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CERTAIN PROBLEMS OF NORMATIVE AND LEGAL REGULATION AS A WAY OF ADMINISTRATIVE AND LEGAL SUPPORT FOR THE IMPLEMENTATION AND REALISATION OF ANTI-EPIDEMIC MEASURES

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Anotation. The author emphasises that in Ukraine there are no comprehensive scientific studies of the state of implementation of the law-making powers of the SPA on the implementation of AEMs, its inherent problems and scientifically based ways of solving them. In addition, Ukraine lacks an adequate legal basis for the implementation of regulatory and legal regulation in this area by the supreme and central executive authorities. The author emphasises that this is the reason why the state of regulatory and legal regulation of the implementation and realisation of AEMs is characterised by numerous problems and shortcomings. Among them, the author identifies the lack of a clear division of powers between the CMU and the MoH, the absence of exhaustive lists of their powers in the regulations, which results in the adoption of regulations contrary to the competence enshrined in the legislation, and the failure to adopt regulations referred to by the laws of Ukraine as the tasks of the CMU.

As a result, the author emphasises the need to solve these problems by: 1) review and harmonisation of the current legislation of Ukraine with a view to introducing an effective mechanism of regulatory and legal regulation, primarily by the supreme and central executive authorities. It should provide for a clear and logical division of powers between them, and enshrine in laws and bylaws exhaustive lists of their powers in this area; 2) introduction of an effective mechanism for monitoring the status and quality of performance of public tasks assigned to the SPA, including the adoption of the necessary bylaws.

Key words: normative and legal regulation, administrative and legal support, anti-epidemic measures, public administration, legal act, central executive authorities, improvement of legislation.

Problem statement. Regulatory and legal regulation is one of the most important and basic measures of administrative and legal support in Ukraine.

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It makes it possible to implement any other administrative and legal measures and achieve the goals of anti-epidemic measures (hereinafter referred to as “AEM”) with their help. After all, by-laws are intended to specify and further develop the provisions of the laws of Ukraine so that they can be legally and effectively implemented. For example, these include the approval of procedures for the activities of public administration subjects (hereinafter referred to as “SPA”), requirements for their tools, etc. necessary to identify factors hazardous to human life and health, licensing requirements for the activities of business entities whose results may pose a threat due to negative impact on the environment, public health, etc.

In view of this, the level of regulation of the regulatory framework, the effectiveness of the SPA functioning under it, coordination and coherence of actions between them are important factors and prerequisites for the proper performance of public tasks, including the creation of the necessary conditions for citizens to exercise their constitutional rights and freedoms, ensuring the legality of the SPA activities and establishing law and order in the state. This necessitates a clear establishment of how the regulatory and legal regulation of the SPA is organised in the State, which is carried out by the SPA through subordinate legislation. Therefore, we propose to pay attention to the scientific study of this area of public administration within the framework of our article.

Analysis of recent research and publications. The general issues of the state of orderliness of the regulatory and legal regulation mechanism, including the system of legislation, procedures for their adoption, etc. have been repeatedly addressed in scientific works on the theory of state and law, constitutional law and administrative law. These include, for example, studies prepared by such Ukrainian legal scholars as D. Baranenko, V. Barskyi, T. Didych, N. Zhelezniak, B. Kalynovskyi, I. Kalynovska, and others. Kalynovskyi, I.B. Koliushko, A.O. Nechyporenko, Z.O. Pogorelova, O.V. Popova, V.I. Ryndiuk, O.V. Rogovenko, A.Y. Sydorenko, M.M. Khvyliya, E.A. Cherniakovych, O.A. Shevchuk, and others. However, the specific issues of the current state of legal regulation of the powers of the SPA to adopt regulations in the field of implementation and enforcement of AEMs have not been properly developed at the scientific level. Due to the lack of comprehensive scientific studies of the state of implementation of the law-making powers of the SPA, its inherent problems and scientifically sound ways of their solution, the state of legal regulation of implementation and realisation of AEM is characterised by numerous problems.

In case of it **the main purpose of the article** is to determinate the main problems of normative and legal regulation of the implementation and realization of anti-epidemic measures and to propose their solutions.

Summary of the main material. To proceed with this task, we note that the current special legislation in the field of AEMs directly assigns the authority to adopt bylaws only to the Cabinet of Ministers of Ukraine (hereinafter – CMU) and the Ministry of Health of Ukraine (hereinafter – MoH). At the same time, it should be noted that questions often arise as to the delineation of

their powers, as they sometimes perform similar functions, primarily in the area of regulatory and legal regulation. Therefore, when analysing the current legislation, it is necessary to compare their competence and establish how consistent it is in this area of public administration, while identifying other problems and shortcomings inherent in current regulations on the issues in question and formulating optimal recommendations for their solution.

In view of this, we note first of all that the issues on which the current legislation provides for the adoption of normative acts by the mentioned executive authorities are enshrined primarily in Articles 7 and 8, as well as repeatedly throughout the text of the Law of Ukraine “On the Public Health System” [1]. We will not reproduce their text in full, but briefly note that the analysis of the comparison of powers of the CMU and the MoH in terms of approval of a number of normative documents by them through the adoption of regulations has made it possible to establish that these articles assign different powers to them. In other words, they do not duplicate each other and the LEAs are adopted by these agencies on different issues.

However, despite this, it should be noted that the approval of the procedure for epidemiological surveillance is attributed to the powers of the CMU by clause 9, part 1, Article 7 of the Law of Ukraine “On the Public Health System” [1]. But, firstly, the CMU Resolution No. 1109 of 22 June 1999 [2] approved the “regulations”, not the “procedure” for “state sanitary and epidemiological supervision” [2], while the Law defines this area of activity of the SPA as “epidemiological supervision” [1]. Their difference has not only a logical and semantic basis, but is also expressed in the nature of the activity that these concepts are used to describe. After all, state sanitary and epidemiological supervision is a collective legal construct that covers a number of areas of spa activities, including control over various issues, sanitary and epidemiological investigations, state regulations, expertise, observation, etc. [2] For its part, epidemiological surveillance is defined as an exclusively scientific activity that involves “a systematic and continuous process of identifying, collecting, compiling, analysing, interpreting and disseminating data on public health, diseases and indicators of the living environment...” [1].

Secondly, both the general procedure for epidemiological surveillance and the procedures for its implementation for specific types of infections were approved contrary to the above by the orders of the MoH No. 1726 of 30 July 2020 [3], No. 406 of 9 March 2021 [4], and No. 1766 of 19 August 2021 [5]. It could be assumed that the above is due to the later adoption of the Law of Ukraine “On the Public Health System” [1], which took place after the date of adoption of the above orders. However, neither the general procedure for epidemiological surveillance, nor special procedures for specific areas of its implementation, which would have been approved by the CMU resolutions, were adopted.

It is also interesting that the Law of Ukraine “On Protection of the Population from Infectious Diseases” [6] does not assign this power to any of the above entities. No amendments were made to Articles 3 and 6 of this Law, which enshrine the powers of the above-mentioned SPAs [6]. With

regard to this Law, it should be noted that it generally assigns narrower scope of powers to the mentioned SPAs, within which there are almost no rule-making powers, except for a few [6]. The Law of Ukraine “On the CMU” [7] in the field of sanitary and epidemiological well-being assigns to the supreme executive body only the powers to ensure state policy [7], and therefore the powers defined by the Law of Ukraine “On the Public Health System” are not reflected in it. In its turn, the Regulation on the MoH [8] also does not assign the authority to adopt the above-mentioned procedures to the MoH. Other central executive authorities authorised to provide administrative and legal support for the AEM, in particular the State Service of Ukraine for Food Safety and Consumer Protection, also do not have such competence in their respective Regulations [9]. Even the Law of Ukraine “On Ensuring Sanitary and Epidemiological Welfare of the Population” [10], which expired and was in force before the Law of Ukraine “On the Public Health System” came into force, did not provide for the authority to approve the procedure for epidemiological surveillance of the Ministry of Health, and the CMU vested it only with regard to the above-mentioned Regulation [2].

The above demonstrates that the current situation is as follows: the legislation is not coordinated with each other; the regulations enshrine different powers of the SPSA in terms of content and scope; the MoH approves procedures that are not within its competence; the CMU does not exercise all the powers assigned to it (we will develop this thesis and strengthen the argument below). In our opinion, one of the reasons for this situation is that the legal acts provide for non-exhaustive lists of powers for these entities. As a result, the adoption of certain procedures by the MoH, which are not provided for by any Law, becomes possible due to the fact that the legislation grants it such a right in the form of wording such as “adopts other by-laws provided for by this Law” [1], “exercises other powers determined by law” [8]. On the other hand, no law has ever vested the MoH with this power and does not currently do so. Therefore, we can conclude that such procedures have no legal force due to the fact that they were adopted contrary to the competence of this SPA, and therefore they are subject to appeal in court to invalidate them and further approval by the competent entity in this regard – the CMU.

At the same time, this situation can be viewed from another angle. Namely, the MoH is a special central executive body in the field of public health, including protection against epidemics. Therefore, it would be more logical to assign to it the authority to approve such procedures, as well as other regulations within its jurisdiction - the formation and implementation of state policy in the field of sanitary and epidemic welfare of the population and in the field of healthcare in general. Therefore, in our opinion, it is advisable to recommend removing such powers from the articles regulating the activities of the CMU and assigning them to the MoH at the regulatory level.

In addition, it is advisable to reconsider the approach to the division of powers between higher and central executive authorities, as the current approach is somewhat unreasonable and illogical. In our opinion, it is appropriate for the CMU to retain powers related to the organisation,

coordination, and control of the functioning and activities of lower-level executive authorities. And the substantive competence in the areas of activity of central executive bodies, such as approval of procedures and regulations, methodologies and criteria, etc., on issues that constitute the object of their functioning, should be attributed to the exclusive competence of the relevant ministries, services, agencies, committees, etc.

In addition to the above, it is also advisable to check whether all the regulations under Article 7 of the Law of Ukraine “On the Public Health System” that fall within the competence of the CMU [1] have been adopted to date, in order to more fully substantiate our conclusion that it does not fully exercise its powers. Thus, an analysis of the provisions of clause 9, part 1, Article 7 of the said Law [1] and a search in official, public databases has revealed that out of the regulations listed therein, no resolutions have been adopted to approve at least ten regulatory documents, the need for which is approved by this Law [1]. Among them, it is advisable to pay special attention to several procedures and lists, which also have not been adopted by any CMU resolution, but at the same time, orders of the MoH have been approved on these and/or related issues. These include, for example:

1) the procedure for submitting state, sectoral and operational reports on the epidemic situation and performing operational public health functions [1]. So far, only the Procedure for Keeping Records, Reporting and Epidemiological Surveillance (Monitoring) of Infectious Diseases has come into force, however, it was approved by the Order of the MoH of 30 July 2020 No. 1726 [11];

2) the procedure for conducting epidemiological investigations of diseases caused by infectious diseases, mass non-communicable diseases [1]. No regulations have been adopted directly under this title, but the MoH adopted Order No. 1742 of 18 August 2021, which approved the Procedure for Conducting Epidemiological Surveys (Investigations) of Epidemics and Outbreaks of Infectious Diseases [12];

3) a list of positions of medical and other employees directly engaged in work with harmful and particularly harmful working conditions in the areas of infectious diseases, poisoning or radiation damage [1]. Instead, the MoH has now adopted several orders approving a general list of positions of medical and other employees in healthcare facilities [13] and positions of such employees directly involved in the elimination of the epidemic and the implementation of measures to prevent the spread of acute respiratory disease COVID-19 caused by the SARS-CoV-2 coronavirus and the treatment of patients with cases of acute respiratory disease COVID-19 caused by the SARS-CoV-2 coronavirus [14].

As we can see, the CMU has not fully exercised its powers, which reduces the effectiveness of the SPAs in fulfilling their public tasks, primarily the introduction and implementation of AEMs, ensuring the exercise of citizens’ rights to life and health, etc. The above necessitates encouraging the supreme executive body to adopt the regulations listed in the law, in particular through public control over its activities. At the same time, as we

have already noted above, in our opinion, it would be more appropriate to attribute the competence to adopt the above-mentioned regulations to the MoH especially since it has been partially fulfilling them for a long time. At the same time, the above also necessitates the alignment of legislation with practice by amending: first, the Law of Ukraine “On the Public Health System”, which will transfer these powers from Article 7 to Article 8; second, the Regulation on the MoH should be supplemented with them, since they are currently not provided for, as is the case with the procedure for conducting epidemiological surveillance.

Conclusions. To summarise the above, we would like to emphasise that the regulatory framework for the introduction and implementation of AEMs, carried out by the SPA, is at a low level of implementation. This necessitates the revision and harmonisation of the current legislation of Ukraine with a view to introducing an effective regulatory mechanism, primarily by the supreme and central executive authorities. It should provide for a clear and logical division of powers between them, and enshrine in laws and bylaws exhaustive lists of their powers in this area. In addition, it would be advisable to introduce an effective mechanism for monitoring the performance of public tasks assigned to the SPAs, including the adoption of the necessary bylaws. This will encourage them to improve the efficiency of their activities.

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