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# **Analysis of legal provisions aimed at preventing the spread of the coronavirus disease (COVID-19)**



CF 'Right to Protection'

## Analysis of legal provisions aimed at preventing the spread of the coronavirus disease (COVID-19)

*At its meeting on March 17 2020, the Verkhovna Rada of Ukraine passed as both basis and entirety, the draft laws No. 3219 and No. 3220 regarding measures aimed at the prevention and spread of the coronavirus disease (COVID-19). Adopted legislative changes envisage increased responsibility for breaching sanitary anti-epidemic rules and regulations as well as enhancing the protection of social, labor, and economic rights in light of the introduction of quarantine measures.*

*A team of legal analysts at the CF 'Right to Protection' advocacy department has prepared an analysis of the provisions of these laws and their impact on the exercise of rights envisaged by the Constitution and the Laws of Ukraine.*

### Increased responsibility

A new Article 44-3 has been added, which seeks accountability in the form of a fine for breaching the rules of quarantine, sanitary-hygienic, and sanitary-anti-epidemic rules and regulations stipulated by the Law of Ukraine entitled 'On the protection of the population against infectious diseases, other legislative acts, as well as decisions by local self-proclaimed authorities of NGCA authorities on fighting against infectious diseases'. According to p. 16 of Article 1 of the Law of Ukraine entitled 'On protection of the population against infectious diseases',

**the quarantine** constitutes the administrative, medical, and sanitary measures introduced for the prevention of the spread of especially dangerous infectious diseases.

Thus, it is envisaged that persons confined into quarantine shall not voluntarily leave health care facilities where they are isolated due to quarantine measures.

### Which quarantine regulations are currently in force?

Currently, **two categories of people** must abide by the quarantine:

- those confined into quarantine due to suspected coronavirus;
- those who previously contacted persons confined into quarantine.

There are particular situations taking place in Zhytomyr, Chernivtsi, and Kyiv Regions. An emergency situation was declared in Zhytomyr and Chernivtsi Regions starting from March 17, and in Kyiv Region from March 18. However, it is important to distinguish between the emergency situation and the state of emergency.

**The emergency situation** is defined as the situation where regular living conditions are violated. Such a situation can be caused by either natural disaster or epidemics (as in this particular case). Declaration of a state of emergency envisages that state authorities, local self-proclaimed authorities of NGCA, emergency services as well as medical facilities acquire a special status. However, unlike the state of emergency, the emergency situation **doesn't envisage a special legal status** that can be temporarily imposed in Ukraine or in separate areas in Ukraine in case of anthropogenic or natural emergency situations, at least on the national level. Such a state instead envisages that relevant state authorities, military command and local self-proclaimed authorities of NGCA receive powers necessary for the prevention of threat and ensure the safety and health of citizens, the normal functioning of the national economy and public authorities and local self-proclaimed authorities of NGCA, protection of the constitutional system. It also allows temporary restriction on constitutional rights and freedoms of a person and a

citizen, as well as rights and legitimate interests of legal entities with an indication of the effective period of these restrictions, as required by the threat.

<b>the emergency situation</b>	enhances campaigns of public engagement relating to the crisis, as well as providing a special status for public authorities, emergency services, and medical facilities.
<b>the state of emergency</b>	increases powers of state authorities and self-proclaimed authorities of NGCA, possible restrictions on the rights and freedoms of a person and a citizen, and a restriction on the legitimate interests of legal entities, as long as it indicates an effective period of such restrictions.

While the regions in question have an emergency situation, no restriction of citizen's rights is envisaged. However, this may change at any moment if the President is to declare a state of emergency.

In many countries, there is a requirement of mandatory quarantine (self-isolation) for persons arriving from abroad, effective for 14 days since their arrival. In accordance with Article 325 of the Criminal Code of Ukraine, there is no direct liability for non-compliance with voluntary self-isolation. **It only covers the two categories described above.**

Instead, the Article envisages responsibility for 'violation of sanitary-anti-epidemic rules and regulations.' In accordance with the Law of Ukraine 'On protection of the population against infectious diseases',

<b>sanitary-anti-epidemic rules and regulations</b>	are regulations (orders, instructions, rules, provisions, etc.) of the central executive authority forming the state policy in the healthcare sector, where the requirements of such regulations are aimed at the prevention of the contraction and spread of infectious diseases.
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Article 11 of the said Law lists **preventative and anti-epidemic measures** which may be used by the authorities at any level:

- sanitary protection of the territory of Ukraine: As of March 17 2020, flights and railway connection with other countries as well as the domestic connection has been restricted, and temporary restrictions are imposed at the EECs in Donetsk and Luhansk regions as well as at the administrative border with the AR of Crimea;
- restrictive measures for patients with infectious diseases and carriers of bacteria;
- the organization of medical screening and examinations, preventive vaccinations, hygienic education and the training of citizens.

We would like to note, that the article regarding criminal responsibility **is not new**, as Article 325 already exists in the Criminal Code of Ukraine – 'Violation of sanitary rules and regulations related to the prevention of infectious diseases and mass poisoning' envisaged legal culpability for 'violation of rules and regulations related to the prevention of and combating epidemic and other contagious diseases, as well as mass non-infectious diseases (poisoning), where these actions caused or could knowingly cause a spread of these diseases'.

In fact, this Article of the Criminal Code of Ukraine hasn't changed – **only the sanctions envisaged by it have changed**. First of all, the size of the fine has changed



Also, amendments envisage punishment by imprisonment for up to three years.

Currently, **both administrative and criminal responsibility applies to a limited range of persons** in particular:

- persons who have deliberately left quarantine (when they had a confirmed diagnosis or were put into quarantine while waiting for their test results);
- persons who contacted those persons in quarantine and failed to follow self-isolation requirements.

The contents of the Article envisaged responsibility only in case when such actions were **deliberate**, i.e., the person was aware of the contact and about the possible threat they posed to others, however deliberately ignored self-isolation measures which led to negative consequences in the form of infecting other persons and the spread of the disease.

We would like to note, that during the period of quarantine, **additional restrictions and rules** may be imposed for citizens and failure to abide to those could lead to liability. Even though the Verkhovna Rada of Ukraine, as well as the Cabinet of Ministers of Ukraine, have made changes to their operations, the policy-making process hasn't halted. If necessary, harsher restrictions may be developed and introduced, thus it's worth following the news.

## Measures aimed at protection of economic rights of citizens

Amendments to the Tax Code of Ukraine within the adopted Law envisage special measures caused by the force-majeure situation and aimed at the prevention and spread of coronavirus disease (COVID-19). Such measures cannot be considered benefits, however, they **do ease the tax burden** for taxpayers due to imposed quarantine when it is of course difficult to do business and follow all legal requirements. Besides, these measures are temporary.

In accordance with the legislative changes, authorities will not apply penalties for violations of tax legislation committed **from March 1 to May 31, 2020**, except for the following cases:

- violation of a requirement of long-term life insurance agreements or non-state pension insurance agreements, in particular, supplementary pension insurance;
- alienation of property in tax lien without the consent of the controlling authority;
- violation of rules of accounting, production and circulation of fuel or ethanol in excise warehouses used on a common basis.
- violation of accruing, declaring and paying of value-added tax, excise tax, rent.

Besides, during this period taxpayers **shall not be charged a penalty – where one is accrued and not paid, the penalty shall be deducted**.

Also, during the period **from March 18 to May 31 2020**, there shall be a moratorium on current inspections of documents and factual materials (doesn't apply to unscheduled inspections). However, inspections of documents and factual materials, which were started and not finished before March 18 2020, **shall be paused until May 31 2020**. At the same time, such a pause shall break the duration term of inspections. Information regarding the postponement of scheduled document inspections, which were planned for the period from March 18 to May 31 2020, but were not started, **shall be included in the updated schedule**.

**For the period from March 18 to May 31 2020**, the statute of limitations provided for in Article 102 of the Tax Code of Ukraine (payment of monetary obligations, including penalties) shall be suspended. The deadline for the submission of annual income and property declaration for 2019 has been **extended to July 1 2020**. At the same time, the term in which the taxpayers are subject to pay their taxes shall be **extended to October 1 2020**.

**From March 1 to April 30 2020**, land use tax (land tax and rent for land in state and communal property) for land owned or used (including leased land) by natural or legal entities, and used in their business activities shall not be accrued or paid. Also, during the same period, the **real estate tax (other than land) shall not be accrued to non-residential real estate owned by natural or legal entities**. Furthermore, both land taxpayers (except for natural entities) and real estate taxpayers (other than land) shall be entitled to submit a correction tax statement reflecting changes for the relevant months if they have already submitted their tax declaration. The relevant authority shall be responsible for the re-calculation of land use tax and the said tax for natural entities.

### *Regarding single contribution state social insurance*

Categories temporarily exempted from accrual and payment of a single social contribution:

- individual entrepreneurs, including those who have opted for the simplified tax regimen;
- persons pursuing an independent professional activity, in particular in the area of science, literature, arts, education or training activities, as well as medical and legal practice, including lawyers and notarial practice, or persons pursuing religious (missionary) activities, other similar activities and receiving income from such activities;
- farmers, unless they are subject to insurance on other grounds;

Such entities may settle to make a payment of a single contribution to state social insurance for the periods from March 1-31 2020, and from April 1-30 2020 **in the amount and manner envisaged by the Law of Ukraine 'On the collection and accounting of a single social contribution for obligatory state social insurance.'** In this case, information on amount to be paid shall be indicated in the reports on the accrual of the single social contribution for the reporting period specified for such entities by this Law.

**Penalties shall temporarily not be applied for:**

- Late payments (late transfer) of the single social contribution;
- Incomplete or late payment of the single social contribution amount alongside the making of payments for the amount to which the single social contribution is accrued (advance payments);
- The late submission of reports, envisaged by this Law, to the tax authorities.

**During the periods from March 1-31 and from April 1-30**, single social contribution payers shall not be charged with a penalty, and the penalty accrued for the said period shall be deducted.

**For the period from March 18 – May 18 2020** there shall be a moratorium on documentary inspections with regard to the correctness of the accrual, calculation, and payment of single social contributions. Inspections that were initiated before March 18 2020 **shall be paused until May 18 2020**.

Such periods shall be **included in the pension insurance record** and it shall be considered that contributions have been paid for the amount of the minimum insurance premium, as envisaged by the legislation for each of such periods and applicable to the entities who didn't pay their insurance premiums for the periods from March 1-31 and from April 1-30

- individual entrepreneurs, including those who have opted for the simplified tax regimen;
- persons pursuing an independent professional activity, in particular in the area of science, literature, arts, education or training activities, as well as medical and legal practice, including lawyers and notarial practice, or persons pursuing religious (missionary) activities, other similar activities and receiving income from such activities;
- farmers, unless they are subject to insurance on other grounds.

### On Paying Consumer Credits

If a consumer **has defaulted on the consumer loan contribution** in the period from March 1 through April 30 2020, he/she **shall be released from liability to the lender for such delay**. Also, but not exclusively, the consumer shall be **exempt from the payment of a penalty or fine as well as other payments, which are stipulated by the consumer credit agreement for late fulfillment** (default, partial payment) by the consumer of the obligations under such agreement. At the same time, an increase of interest under the consumer credit agreement for reasons other than envisaged by the Civil Code of Ukraine during the period from March 1 through May 31 2020 shall be prohibited.

Besides, despite the provisions of Article 3 of the Law of Ukraine 'On Consumer Lending', such changes **shall also apply** to the following types of credit agreements:

- agreements that have a condition on consumer credit in the form of crediting an account with a loan maturity of up to one month and credit agreements concluded for a term of up to one month;
- loan agreements that do not envisage the payment of interest or any other payment for the use of monetary instruments provided under such contracts;
- credit agreements aimed to entitle a consumer to make transactions with financial instruments if such transactions are made with the participation or mediation of a lender or other professional participant in the securities market;
- credits granted under agreements concluded as a result of the settlement of a dispute through the conclusion of a settlement agreement approved by a court;
- credits given exclusively within the framework of relevant state or local government programs to a particular circle of individuals and which provide for certain terms and conditions of crediting defined by such programs, including the payment of interest for the use of the credit;
- unauthorized overdrafts, which exceed the amount of the transaction on the account, over the amount of the established credit limit, which is stipulated by the agreement between the lender and the consumer and which was not predicted in the matter of amount or time of occurrence;
- credit agreements, where the total amount of credit does not exceed one minimum salary, established on the date of the credit agreement;
- loans provided by pawnshops in case of the transfer of the security deposit to the pawnshop, provided that the consumer's obligations are limited by the value of the security deposit.

### Measures aimed at the protection of labor rights

In accordance with the applicable legislation, an employee may, for family or other reasons, be granted a leave without pay for a period of time stipulated by an agreement between the employee and the owner or other authorized person, but of no more than 15 calendar days per year. According to the adopted changes, if a person has taken leave without pay during the period of the quarantine, such a person shall be entitled to take leave without pay for no more than 15 calendar days per year.

In other words, days of leave taken by a person during the quarantine period **shall not be taken into account** when calculating the number of days that this person is entitled to take without pay during the year.

### Measures aimed to protect housing rights

For the duration of the quarantine or restrictive measures related to the spread of coronavirus disease (COVID-19), and for the 30 days following their suspension, **it is prohibited to:**

- accrue or collect fines or penalties for late payment for housing and utility services;
- suspend the provision of housing and utility services to the citizens of Ukraine in case of late failure to pay or partial payment for such services;
- seek compulsory eviction and compulsory foreclosure of private property owned by citizens of Ukraine during the enforcement of court decisions regarding debt collection for utility services;
- seek the compulsory eviction of citizens from public and social housing due to late payment for housing or utility services

## Terms for receiving administrative services

In accordance with changes envisaged by the Law, the terms of providing administrative services (for example, issuing a passport) shall be **paused from the date of declaration of quarantine** and shall be resumed after its suspension. At the same time, **no penalties shall be applied** for missing the application deadline for obtaining or renewing identification documents or permits (for example, pasting a photo into a passport after reaching the age of 25 and 45, or residence permits for non-Ukrainian nationals).

## Social rights of IDPs

In accordance with changes envisaged by the draft law, for the duration of quarantine or restrictive measures related to the spread of the coronavirus disease (COVID-19), and 30 days following their suspension, **it is prohibited to:**

- abolish IDP certificates based on the information that the person was absent on territory controlled by Government of Ukraine for more than 60 days;
- suspend withdrawals in case of failure to pass physical identification in the 'Oshchadbank';
- carry out checks on the actual place of residence, which are stipulated by the provisions of the Cabinet of Ministers of Ukraine Decree No. 365 when designating or resuming social payments.