connected both with incorrect drawing up of protocols and with workload of courts which do not have an objective possibility to consider business in due time.

Article 44-3 of the ALCO is a reference norm. This means that specific rules of conduct for which liability is established are contained in other regulations. If at registration of the protocol such norm is not specified at all, it is difficult enough to establish what exactly the person violated. This method of constructing a disposition in this norm has been repeatedly criticized by scientists. S.S. Kovaleva rightly draws attention to the fact that sanitary and hygienic, sanitary and anti-epidemic rules and regulations, the violation of which is noted in Art. 44-3 of the Code of Administrative Offenses, are absent in the text of the Law "On protection of the population from infectious diseases". These rules and norms are normative legal acts (orders, instructions, rules, regulations, etc.) of the central executive body that ensures the formation of state policy in the field of health care, the requirements of which are aimed at preventing the occurrence and spread of infectious diseases. The multiplicity and dispersion of these norms in numerous legal acts, together with the need for special knowledge to interpret their content has led to significant difficulties in implementing the legal structure of Art. 44-3 of the Code of Administrative Offenses in practice [21, p. 162]. E.V. Kurinnyi in the context of this rightly notes that the blanket nature of the content of the disposition of Art. 44-3 of the Code of Administrative Offenses significantly complicates the independent acquaintance of the majority of citizens with the current prohibitions contained in several regulations, including the bylaw [22, p. 149].

The main reasons for not being brought to administrative responsibility include the following:

1) the absence in the materials of the administrative case of appropriate evidence of an administrative offense (explanations of witnesses, videos, which show illegal actions, etc.);

2) drawing up a report on a person who is not the subject of this administrative offense;

3) failure to indicate in the protocol the violated norm of the law;

4) the presence of mitigating circumstances, the admission of a person's guilt, failure to prosecute earlier, the nature of the offense and its consequences;

5) missing the deadline for bringing to administrative responsibility. The term of bringing to administrative responsibility is 3 months. With the expiration of this period, even if there is guilt on the part of the person, no administrative penalty can be imposed on him. It is in connection with this rule that we have such low statistics under Art. 44-3 ALCO. The courts are currently so overcrowded that cases in some regions are scheduled for mid-2021. Obviously, it is difficult to talk about meeting the 3-month deadline here.

According to statistics on cases of violation of quarantine rules for people out of 41,916 cases considered for violations of quarantine requirements, only in 3,225 cases persons were subject to administrative penalties. Let's consider some of these cases.

1. 04.11.2020 at 12:45. citizen PERSON_1, at the address: Rivne, on the Zdolbunivska street, opposite the building № 29, in the territory where the "red" level of epidemic danger was established, violated the rules on quarantine of people, namely: traded in a forbidden place without wearing personal protective equipment: masks and gloves, which violated the requirements of the Cabinet of Ministers № 641 of 22.07. 2020 [23]. Taking into account that PERSON_1 committed two administrative offenses, particularly, traded in food in unspecified places, for which liability under Part 1 of Art. 160 Code of Ukraine on Administrative Offenses, and without means of individual protection: masks and gloves for what the responsibility according to Art. 443 Code of Ukraine on Administrative Offenses, the court does not see the possibility of applying Art. 22 of the Code of Administrative Offenses and the recognition of an administrative offense as insignificant. In the view

of the above, the nature of the offense, the identity of the offender, the degree of her guilt, the court finds it necessary to bring PERSON_1 to administrative responsibility under Part 1 of Article. 160 of the Code of Administrative Offenses and Art. 44-3 of the Code of Administrative Offenses and apply an administrative penalty under the rules of Art. 36 of the Code of Administrative Offenses, which meets the requirements of Art. 23 of the Code of Administrative Offenses and will be sufficient and necessary to prevent new misdemeanors "[24].

2. On March 20, 2020, the Shevchenkivsky District Court of the city of Kyiv considered a case for violation of the rules on quarantine of people. Thus, the court found that a resident of Kyiv was selling food from in an unspecified place, which allowed for violation of sanitary and anti-epidemic rules during the quarantine period. According to the results of the case, the person was found guilty of committing an administrative offense under Art. 44-3 of the Code of Ukraine on Administrative Offenses and imposed an administrative fine of 17 thousand UAH.

Most cases of violation of human quarantine requirements end with the closure of administrative proceedings due to the lack of an administrative offense. Here is one such case.

According to the protocol on administrative offense APR 18 № 514240 from April 28, 2020 PERSON_1 April 24, 2020 at 10:30 am in Konotop on Mira Ave., 79, in the parking lot of the store "ATB", traded with fish during spawning and honey from the luggage compartment of the car, which violated the requirements of the Cabinet of Ministers of Ukraine № 211 of 11.03.2020 as amended, paragraph 5 of the protocol № 9 extraordinary meeting of the commission on technogenic and environmental safety and emergencies of Konotop City Council, and committed an offense, provided by Art. 443 Code of Ukraine on Administrative Offenses. Thus, in the statement of the essence of the offense it is indicated that by his actions PERSON_1 violated the requirements of the resolution of the Cabinet of Ministers of 11.03.2020 № 211, as amended. At the same time, the protocol does not include information from the Unified State Register of Legal Entities, Individuals - Entrepreneurs and Public Associations, that PERSON_1 is registered as an entrepreneur, and at the hearing he explained that he is not engaged in entrepreneurial activity, ie is not a business entity , the work of which is prohibited in accordance with the above provisions of the Cabinet of Ministers of 11.03.2020 № 211. In addition, the content of the protocol shows that the actions of the person against whom the protocol is made, PERSON_1, directed to trade in an unspecified place, but no evidence that he traded in fish during spawning in an unspecified place. On the optical disk, as indicated in the protocol on administrative offense, from the video surveillance cameras of the ATB attached to the protocol, there is no information about the circumstances of any offense, there is no record on it (a. P. 10).

In setting out the content of the offense in the protocol, the author refers to the decision of local governments to violate the conditions of quarantine. However, it does not specify what restrictions are set by this regulation, and there is no reference to the date of this decision. This makes it impossible to conclude that there is an offense. Given the above, the court concludes that the lack of sufficient and appropriate evidence to confirm the presence in the actions of PERSON_1 of an administrative offense under Art. 443 Code of Ukraine on Administrative Offenses, and therefore proceedings are subject to closing on the basis of item 1 h. 1 Art. 247 Code of Ukraine on Administrative Offenses ".

At the beginning of the quarantine, the Kelmenets District Court of Chernivtsi region and the Pokrovsky District Court of Dnipropetrovsk region closed the proceedings due to the fact that the obligation to provide the population with personal protective equipment was imposed on the state. The presence of a person in a public place without appropriate personal protective equipment is not a violation of quarantine rules, because the population must be provided with masks and respirators at the expense of state and local budgets [25], [26].

A significant number of cases are also closed due to lack of proper evidence or due to the insignificance of the act.

The right to appeal against a decision in a case of an administrative offense is one of the guarantees of protection of individual rights, ensuring the legality of bringing to administrative responsibility. In accordance with Article 287 of the Code of Administrative Offenses of Ukraine, the decision may be appealed by the person against whom it was issued, as well as by the victim. In addition to these persons, legal representatives or a lawyer may file a complaint on their behalf. Exceptions to this rule are the decisions of the district (city) court (judge) on the imposition of administrative penalties, which are final and are not subject to appeal in proceedings on administrative offenses. However, these rulings can be revoked or changed in the order of supervision, ie at the protest of the prosecutor by the judge himself, as well as regardless of the presence of the protest - by the chairman of the supreme court.

Thus, in accordance with Art. 287, 288 of the specified Code, the decision on the case of an administrative offense may be appealed by the person in respect of whom it was issued, as well as the victim. The decision on the case of an administrative offense may be appealed to the following bodies and institutions:

1) resolution of the administrative commission - to the executive committee of the relevant council or to the district, district in the city, city or city district court, in the manner prescribed by the Code of Administrative Procedure of Ukraine;

2) the decision of the executive committee of the village, settlement, city council - in the relevant council or in the district, district in the city, city or city district court, in the manner prescribed by the Code of Administrative Procedure of Ukraine;

3) the decision of another body (official) on the imposition of an administrative penalty, the decision on the case of an administrative offense in the field of road safety, recorded automatically - in a supreme body (supreme official) or in the district, district in the city, city or city court , in the manner prescribed by the Code of Administrative Procedure of Ukraine.

The decision on the simultaneous imposition of the main and additional administrative penalties may be appealed at the choice of the person against whom it was imposed, or the victim in the manner prescribed for appealing the main or additional penalties. The complaint is filed with the body (official) that issued the decision on the case of an administrative offense, unless otherwise provided by the legislation of Ukraine.

The received complaint shall be sent within three days together with the case to the body (official) authorized to consider it in accordance with this Article. A person who has appealed the decision in the case of an administrative offense is exempt from paying state duty.

According to Art. 289 Code of Ukraine on Administrative Offenses, the complaint against the decision on the case of an administrative offense can be filed within ten days from the date of the decision, and on decisions on the case of administrative offenses in the field of road safety, including recorded automatically, -within ten days from the date of service of such resolution. In case of omission of the specified term for valid reasons, this term may be renewed by the body (official) authorized to consider the complaint upon the application of the person in respect of whom the decision was made.

Complaints from persons who do not have the right to appeal, as well as complaints against decisions that are not subject to appeal, must be returned to the complainant.

The procedure for appealing the decision on the case of an administrative offense is established by Article 288 of the Code of Administrative Offenses . The decision can be appealed either administratively or in court. The current CAO provides for three options of appeal - alternative, when the decision can be appealed to a higher body (senior official) or to a court, consecutive, in which the complaint must first be filed with a higher body (senior official), and then, if its decision does not satisfy the complainant - in the district (city) court, and exceptional, which provides for the filing of a complaint only to a higher body (senior official). This procedure currently does not meet the requirements of the Constitution of Ukraine, which guarantees everyone the right to appeal against any actions and decisions of state bodies and officials, and therefore needs to be revised. In addition, we should reconsider, in our opinion, the provisions on the finality of the decision of the district (city) court (judge).

In accordance with Article 289 of the Code of Administrative Offenses , a complaint against a decision in a case of an administrative offense may be filed within ten days from the date of the latter. In case of omission of the specified term for valid reasons (illness, long business trip, etc.) its renewal by the body (official) authorized to consider the complaint is allowed. The application of the person in respect of whom the decision was made to renew the term of appeal shall be submitted in writing, it must indicate the reasons for missing the deadline. It follows from the content of Article 289 of the Code of Administrative Offenses that if the term of appeal is missed without good reason, it is not renewed.

The complaint is submitted to the body (official) that issued the decision, unless otherwise provided by law. Within three days, the complaint together with the case is sent to the body (official) authorized to consider it. A person who has appealed against a decision in a case of an administrative offense shall be exempt from paying state duty.

Any decision in the case of an administrative offense may be appealed by the prosecutor. The law does not set a time limit within which a prosecutor may protest a ruling.

Filing a complaint within the prescribed period suspends the execution of the decision to impose an administrative penalty until the complaint is considered, except in certain cases provided for in Article 291 of the Code of Administrative Offenses . Enforcement orders are not suspended (because such rulings are enforced by announcing them, ie they have already been enforced at the time of the appeal), administrative arrest (as this penalty can only be applied by a judge or court whose rulings are not appealed), and when the fine is levied at the place of the administrative offense (the penalty has already been executed). It should be noted that Article 291 of the Code of Administrative Offenses does not list the cases when the execution of the resolution is not suspended. Thus, the filing of a complaint cannot stop the execution of a decision on the application of correctional labor, which, as well as the application of administrative arrest, is made only by a court or a judge.

Although Part 2 of Article 291 of the Code of Administrative Offenses stipulates the suspension of the execution of the decision in case the prosecutor makes a protest without any exceptions, the prosecutor's protest cannot stop the execution of the decision to apply the warning, as well as in the case of a fine at the scene of the offense for the above reasons.

Complaints and protests against the decision on the case of an administrative offense shall be considered by the competent authorities or officials within 10 days from the date of their receipt, unless otherwise provided by law.

When considering a complaint or protest, the authorized body (official) is obliged to check the legality and validity of the decision, carefully understand the essence of the complaint or protest and make the appropriate decision. To this end, a number of circumstances should be clarified, which relate to both material and procedural grounds for bringing to administrative responsibility, ie whether the fact of the offense, the guilt of the person in its commission, or missed the deadline for administrative penalties and proceedings, whether the procedure of consideration of the case has been observed, etc.

The body (official) after consideration of the complaint or protest makes one of the following decisions:

1) leaves the decision unchanged and the complaint or protest unsatisfied. This version of the decision is possible in cases where the arguments set forth in the complaint or protest contradict the evidence in the case. Only a ruling rendered in compliance with substantive and procedural norms on the basis of a comprehensive examination of the evidence gathered in the

case, their analysis, correct assessment and reasonable conclusions can be left unchanged. The decision to leave unchanged the decision in the case of an administrative offense must be motivated, contain full answers to the arguments of the complaint or protest. From the moment of making such a decision, the decision to bring to administrative responsibility takes effect;

2) cancels the decision and sends the case for retrial. The grounds for revoking the decision may be incomplete establishment of the circumstances relevant to the decision in the case, lack of proof of the circumstances that the body (official) considered the case established, inconsistency of the conclusions set out in the decision, circumstances of the case, violation or misapplication substantive or procedural rules;

3) cancels the decision and closes the case. The body (official) considering the complaint or protest is obliged to do so if there is insufficient evidence to bring the person to administrative responsibility, and additional investigation or retrial will not yield anything. Cancellation of the decision with the closure of the case is also possible in the case of establishing circumstances that preclude proceedings in the case of an administrative offense (Article 247 of the Code of Administrative Offenses).

4) changes the penalty measure within the limits provided by the normative act on liability for an administrative offense, so that, however, the penalty is not increased. This provision provides for the freedom to appeal against a decision imposing an administrative penalty, as the complainant may not be afraid to increase the penalty. In such cases, the amount of the fine may be reduced, the penalty shall be replaced by a milder one if the sanction is alternative (fine - warning, administrative arrest - fine, etc.), the term of deprivation of special rights, correctional work or administrative arrest will be shortened, additional penalty will be canceled; paid for seized items.

Summing up the results of the research, it is necessary to formulate several conclusions:

1. The application by the police of Article 44^3 of the Code of Administrative Offenses "Violation of the rules on quarantine of people" in practice is complicated by certain of its shortcomings, which include:

1) difficulties in distinguishing a criminal offense under Art. 325 of the Criminal Code of Ukraine, from an administrative offense under Art. 44^3 Code of Administrative Offenses;

2) reference nature of the disposition Art.. 44^3 КУпАП;

3) excessively severe sanctions of Part 1 of Art. 44-3 Code of Administrative Offenses;

4) inconsistency of the name of Art. 44^3 Code of Administrative Offenses of its content, etc.

As a result, there is an ambiguous and, in some cases, contradictory practice of bringing to administrative responsibility for violating the rules on quarantine of people and so on.

2. Prohibitory administrative law provided for in Art. 44^3 of the Code of Administrative Offenses, needs to be improved in the context of distinguishing it from the criminal offense under Art. 325 of the Criminal Code of Ukraine, the establishment of scientifically sound sanctions in Part 1 of Art. 44^3 of the Code of Administrative Offenses, correction of the title of this article, as well as the clarity of determining its disposition.

3. It is also necessary to increase the level of legal awareness, legal culture and qualifications of employees of the National Police of Ukraine in order to optimally ensure compliance with quarantine rules, as well as to ensure the inevitability of administrative liability in cases of administrative offenses under Art. 44^3 Code of Administrative Offenses.

References:

1. Mazurenko V. I. Sambor M. A., Hudovych O. D. Pravovi osnovy taktyky dii politseiskykh v umovakh nadzvychainykh sytuatsii [Legal bases of tactics of actions of police officers in the conditions of emergency situations] Naukovyi Zbirnyk IDUTsZ [Scientific Collection of IDUCZ] 2018. № 6. P. 122-140.

2. Kodeks Ukrainy pro administratyvni pravoporushennia (statti 1 - 212-24) : zakon Ukrainy № 8073-X vid 07.12.1984. [Code of Ukraine on Administrative Offenses: Law of Ukraine of 07 December, 1984] URL : https://zakon.rada.gov.ua/laws/show/80731-10#Text/. (date of the beast 15.04.2021).

3. Pro vnesennia zmin do deiakykh zakonodavchykh aktiv Ukrainy, spriamovanykh na zapobihannia vynyknenniu i poshyrenniu koronavirusnoi khvoroby (COVID-19) : Zakon Ukrainy № 530-IX. vid 17.03.2020. [On Amendments to Certain Legislative Acts of Ukraine Aimed at Preventing the Occurrence and Spread of Coronavirus Disease (COVID-19): Law of Ukraine № 530-IX. from 17.03.2020.] URL: https://zakon.rada.gov.ua/laws/show/530-20#Text. (date of the beast 15.04.2021)

4. Kolpakov V.K. Administratyvna vidpovidalnist (administratyvno-deliktne pravo): navch. posibn [Administrative liability (administrative tort law)]. Kyiv : Yurinkom Inter, 2008. 256 p.

5. Admynystratyvnaia otvetstvennost: ucheb. posobye dlia studentov vuzov, obuchaiushchykhsia po spetsyalnosty «Iurysprudentsyia» [Administrative responsibility: textbook for university students studying in the specialty "Jurisprudence"] / obshch. red. A. Y. Stakhov, Moskva : YuNYTY-DYANA: Zakon y pravo, 2012. 231 p.

6. Poiasniuvalna zapyska 16.03.2020 do proektu zakonu Ukrainy pro vnesennia zmin do deiakykh zakonodavchykh aktiv Ukrainy, spriamovanykh na zapobihannia vynyknennia i poshyrennia koro-navirusnoi khvoroby (COVID-19) [Explanatory note of March 16, 2020 to the draft law of Ukraine on amendments to some legislative acts of Ukraine aimed at preventing the occurrence and spread of coronavirus disease (COVID-19)]. URL: https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=68397. (date of the beast: 15.04.2021)

7. Hurzhii A. V., Melnyk Yu. O. Obiekt pravoporushennia yak kryterii strukturyzatsii administratyvno-deliktnoho zakonodavstva [The object of the offense as a criterion for structuring administrative tort

law]. Yurydychna nauka [Legal science]. 2015. № 4.C. 14-19.

8. Osnovy zakonodavstva Ukrainy pro okhoronu zdorovia: zakon Ukrainy № 2801-XII vid 19 lystopada 1992 roku [Fundamentals of the legislation of Ukraine on health care: the law of Ukraine № 2801-XII of November 19, 1992]. URL: https://zakon.rada.gov.ua/laws/show/2801-12#Text (date of the beast: 14.04.2021).

9. Okereshko M. V. Poniattia i sklad administratyvnoho pravoporushennia, vchynenoho likarem u sferi okhorony zdorovia naselennia [The concept and composition of an administrative offense committed by a doctor in the field of public health]. Molodyi vchenyi [A young scientist]. 2017. № 5.1 (45.1). P. 80-84. URL: http://molodyvcheny.in.ua/files/journal/2017/5.1/21.pdf. (date of the beast: 14.04.2021).

10. Pro zakhyst naselennia vid infektsiinykh khvorob : Zakon Ukrainy № 1645-III vid 06.04.2000. [Protection of the population from infectious diseases : Law of Ukraine № 1645-III of 06.04.2000] URL : https://zakon.rada.gov.ua/laws/show/1645-14#Text. (date of the beast 13.04.2021).

11. Pro mistseve samovriaduvannia v Ukraini: zakon Ukrainy 1427-IKh vid 21 travnia 1997 roku. [On local self-government in Ukraine: Law of Ukraine 1427-IX of May 21, 1997] URL: https://zakon.rada.gov.ua/laws/show/280/97-%D0%B2%D1%80#Text. (date of the beast : 11.04.2021).

12. Bielikova O. V. Yurydychnyi sklad administratyvnoho pravoporushennia. Derzhava ta rehiony. Seriia: pravo. [Legal composition of an administrative offense. State and regions. Series: right]. 2013 r. No 3(41). P. 22-28.

13. Kodeks Ukrainy pro administratyvni pravoporushennia: naukovo-praktychnyi komentar [Code of Ukraine on Administrative Offenses: scientific and practical commentary] / R. A.Kaliuzhnyi, A. T.Komziuk, O. O.Pohribnyi ta in.. Kyiv: Vseukrainska asotsiatsiia vydavtsiv «Pravova yednist», 2008. 655 p.

14. Pro zapobihannia poshyrenniu na terytorii Ukrainy hostroi respiratornoi khvoroby COVID-19, sprychynenoi koronavirusom SARS-CoV-2 : Postanova Kabinetu Ministriv Ukrainy № 211 vid 11.03.2020 [On prevention of the spread on the territory of Ukraine of acute respiratory disease COVID-19 caused by coronavirus SARS-CoV-2: Resolution of the Cabinet of Ministers of Ukraine № 211 of 11.03.2020]. URL : https://zakon.rada.gov.ua/laws/show/211-2020-%D0%BF#Text. (date of the beast 15.04.2021).

15. Postanova Okhtyrskoho miskraionnoho sudu vid 24 bereznia 2020 roku u spravi № 583/1041/20 [Decision of the Okhtyrka City District Court of March 24, 2020 in the case № 583/1041/20]. URL : https://reyestr.court.gov.ua/ (date of the beast 14.04.2021).

16. Postanova Marinskoho raionnoho sudu vid 23 bereznia 2020 roku u spravi № 237/1196/20 [Resolution of the Mariinsky District Court of March 23, 2020 in the case № 237/1196/20.]. URL : https://reyestr.court.gov.ua/ (date of the beast 14.04.2021).

17. Postanova Romenskoho miskraionnoho sudu vid 23 bereznia 2020 roku u spravi № 585/728/20 [Resolution of the Romensky City District Court of March 23, 2020 in case № 585/728/20]. URL : https://reyestr.court.gov.ua/ (date of the beast 14.04.2021).

18. Postanova Konotopskoho miskraionnoho sudu vid 20 bereznia 2020 roku u spravi № 577/1102/20 [Resolution of the Konotop City District Court of March 20, 2020 in case № 577/1102/20]. URL : https://reyestr.court.gov.ua/ (date of the beast 14.04.2021).

19. Postanova Shevchenkivskoho raionnoho sudu m. Kyieva vid 20 bereznia u spravi № 761/8726/20 [Resolution of the Shevchenkivsky District Court of Kyiv of 20 March in case № 761/8726/20]. URL : https://reyestr.court.gov.ua/ (date of the beast 14.04.2021).

20. Pro zatverdzhennia Instruktsii z oformlennia materialiv pro administratyvni pravoporushennia v orhanakh politsii: Nakaz MVS Ukrainy № 1376 vid 06.11.2015 [On approval of the Instruction on registration of materials on administrative offenses in police bodies: Order of the Ministry of Internal Affairs of Ukraine № 1376 dated 06.11.2015]. URL: https://zakon.rada.gov.ua/laws/show/z1496-15#Text. (date of the beast 16.04.2021).

21. Kovalova S.S. Vidpovidalnist za porushennia karantynu ta sanitarnykh pravyl i norm shchodo zapobihannia poshyrenniu koronavirusnoi infektsii (COVID-19) v Ukraini. Naukovo-praktychnyi zhurnal «Pravo. Liudyna. Dovkillia» [Responsibility for violation of quarantine and sanitary rules and regulations for the prevention of the spread of coronavirus infection (COVID-19) in Ukraine. Scientific and practical journal "Law. Man. Environment"]. 2020. № 11(2). S. 158–168. DOI: https://doi. org/10.31548/law2020.02.019. (date of the beast 16.04.2021).

22. Kurinnyi Ye.V. Pro aksiolohichnu sutnist administratyvnykh shtrafiv. Visnyk Zaporizkoho natsionalnoho universytetu [On the axiological essence of administrative fines. Bulletin of Zaporizhia National University]. Vyp. № 1. 2020. P. 144–150. DOI: https://doi.org/10.26661/ 2616-9444-2020-1-22. (date of the beast 16.04.2021).

23. Pro vstanovlennia karantynu ta zaprovadzhennia posylenykh protyepidemichnykh zakhodiv na terytorii iz znachnym poshyrenniam hostroi respiratornoi khvoroby COVID-19, sprychynenoi koronavirusom SARS-CoV-2 : Postanova Kabinetu Ministriv Ukrainy № 641 vid 22.07.2020 [On the establishment of quarantine and the introduction of enhanced anti-epidemic measures in the area with a significant spread of acute respiratory disease COVID-19 caused by coronavirus SARS-CoV-2: Resolution of the Cabinet of Ministers of Ukraine № 641 from 22.07.2020]. URL: https://zakon.rada.gov.ua/laws/show/641-2020-%D0%BF#Text. (date of the beast 14.04.2021).

24. Postanova Rivnenskoho miskoho sudu Rivnenskoi oblasti vid 09.12.2020 r. u spravi № 569/18428/20 [Resolution of the Rivne City Court of the Rivne Region of 09.12.2020 in the case №

569/18428/20]. URL : https://reyestr.court.gov.ua/ (date of the beast 14.04.2021).

25. Postanova Kelmenetskoho raionnoho sudu Chernivetskoi oblasti vid 08.04.2020 r., sprava № 717/422/20 [Resolution of the Kelmenets District Court of the Chernivtsi Region of 8 April 2020, case No. 717/422/20]. URL : https://reyestr.court.gov.ua/ (date of the beast 14.04.2021).

26. Postanova Pokrovskoho raionnoho sudu Dnipropetrovskoi oblasti vid 13.04.2020 r., sprava № 189/391/20 [Resolution of the Pokrovsky District Court of the Dnipropetrovsk Region of 13 April 2020, case 189/391/20]. URL : https://reyestr.court.gov.ua/ (date of the beast 14.04.2021).

Mangora V.V.
Candidate of Pedagogic Sciences,
Associate Professor,
Associate Professor of the Department History of Ukraine and Philosophy
Vinnytsia National Agrarian University,
Vinnytsia, Ukraine

FEATURES OF DEPORTATION IN UKRAINE

Abstract.
In the article the author explores the concept of deportation. The issue of the procedure of forced expulsion of foreigners and stateless persons from Ukraine is also being investigated separately.

Keywords: *deportation, expulsion, expulsion (deportation) of foreigners and stateless persons, procedures of forced expulsion of foreigners and stateless persons from Ukraine.*

Formulation of the problem. Due to the fact that Ukraine is simultaneously a country of origin, destination and transit of migrants, a territory of different, diverse and large-scale migration flows, ensuring state regulation in the field of migration is a difficult task that requires a comprehensive, systematic approach, adequate funding, human and scientific provision [1].

At present, the territory of Ukraine is a buffer zone between the CIS countries and the European Union. That is why thousands of migrants from the former Soviet Union are trying to use this country to be able to live in the Schengen area. Most of these attempts are illegal, so deportation from Ukraine has become extremely common.

Having an international legal basis, deportation really functions as a complex legal institution and needs to be studied and improved in modern conditions COVID 19.

Analysis of recent research and publications. Various aspects of forced expulsion of foreigners and stateless persons from Ukraine have been repeatedly studied by such authors as: O. Voronyatnikov, R. Gavrik, I. Gula, N. Demchyk, V. Zuy, O. Kuzmenko, C. Oliynyk, V. Olifer, A. Siver, N. Tyndyk, S. Chekhovych, M. Shulga and others. At the same time, it should be acknowledged that the conducted research does not cover all issues in this area, as there are a number of debatable issues, in particular, the procedure of forced expulsion of foreigners and stateless persons from Ukraine in a pandemic.

The purpose of this article: is to study the peculiarities of deportation in Ukraine.

To achieve this goal it is necessary to solve the following **tasks:**

- define the concept of "deportation";
- consider the procedure for forcible expulsion of foreigners and stateless persons from Ukraine

Presenting main material. Each country, depending on the existing legal system and historical features of development, has its own authentic, well-established mechanism for acquiring citizenship, procedures for issuing identity documents, registration of citizens, monitoring compliance with the rules of entry (exit) on (with) it territory, rules of stay of foreigners, refugees and stateless persons [2, p. 31]. However, as a result of violations of the rules established by the legislation of a state, a foreigner or a stateless person, the question of punishment, one of the main types of which is the expulsion or deportation of these persons from the country where the offense was committed [3, p. 169]. Specific features of expulsion (deportation) of foreigners and stateless persons are enshrined in the legislation of Ukraine.

Deportation in the theory of international law means the forcible transfer of part of the population of the occupied territory outside or the movement of part of its population to the occupied territory, and according to the Geneva Protocol, such actions are an international crime. In the Stakic case of 31 July 2003, the International Criminal Tribunal for the former Yugoslavia ruled that the crime should be interpreted as the forcible removal of persons through deportation or other acts of violence on grounds of international law from the area in which they are lawfully to the territory controlled by the opposing party. A crime also occurs if the civilian population moves for fear of death or other acts of discrimination. An almost identical definition of deportation is set out in paragraph 2 (d) of Art. 7 of the Statute of the International Criminal Court [4, p. 732–733].

Ukrainian law does not use the term "deportation", but uses the term "forced expulsion of foreigners and stateless persons".

Expulsion in legal science means "a measure of administrative and legal coercion, which consists in the