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# COMPULSORY ADMINISTRATIVE ACTIONS IMPLEMENTED UNDER THE EMERGENCY EPIDEMIOLOGICAL SITUATION

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## ABSTRACT

The Article considers the role and meaning of implemented compulsory administrative actions under the emergency epidemiological situation, includes an analysis of legal changes in articles in the law of health about implemented compulsory administrative actions in the whole country or some regions.

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## KEYWORDS

Administrative Coercion,  
Compulsory Administrative  
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## Introduction.

The purpose of this article is to analyze the main legislative changes in the Law of Health, which provide for the regulation of various anti-epidemic measures on the territory of the entire country or a separate region, in connection with limiting the spread of the growing COVID-19 pandemic. Based on Article 84, item 12 of the Constitution of the Republic of Bulgaria, the National Assembly, at the proposal of the Council of Ministers, adopted a decision declaring a state of emergency on the entire territory of the country, effective from March 13, 2020. The provision of item 2 of the decision instructs the Council of Ministers to take all necessary measures to manage the emergency situation related to the COVID-19 pandemic and in accordance with Article 57, paragraph 3 of the Constitution of the Republic of Bulgaria.

## Forced administrative measures applied during the state of emergency.

The decision of the National Assembly to declare a state of emergency led to the adoption of the Law on Measures and Actions during the State of Emergency, declared by a decision of the National Assembly of March 13, 2020, and to overcome its consequences, and a series of legislative changes in the Law of Health [11, 12]. Both laws regulate the application of various types and sizes of compulsory

administrative measures, which clearly shows the legislator's intention to use administrative coercion tools for direct action against violations of legislation defining social relations related to public health protection. Administrative coercion is a type of state coercion used in certain cases defined by law as an extreme means of realizing various legal relationships arising in the field of executive activity [1]. Administrative coercion involves prescribing a specific behavior that limits the "free actions of the legal subject with the aim of not violating the rights of another person, representing competition of subjective rights regulated by the state through a legislative mechanism" [8].

The application of forced administrative measures objectifies administrative coercion as state coercion. Forced administrative measures are aimed at preventing and stopping violations related to protecting the health of citizens, as well as preventing, removing, or restoring the harmful consequences of such violations. Forced administrative measures are addressed only to natural and legal persons who bear the burden of legislative decisions that restrict free movement in space and free economic initiative [4]. For comparison, before 1931, municipalities were required to contribute 5% of their actual regular revenue to the fund for fighting malaria, provided that special measures against malaria were being applied in the municipality's area, according to Article 11, item 3 of the Malaria Control Act [6].

The introduction of anti-epidemic measures on the territory of the country or a separate region is regulated by the provision of Article 63 of the Law of Health. In the event of an emergency epidemic situation, the Minister of Health is authorized to introduce anti-epidemic measures on the territory of the country or for a specific region for a certain period. According to the provision of Article 5, paragraph 1 of the Law of Health, the Minister of Health manages the national health system and exercises control over activities related to the protection of citizens' health and state health control. Based on the powers granted to him, the minister most often issues orders, having issued over 200 orders during the state of emergency.

With several consecutive amendments to Article 63 of the Law of Health, various restrictive measures are introduced. For the first time, legislation (State Gazette No. 23 of 2020) introduces restrictive measures, including a ban on entry into the country's territory for citizens of other states. The restrictive measure is linked and applied in the case of a declared state of emergency under Article 84, item 12 of the Constitution of the Republic of Bulgaria.

The scope of restrictive measures is also expanded (State Gazette No. 28 of 2020), which may include temporary restriction of movement on the territory of the country, temporary suspension or restriction of the operation or regime of public-purpose facilities, and/or other facilities or services provided to citizens in cases of a declared state of emergency under Article 84, item 12 of the Constitution of the Republic of Bulgaria, as well as contact persons of patients with infectious diseases who cannot refuse to undergo testing to determine the harboring of an infectious disease. These new provisions are given retroactive effect, coming into force on March 13, 2020.

With the subsequent amendment to Article 63 of the Law of Health on 13.05.2020 (SG No. 44 of 13.05.2020), the text is entirely amended, and for the first time, it is introduced normatively what constitutes an immediate danger to life and health from the epidemic spread of an infectious disease: caused by a pathogen with high epidemic potential (infectivity of the agent, high mortality, multiple transmission routes, or healthy carriage) and/or the source, mechanism, and route of transmission are unusual or unknown; poses a serious threat to public health even when the number of confirmed cases in humans is small; may hinder or delay public health control measures, including due to the lack of treatment and/or vaccine and/or the presence of multiple outbreaks and others; has low immunization coverage in the population; is unusual for the region, season, or population; progresses more severely than expected, has higher morbidity and/or mortality, or has unusual symptoms; puts vulnerable or at-risk groups of the population at risk (children, the elderly, refugees, persons with immunodeficiency and/or chronic diseases, and others); there are registered cases among medical professionals.

For the first time, the presence of a specific goal is introduced as a precondition for declaring an epidemic situation - protection and safeguarding the life and health of citizens, and the type of administrative act is specified - general administrative and the norm under the APC, on the basis of which it is issued - Article 73 of the APC. What unifies the measures under Article 63, paragraphs 4 - 7 of the Health Act is the circumstance that they are introduced during a declared state of emergency epidemic situation and are temporary. Their purpose is to help overcome the risk of infecting an unlimited number of people and to provide the medical field with the opportunity to handle the situation, which threatens the life and health of people. Since every declaration of an emergency epidemic situation

for a certain period of time is preceded by an assessment of the epidemic risk of the respective infectious disease and the immediate danger arising from it for people, the anti-epidemic measures introduced during such a declared situation are necessarily temporary as well [10].

The amendments to Article 63 of the Law of Health suffer from the same flaws that have caused problems in the application of the Law of Health since the moment of its adoption. The amended legal norm, instead of being a rule of conduct, whose implementation is secured with the coercive power of the state, contains a proclamation of principles, descriptions more suitable for a textbook on health organization than for a normative act, lacking a legal rule. Similar criticism was voiced with the adoption of the Health Act in 2004 [6]. It is particularly perplexing that the legislative decision describes in the legal provision the type of administrative act as if the legislator had doubts that it concerns a general administrative act.

The amendments to Article 63 of the Law of Health (SG No. 23 of 26.04.2022) are even more legally unsound since the temporary anti-epidemic measures are specified through an exemplary list:

- prohibition of entry into the territory of the country;
- restriction of movement within the territory of the country;
- suspension of the operation of public facilities and/or other facilities or services provided to citizens;
- requirement of a document for access to public facilities and/or other facilities or services provided to citizens.

The listed anti-epidemic measures are preventive in nature and aim to prevent the spread of an infectious disease.

Moreover, with the latest amendment, the general administrative acts under Article 63 of the Law of Health must always be issued under the conditions of urgency under Article 73 of the APC. There may be cases requiring the immediate issuance of a general administrative act to prevent or stop violations related to national security and public order or to ensure the life, health, or property of citizens when compliance with the rules of Articles 66 and 69 of the APC would delay its issuance. Therefore, Article 73 of the APC allows the general administrative act to be issued without publicly announcing the motives of the authority under the order of Article 66 and giving a minimum period of one month for interested parties to express an opinion on the act, in the stated hypotheses, with the reasons for its issuance being communicated during its execution [2]. Thus, instead of leaving the discretion to assess in which cases the urgency under Article 73 of the APC should be used, the legislator has "helped" the administrative body, which will issue the general administrative act, not to state the motives for why the act is issued under the order of Article 73 of the APC and what necessitates its issuance. Article 73 of the APC provides the possibility not to comply with some provisions related to the notification and participation of interested parties in the procedure for issuing a general administrative act. The cases of urgency are: to prevent or stop violations related to national security and public order; to ensure the life, health, and property of citizens. The assessment of urgency is made by the administrative body. In the specified urgent cases, the reasons for issuing the act are also disclosed [5].

Forced administrative measures are issued based on Article 38 of the Law of Health. The provision of Article 38, paragraph 1 of the Law of Health stipulates that in case of non-compliance with health requirements for public facilities, products, goods, and activities of importance to human health, and the maximum permissible levels of environmental factors, state health inspectors give mandatory prescriptions and set a deadline for eliminating the violations. According to Article 38, paragraph 2 of the Law of Health, in case of non-compliance with the mandatory prescriptions within the specified period, the director of the RHI or, respectively, the director of the NCPHP, issues an order to suspend the operation of the facility or parts thereof or to suspend the relevant activity until the violations are eliminated.

The prescription issued under the order of Article 38, paragraph 1 of the Law of Health does not constitute an administrative act eligible for appeal that can be subject to judicial review, as it is issued in the exercise of the powers of the RHI authorities to perform state health control, as provided in Article 19, paragraph 2, item 6 of the law, has no independent character, and cannot be equated to a forced administrative measure under the meaning of Article 38, paragraphs 2 and 3. The non-compliance with the prescription is the legal fact that would lead to the imposition, and by another authority, of a forced administrative measure under Article 38, paragraphs 2 and 3. The forced administrative measure under Article 45 of the Law of Health, will cause adverse consequences for the addressee. Although the

prescription is mandatory for execution, according to the norm of Article 44, it lacks the characteristics of an imposed forced administrative measure under Article 19, paragraph 3 in connection with Article 38, paragraphs 2 and 3 of the Law of Health.

Compulsory administrative measures can also be applied under Article 61 of the Law of Health, which defines the mandatory isolation of individuals (persons who are sick with or carriers of anthrax, brucellosis, smallpox, viral hemorrhagic fevers, diphtheria, Ebola, yellow fever, typhoid fever, malaria, poliomyelitis, severe acute respiratory syndrome, tuberculosis with bacillus release, cholera, plague, and COVID-19) and mandatory quarantine, whereby contacts of persons placed under mandatory isolation are subject to mandatory quarantine. To prevent the spread of infectious diseases, mandatory quarantine may also apply to persons who have entered the country from other states. The Minister of Health, upon the proposal of the Chief State Health Inspector, may order by decree mandatory isolation of persons who are sick with or carriers of infectious diseases other than those listed in paragraph 1, as well as mandatory quarantine of those in contact with them, based on an assessment of the existing epidemic risk of spreading the respective infectious disease. Mandatory isolation is carried out by a prescription issued by the director or an authorized deputy director of the respective regional health inspection. Mandatory quarantine is carried out by a prescription issued by the director or an authorized deputy director of the respective regional health inspection. The prescription itself, by its nature, bears the characteristics of a compulsory administrative measure [13].

Compulsory administrative measures under Article 63 of the Law of Health are preventive since they aim to prevent the spread of an infectious disease. The basis for applying a preventive administrative measure due to its preventive nature cannot be an offense that has been committed or even begun but rather the danger of an offense. The preventive compulsory administrative measure is almost always applied in connection with an imminent, impending danger of committing an offense. This danger must be obvious, unquestionable, real, specific, and imminent, and it must be assessed and established in each specific case [3].

With the amendments to the Law of Health is also regulated the administrative and penal liability of individuals and legal entities that violate or fail to comply with orders from the Minister of Health and the director of the regional health inspection concerning anti-epidemic measures introduced to limit the spread of COVID-19. On March 13, 2020, a provision was adopted that defined the penalties imposed for non-compliance with the restrictions and provided for a fine of 5,000 leva for individuals and a property sanction of 15,000 leva for legal entities and sole traders. Given the disproportionality of the sanction with the social danger of the committed act, on April 9, 2020, the legislator adopted changes that modified the sanctions.

According to the provision of Article 209a, for a violation of Article 63, paragraphs 4, 7, 10, or 11, and Article 63a, paragraphs 1 or 2 of the Law of Health, unless the act constitutes a crime, a fine of 300 to 1,000 leva is provided for individuals, and for repeated violations, from 1,000 to 2,000 leva, and for sole traders or legal entities, a property sanction of 500 to 2,000 leva, and for repeated violations, from 2,000 to 5,000 leva. Violations are established by acts drawn up by state health inspectors or by officials designated by the director of the regional health inspection, officials designated by the directors of the regional directorates of the Ministry of Interior, or officials designated by the mayors of municipalities. The penal decrees are issued respectively by the director of the respective regional health inspection, the director of the respective regional directorate of the Ministry of Interior, and the mayor of the respective municipality.

A special provision is contained in Article 215, which should be applied to persons who are sick with COVID-19, their contacts who do not comply with quarantine, as well as persons who have entered the country from other states and refuse or interrupt the execution of mandatory isolation, and they are punished with a fine of 5,000 leva.

For example, in Belgium, for violating anti-epidemic measures (not wearing a mask in shops, shopping centers, and other places) for a first offense, a fine of 250 euros is imposed, and in case of disagreement with the imposed fine or repeated offense, the fine may increase to 4,000 euros, including the act being criminalized, and non-compliance with the introduced restrictions can lead to the imposition of a punishment of "imprisonment" from 8 days to 3 months. For traders, the amount of the property sanction starts at 750 euros.

Based on Article 63, paragraph 4 of the Law of Health, the Director of RHI – Blagoevgrad, for the period from March 13, 2020, to March 15, 2022, has issued 28 general administrative acts.

Compliance with the orders issued by the Minister of Health is ensured by on-site inspections by the respective Regional Health Inspections, which, according to the inspection protocols, monitored the provision of disinfectants, recording the frequency of disinfection activities in a logbook, providing personal protective equipment for the staff (gloves, protective masks, work clothes), availability of hot running water, detergents, and disinfectants, posting signs indicating the observance of distance within and outside the facility, ensuring a physical distance of no less than 1.5 m between persons in the facility.

For the period from March 13, 2020, to March 15, 2022, RHI – Blagoevgrad has drawn up a total of 304 acts for establishing administrative violations and issued 239 penal decrees for violations issued under orders of the Minister of Health. Of these, only two acts for establishing administrative violations are for violation of Article 63, paragraph 7 of the Law of Health, and all others are for violation of Article 61, paragraph 4 of the Law of Health.

For the same period, March 13, 2020, to March 15, 2022, a total of 18 compulsory administrative measures were issued, all for violation of Article 38, paragraph 4 of the Law of Health, namely for non-compliance with health requirements for public facilities, products, goods, and activities significant for human health and the maximum permissible levels of environmental factors. State health inspectors issue mandatory prescriptions and set a deadline for rectifying violations, with the director of the regional health inspection, respectively the director of NCPHA, issuing an order within 48 hours of stopping the facility, confirming or canceling the issued prescription for stopping the operation of the facility or the respective activity. From this, we can conclude that the legal possibility to apply compulsory administrative measures is not being used optimally.

### **Conclusion.**

Compulsory administrative measures can only be applied in explicitly and precisely listed cases in law or decree. They should only be applied by the precisely defined administrative bodies specified in the legal norm, and only that compulsory administrative measure that is precisely defined in the legal norm by type should be applied.

The correct and timely application of compulsory administrative measures under the Law of Health plays an important role in protecting and safeguarding the health of citizens.

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### **REGULATIONS**

9. Administrative Procedure Code, Promulgated, State Gazette No. 30/11.04.2006, issue 102 of December 8, 2023.
10. Decision No. 10 of 23.07.2020 of the Constitutional Court of the Republic of Bulgaria on constitutional case No. 7/2020/.
11. Health Act, In force from 01.01.2005, Prom. SG. issue 70 of August 10, 2004, amended and supplemented SG. issue 32 of April 26, 2022.
12. Law on Measures and Actions During the State of Emergency, Declared by a Decision of the National Assembly from March 13, 2020, and for Overcoming the Consequences (title amended - SG, issue 44 of 2020, in force from 14.05.2020), In force from 13.03.2020, Prom. SG. issue 28 of March 24, 2020, amended SG. issue 77 of September 16, 2021.
13. In Decision No. 54 on administrative case No. 917 of 2020 in the records of the Administrative Court – Blagoevgrad, it is accepted that the prescription is an administrative act but is not defined as a coercive

administrative measure. With Decision No. 2064 on administrative case No. 686/21 in the records of the Administrative Court – Blagoevgrad, a prescription for quarantine was declared null and void. In this regard is also Decision No. 2065 on administrative case No. 688 of 2021 in the records of the Administrative Court – Blagoevgrad. In Decision No. 1458 on administrative case No. 414/20 in the records of the Administrative Court – Blagoevgrad, it is accepted that the prescription is not an administrative act, but as an act of executing an order of the Minister of Health, it is issued in the prescribed written form by law – Art. 271, para. 6 of the APC, with a specific period (14 days) and place of execution, as mandatory requisites, individualizing the specific obligation to be executed (isolation at a specific place for a certain period). In this sense, the prescription constitutes the exact execution of the obligation under item II.1 of the order. Conversely, Decision No. 2064 on administrative case No. 686/21 in the records of the Administrative Court – Blagoevgrad, according to which the issued prescription for quarantine of a natural person was declared null and void.