

Research on Laws and Systems Related to Infectious Diseases in China

- Focusing on the isolation measures

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A B S T R A C T

At the end of 2019, the novel coronavirus COVID-19 began to spread in China, and the Chinese society has fully invested in the fight against the novel coronavirus epidemic, which is a major test of the rule of law in public health in China. Since ancient times, infectious diseases have been one of the most terrifying enemies of human beings, posing a serious threat to human life and health. The prevention, control and elimination of infectious diseases requires not only science and technology, but also a sound legal system and a sound legal system, so that the people can feel at ease, have laws to abide by, and administer in accordance with the law. Formulate relevant laws and regulations such as the Law on the Prevention and Control of Infectious Diseases. Prevent, control and eliminate the occurrence and prevalence of infectious diseases, and protect citizens' life, health and public health. China's experience has gradually improved, and the legal system for the prevention and control of infectious diseases has been gradually improved. In 2003, 2004, and 2013, a number of laws and regulations were revised and promulgated. In 2020, a revised draft was promulgated, but some problems were inevitably exposed at the application level.

Key words: COVID-19; crisis management; infectious diseases ; isolation measures

1. Introduction

Infectious diseases, along with the process of human civilization, have never disappeared. Both the global plague in the 17th and 18th centuries, the plague and the 1918 influenza epidemic, the SARS epidemic in 2003, and the Ebola hemorrhagic fever outbreak in 2014 have all brought endless disasters to mankind and made the world pay a huge price. According to the World Health Organization (WHO) statistics worldwide, three out of every 10 deaths die from infectious diseases, perinatal conditions, and malnutrition. Infectious diseases cause 51% of life span loss, especially in low-income countries, and 68%. (Wang, 2010:753-755). In 2013, China (excluding Hong Kong, Macao and Taiwan) reported 6,416,418 cases of notifiable infectious diseases and 16,592 deaths, with an incidence rate of 473.87/100,000 and a mortality rate of 1.23 / 10 0,000 (The National Health and Family

Planning Commission, 2013). The prevention, control and elimination of infectious diseases is our unremitting pursuit. It needs not only the support of science and technology, but also the guarantee of the legal system. The Law on the prevention and Treatment of infectious diseases is the sum total of laws and regulations that adjust the prevention, control and eliminate the occurrence and epidemic of infectious diseases and ensure the various social relations produced in human health activities. (Wu, 2005: 67). After summarizing the work experience and lessons of SARS, China revised and promulgated the Law on the Prevention and Treatment of Infectious Diseases in 2004, together with other supporting laws and regulations, providing an important legal guarantee for the prevention and treatment of infectious diseases in China.

At the end of 2019, under the sudden influence of novel coronavirus, The Chinese society has fully turned into the abnormal state of fighting against the epidemic, which is another major test of the rule

of law of public health in China. In the process of prevention and control, the decisive quarantine measures taken by the government have played an important role in the prevention and control. However, while the quarantine measures achieve effective epidemic prevention, they may also cause conflicts between citizens' basic rights and public interests. In order to protect the life and health of the public, it is understandable that individual personal freedom is restricted according to law, but it is not easy to make the choice of the basic right of personal freedom of citizens. Both the boundary of isolation measures and the boundary of limited personal freedom must be carefully considered. (Song, 2011;24). On the other hand, in practice, sometimes there are indeed some law enforcement acts that distort the original intention of implementing quarantine measures and transcend the law authorization to infringe on the legitimate rights and interests of citizens. For the anomie of public power in the implementation of quarantine measures, it is not only due to the weak awareness of the rule of law and the basic rights of citizens, but also whether the relevant system of the prevention and control of isolation measures of public health emergencies is complete and whether the operation mechanism is reasonable. Public power in the implementation of isolation measures how to operate, will affect which individual rights, need to compare relevant norms and practice, and discusses how to realize in the implementation of the civil rights protection and public power control the dual rule of law goal, balance the individual rights and public interests, to achieve China related public health emergency response law optimization, promote the process of quarantine measures in the rule of law. (Zhai, 2010:32)(Xu, 2012:13-17). In the context of responding to public health emergencies, in addition to implementing effective control, how to balance the safety interests of the majority with the legal rights of the minority. In this regard, the isolation measures are a connection of the relationship between the majority and the few, and there is little discussion in the academic community. Through the related content of isolation measures in the standard system form analysis, can be clear to China in the position of the isolation measures in the legal system, define its legal meaning, and as the legal basis to describe the public power in the isolation measures and relative — rights relations, thinking about the problems existing in the specification and practice, to find a suitable path of the rule of law. The response to public health emergencies is a public health work that needs long-term implementation, and the isolation measures taken involve important basic rights such as public interests and citizens' personal-freedom. (Min, 2008:7)(Yana, 2007:75-77). at present problems will not repeat itself in the future, the pub-

lic health emergency response in the implementation of isolation misconduct is various reasons, the specification level is not clear, unclear factors, also has the implementation level lack of specific implementation standards and related resources supporting factors. To address this challenge, it is imperative to optimize laws and regulations related to isolation measures in public health emergencies. Therefore, it is necessary to use theory to guide specific practice, reasonably distribute the interests of all parties, and guarantee the balance between public rights and private rights, public interests and individual basic rights.

2. Materials and Methods

To study the idea of identifying — concept, analyzing — standard and constructing — system optimization. Firstly, analyze the standard evolution of the isolation measures in the public health emergencies and the practical problems; analyze the problems of the problems of the isolation measures; and make the optimization suggestions for the improvement of laws and regulations. The research methods used in this paper mainly include literature analysis methods and empirical research methods.

Literature analysis. Collect literature related to isolation measures in public health emergencies since the SARS outbreak whenever possible. To understand the background and value of isolation measures to combat public health emergencies, to distinguish the concept and nature of isolation measures, and to construct a reasonable judgment standard for legitimacy.

Empirical analysis. On the one hand, the authors study the historical evolution of the isolation measures system, comparing the past with the current relevant norms, analyzes the problems and causes existing in the current norms, and finds the boundary between the public power implementing the isolation measures and the protection of the basic personal rights.

3. Research status

Since SARS in 2003, the academic community has conducted a lot of targeted research on the emergency response based on public health emergencies. Related research focuses on the theory of rule of law, the state of emergency and specific emergency mechanism in the response of public health emergencies, the operation of public power and the protection of civil rights in the response of public health emergencies. Specifically, the existing research results can be mainly divided into the following aspects:

1. Conduct theoretical research on the rule of law from the aspects of rule of law thinking, rule of law principles and legal system, observe the rule of law

process of public health emergencies from a relatively macro perspective, and pay attention to the legal guarantee and legal system construction of public health emergencies. Using the rule of law to deal with public health emergencies is an academic consensus, such as the characteristics of public health emergencies means that in the corresponding response process, will inevitably need to give the relevant public authority with certain emergency disposal right to help its implementation function, but the emergency disposal right in the operation process still must conform to the principle of the rule of law, follow the rule of law thinking and legal thinking. For the principles of the rule of law, on the one hand, it is the principle that all public authorities must abide by when exercising their emergency power in public health emergencies; on the other hand, it is also "the basic legal principle of the rule of law in dealing with public health emergencies." (Wang, 2020:65-77). Using the rule of law for epidemic prevention and control is a basic requirement of a country under the rule of law. The more critical the situation is, the more possible the test of the state and level of the rule of law of a country. Therefore, in the response to public health emergencies must implement the rule of law thinking, drive the rule of law spirit, the legitimacy as the basic requirements and follow any decision and behavior, emergency mechanism start and isolation of prevention and control means must be from the purpose, authority, content, means, procedures and other five aspects of legitimacy review can prove its rationality and legitimacy. (Wang, 2020:3-13).

2. 2. After the research and reflection on the current legal system of epidemic prevention and control, we put forward the corresponding construction mode. When public health emergencies, in addition to by strengthening emergency measures, emergency hearing, emergency reserve training and other related system to directly protect the citizens' health, also need through the environment and health law to coordinate the relationship between human and nature, cultivate the civic consciousness of the masses, unobstructed information transmission channels to indirectly protect their life and health rights. (Li, 2020:100-117). Public health emergencies are highly uncertain and seriously harmful. The construction of a public health-related legal system is an urgent part to improve the rule of law in China. (Meng, 2020:135-147). Li and Meng believe that the right to health is the highest goal of the construction of the public health legal system. China's current system is insufficient in both legislation and law enforcement. We should give full play to the advantages of China's system, transform the achievements from the implementation effectiveness of the system to the construction of the legal system, and construct the relevant legal system from the aspects of structure, law, system, and

participants, so as to form the integrated effect of the law. (Guo, 2020:3-19).

3. Conduct relevant research from the perspective of emergency state, and propose countermeasures for the challenges faced by the current emergency response mechanism. On the one hand, the state of emergency legal system is the "rebalancing" process of public rights and private rights, and on the other hand, it can provide an identification for the transformation of social order from normal to abnormal conditions. Therefore, we should restart the legislative process of "Emergency Law", and set the goal of "Management Law" reasonably, and split the Emergency Response Law into two parts: "status Law" and "Management Law" to lower the threshold of declaring emergency, and realize the overall planning of response during and after the event. (Lin, et al. 2020:130-140). The public health legal system is a "common good" system with the goals aimed at protecting public health. Its value pursuit mainly focuses on three aspects: health, public issues and law. China's relevant system resources to provide specification, law enforcement, justice, law-abiding four aspects of resources, formed during the outbreak of public health emergency governance of public health formed the binary pattern of emergency rule of law and conventional rule of law, in response to this pattern should grasp the four aspects to improve the relevant system into China. (Li, 2020:25-43). The systematic state of emergency is the normal rather than the rule of law corresponding to the conventional rule of law. The state of emergency has three meanings of fact, norm and governance. (Xie, 2020:31-48). China's public health emergency comes from the integration of public health law and emergency law, which must take into account the necessity, scientific and procedural, and start the —— disposal of —— as the three stages of building the emergency system. At the same time, it is also necessary to upgrade some administrative regulations to laws, introduce targeted and detailed laws and norms, coordinate and clarify the leadership system, and classify public health emergencies to grant people's governments at all levels with different emergency powers. (Meng, 2020:135-147).

4. Study the legal system and legal contents of the response to public health emergencies, and put forward targeted legal principles, the ways of law amendment and the provisions. The principles of the Law on the Prevention and Treatment of Infectious Diseases need to be supplemented, and doubts should be revised into the Law on the Prevention and Treatment of Infectious Diseases from the principle of principle, transparency and timeliness, the principle of exemption that should be followed in response to public health emergencies (Wang, 2020:14-23.) Problems existing in China's public health emergencies mainly stem from

the lack of building a society ruled by law. To be specific, there are insufficient legal norms on the obligations of each subject in public health emergencies, arbitrarily reduce the legitimate rights of citizens, citizens' imperfect sense of consistency of rights and obligations and lack of obligations, and lack of disciplinary means for violations of laws and regulations. Under the guidance of scientific nature, we should improve the public health legal standard system, strengthen legal services related to public health, and strengthen the handling of illegal behaviors while coordinating the benign interaction between the government and society. (Huang, 2020:27-36.) The current legal norms that have encountered problems in the response to the public health emergency event are mainly due to the lack of its legislative concept. In this regard, in the revision of the Emergency Response Law, we should improve the quality of legislation and improve the function of the emergency response system by improving the bottom-line thinking, adjusting the legislative mode, updating the emergency management concept, strengthening the leadership mechanism and working system, and enhancing the overall planning and comprehensive coordination. (Zhong, 2020,:24-37). In addition, there are scholars in the law "emergency" words in the study, the law of the "emergency" in "emergency" terms and concept, lack of precision, need to change the expression, expression of the state of emergency, using "emergency" , "emergency" words can effectively avoid confusion, rigorous treat the use of legal concepts, avoid the generalization of its meaning (Chen, 2015:109-114) (Jiang, 2020:372-38)

5. Specific research on the isolation measures system in public health emergencies. The quarantine measures during the SARS period lacked legal authorization and some legal procedures, but in order for these measures to prevent and control the epidemic, these quarantine measures formed a tension between legitimacy and legitimacy. (Zhu, 2003, 05:57-62) (Zhong, 2003:7-10) (Long, 2003:35-40). Through SARS influence and legislative efforts, the current specification system can for the prevention and control isolation measures to provide more legal supply, in the public health emergency isolation measures legitimacy from form legal development to discretionary justice, judgment standard by formal legal retention principle to focus on substance proportion principle, so more emphasis on the administrative organs of self restraint. (Chen, 2011:41-50). Law stipulated by the isolation of various, improper operation will cause chaos, to "quarantine" as the superior legal concept, through the concept of "quarantine" systematization and "quarantine" systematization to make the overall isolation measures systematization, form a hierarchical legal retention system and the judge retention system, from the classification,

subject, procedure, relief level of isolation measures system to perfect. (Gao, 2020:631-652). For whether the government has the right to block a certain range of epidemic area this problem, legal norms used is uncertain legal concept, so local governments have the purpose has the right to implement purpose discretion, as long as conform to the legal purpose, minimum infringement and interests can implement the corresponding blockade measures, but not announced the epidemic area namely blockade decision and behavior has serious legitimacy defects. (ye, 2020:2-11).

6. Studying the operation of public power in public health emergencies, such research results are relatively rich, including power allocation, power conflict, emergency power constraints and other aspects. Infectious disease prevention and control of legal challenge is the authorization and reflection on power to maintain the balance, the monitoring of new infectious diseases, immediately into legal infectious diseases control and risk prevention depends on infectious diseases designated power and procedures, when the law does not give the government full power and responsibilities, no clear corresponding administrative procedures, will appear in practice isolation measures, social activity control and personnel cross-regional flow related problems and contradictions. (zhao, 2020:94-108). The subject of public power, the subject of private power and the principle of procedure in the state of emergency all have their own internal logic, and the public power and private power play games with each other. Therefore, the grant and restriction of public power and the protection of reducing private rights are the unity of opposites. (Xie, 2020:31-48). In public health emergencies, the balance of power is broken, and there are multiple new power conflicts of public and private power. Different powers should be centralized and inclusive in the normative structure, and reasonable allocation and coordinated procedures should be provided. (Hu. et. al. 2020:37-45). The current law lacks binding force on the "national emergency power", so it is necessary to take the constitution as the commander and the special law as the support of the legal standard system, so as to make up for the lack of legal concept, legal principles and legal rules in the current standard system. (Li, 2020:54-67).

For the new crown in the process of cross-regional administrative power configuration, the public health emergencies of cross-regional governance problems are rooted in the horizontal government of the legal supply is insufficient, should take the emergency response law as the core in the legislation gives local collaborative power to deal with emergency events, in play around the government autonomy at the same time, the legal binding of the government agreement to confirm. (Zhou, 2020:74-83).

The interpretation of the central government relationship focuses on how to explain the laws of "unified leadership", "hierarchical responsibility" and "territorial management". We should best explain the relevant norms from the standpoint of interpretation, and properly handle the central and local government relations to realize the optimization of the organizational structure in response to public health emergencies.(Wang, 2020:76-93).

In this regard, the response to public health emergencies takes the territorial management as the basic principle, and the purpose of establishing this principle is that "one is to effectively integrate emergency resources and take into account the efficiency and scientific nature, and the second is to implement the whole process and active response to emergencies" (Qi, 2020:37-46)."Local governments have the right to actively respond to sudden infectious diseases within their statutory authority, based on the principle of hierarchical responsibility rather than the principle of territorial management."(Ye,2020:2-11).In addition, the main standard for the organization and operation of leading groups and headquarters in the local prevention and control organization system is the common law. (Gao.et.al, 2020:47-60).

Finally, for the protection of civil rights in public health emergencies, the academic circle has conducted extensive research from the rights protection mode and the protection path of specific rights.It is necessary to set up the dynamic principle of power restriction to replace the static list of rights, and to demonstrate the corresponding right restriction with a dynamic double argumentative thinking, so that the restriction of public power does not necessarily conflict with civil rights and civil liberties.(Zhang, 2020:116-127).The restriction in the emergency state of power can not be unlimited, should be limited by the principles of the rule of law, and ultimately must serve the protection of human dignity, which is the boundary of the contraction of individual rights in the response to public health emergencies.(Zhao,2020:11-24).The legitimacy of emergency administration has been shaken. On the basis of abiding by the basic principles of administrative law such as the principle of proportion and the principle of legal reservation, it is necessary to give full play to the role of constitutional interpretation to prove the constitutionality and rationality of the power restriction on citizens.(Zhao,2020:78-85.)

When a public health emergency occurs, the counterpart has an administrative cooperation obligation, and the voluntary identification and obedience certificate of the counterpart becomes the legitimacy of its cooperation obligation.(Lei, 2014:100-106).

Citizens' right to life and health is the first important right to be considered and protected in the response to public emergencies.For citizens' right to

life and health rights, Liu believes that citizens' health rights can be divided into positive beneficial rights and negative defense rights, in the emergency is limited to the beneficial right part of the health rights can be reduced, the reduction must be decided by the public power, and cannot extend the scope of the reduction to citizens' health defense right.(Liu,2020:30-39).There are particularity to the right to health of medical workers in public health emergencies, the key point lies in how to balance public welfare and private interests.It is one of the following ways to improve the relevant legal guarantee, set up the "doomsday rules" and the "list of justifiable reasons", and replace the punishment system with the reward system. (Wang, 2020:60-66).

4. Problems existing in isolation measures

4.1 Relevant regulations in China

Article 3 of the Administrative Compulsory Law stipulates that when a public health event occurs, the emergency measures taken by the administrative organ shall be implemented in accordance with the provisions of relevant laws and administrative regulations.It can be seen from the provisions of the Administrative Enforcement Law that, on the one hand, the isolation measures taken for the prevention and control of infectious diseases involve the restriction of personal freedom and are still the object of the administrative enforcement Law, and the relevant laws and administrative regulations are the special provisions of the administrative enforcement measures. — are in conflict with the Administrative Enforcement Law.It can be said that the disposal of public health incidents will still be carried out in the institutional framework of laws such as the Emergency Response Law and the Prevention and Treatment Law of Infectious Diseases.(Chen,2011:41-50).

In addition, the Emergency Response Law does not directly stipulate the quarantine content, but its 49 article authorizes the government to take "necessary measures."Therefore, the direct legal basis for the implementation of isolation measures in the current system is Article 39, Article 40 and Article 41 of the Law on the Prevention and Treatment of Infectious Diseases, which respectively stipulate that medical institutions may isolate patients, pathogen carriers and close contacts in the discovery of Class A infectious diseases;Disease prevention and control agencies may isolate close contacts upon detection of outbreaks; local people's governments at or above the county level may isolate persons and close contacts in the places where Class A infectious diseases are discovered.

4.1.1 Relevant expressions of "isolation"

The relevant measures of "isolation" are based on laws and regulations, but these laws and regulations do not specify what specific contents of the "isolation measures" contain. Literally, "isolation" means separating people from people. In the category of preventing and controlling infectious diseases, it usually refers to isolating people who may spread diseases from healthy people and preventing the spread of infectious diseases by blocking contact. From the national legislative examples, isolation measures are mainly divided into separation (isolation), quarantine two ways. (Ellas, 2016:136) the main distinction criterion between the two is whether the epidemic infection (Gao, 2020:631-652). But in the "prevention and treatment of infectious diseases" "quarantine" is limited to "traffic health quarantine", and related to "isolation" including "separate isolation treatment", "designated place for medical observation", "compulsory isolation treatment measures", "isolation measures", etc., which for "close contacts" is "designated place for medical observation", if from the perspective of whether to distinguish, then "designated place for medical observation" is also a kind of "quarantine". It can be seen that "quarantine" and "quarantine" in the Law on the Prevention and Treatment of Infectious Diseases are not opposite concepts. "isolation" focuses on the separation of people, and "quarantine" focuses on the inspection of infectious diseases. In general, the differences in the various "isolation" in the Prevention and Treatment of Infectious Diseases Law are more distinguished by the different objects of its implementation. Although the word "quarantine" is often used only once in the Law on the Prevention and Treatment of Infectious Diseases, the concept of "quarantine" still plays an important role in China's legal system. As early as 1957, China formulated the Regulations on National Health and Quarantine, including the current relevant rules of the National Health and Quarantine Law and the Detailed Rules for the Implementation of the National Health and Quarantine Law. The term "quarantine" is also used by the provisions of the Domestic Traffic Health and Quarantine Regulations and the Implementation Plan of the Domestic Traffic Health and Quarantine Regulations in the framework of the Law on the Prevention and Treatment of Infectious Diseases. The Law on the Prevention and Treatment of Infectious Diseases and the Border Health and Quarantine Law are two important laws formulated by China to prevent the spread of infectious diseases, with different legislative priorities. The prevention and treatment of infectious diseases in 1989 law stipulates "border health and quarantine" in accordance with "relevant laws", 2004 revised to

"border health and quarantine, this law is not provide, respectively applicable to the provisions of other relevant laws and administrative regulations", thus shows the law on the prevention and treatment of infectious diseases and the border health and quarantine law " the relationship between the general law and special law.

4.1.2 The statutory meaning of "isolation"

The definition of quarantine contains four elements: limits to designated premises, limits activities, treatment, until danger is discharged. This is the most narrow interpretation of "isolation", meaning that "isolation" should include "treatment". Although the "isolation" in the Implementation Measures of the Law on the Prevention and Treatment of Infectious Diseases is "isolation treatment", it is still close to this narrow concept. It is a "medical measure" for infectious disease patients, suspected patients and pathogen carriers, and its superior concept is "sanitary treatment". The above three regulations are formulated by the health administration department of the State Council. In the implementation of quarantine measures, the narrow definition of "isolation" is similar to foreign legislation. The implementation objects of "isolation" are patients with "treatment" and "isolation", and "quarantine" measures are "quarantine" for close contacts and suspects who cannot be determined.

However, " in real life, ordinary people do not adopt such a strict understanding of isolation, especially if they do not treat treatment as a necessary connotation of isolation. No matter whether accompanied by treatment, medical examination and other measures, whatever is kept in the designated place, the activities are restricted, all belong to the isolation recognized by ordinary people." (shen, 2009:110-140). The Law on the Prevention and Treatment of Infectious Diseases, the Regulations on Domestic Traffic Health and Quarantine, and the Regulations on Emergency Response to Public Health Emergencies adopt the general term interpretation of "quarantine". In the Law on the Prevention and Treatment of Infectious Diseases, Among them, "isolation treatment" for patients and other patients, Local governments are taking "quarantine measures", Its implementation focuses on the prevention and detection of infectious diseases, Objects quarantined do not necessarily require "treatment," Therefore, "designated medical observation" can also be considered a kind of "isolation"; "Domestic traffic health and quarantine Regulations" appeared "quarantine", "temporary quarantine" and other expressions, Here, the "temporary" "isolation" clearly rejects "treatment"; The Regulations on Emergency to Public Health Emergencies are similar to the Law on the Prevention and Treat-

ment of Infectious Diseases, Position "in situ isolation", "in situ observation" and "in situ treatment". At the same time, there are "isolation treatment", "medical observation measures" and other related expressions. At this point, due to the different specification authority of "isolation" and its related concepts give different meanings, makes the specification of "isolation" can contain narrow and broad two levels, broad "isolation" is common sense, not necessarily contains the meaning of "treatment", the narrow sense of "isolation" is in the medical sense, must contain "treatment".

The main difference between isolation in the broad or narrow sense of "isolation" is whether "treatment" is required for those involved, and the same is true for "designated premises, restricted activities, until the danger is lifted." "Until the danger is lifted" means eliminating the danger of the spread of infectious diseases, which is also the basic purpose of implementing various quarantine measures. These measures are implemented to either the people who are infected with infectious diseases or those who have had close contact with the source of infectious diseases. It can be said that the value of implementing various quarantine measures is concentrated by their implementation objects.

4.2 Problems faced in the implementation

4.2.1 Questions about the legitimacy of the target extension of the quarantine measures

Novel coronavirus has triggered the most serious public health emergency since the founding of the People's Republic of China. Its impact is beyond the law on the Prevention and Treatment of Infectious Diseases, as revised by experience based on SARS prevention and control. The provisions of the Law on the Prevention and Treatment of Infectious Diseases on isolation measures are implemented through controlling the personal freedom of patients, carriers of disease sources, suspected patients and close contacts. If these personnel can be accurately positioned, then through this means can achieve a relatively good prevention and control effect. However, in the public health emergency caused by the novel coronavirus, when the initial adverse prevention and control led the country to take emergency response measures, the virus had already spread across the country. At this time, it was difficult to quickly know who might carry the virus based on epidemiological investigation. If it is difficult to determine who carries the virus, minimizing healthy residents can also effectively reduce the chance of disease transmission among virus carriers, so it is not uncommon for local governments to adopt closed management for communities.

From the perspective of legal authorization, the government has the right to close the relevant

places that may cause the spread of infectious diseases according to relevant laws when necessary. At this time, the restrictions suffered by ordinary citizens when entering and leaving these places will become the reflection effect of the closed place —, which is, the closed management — of the community. However, as local governments have increased the prevention and control measures, shifting from requiring residents to reduce their travel to banning ordinary residents from "going out, building and community". 1, these measures have completely restricted most residents to their homes and have an obvious isolation nature. The target of quarantine has been expanded from patients, pathogen carriers, suspected patients and close contacts to all personnel, which clearly breaks through the relevant provisions of the Law on the Prevention and Treatment of Infectious Diseases.

In order to protect the life and health of the public from infectious diseases, the public power represented by the government has the right to impose necessary restrictions on the personal freedom of citizens in accordance with the authorization of law in the event of public health emergencies. But when the harm caused by infectious diseases beyond the law on the prevention and treatment of infectious diseases "emergency response law" and other law in the predictable degree, the government quarantine measures once again to control infectious diseases legitimacy question, also again highlights the necessity of implementing isolation measures and the tension between the protection of individual basic rights. If the requirement of legitimacy is abandoned and the government is allowed to take arbitrary measures to prevent and control infectious diseases, then the various prevention and control measures will inevitably lose their boundaries, which will put the legitimate rights of citizens at an extremely disadvantageous position. In order to standardize the operation of power and prevent its abuse while ensuring its due role, we must follow the requirements of the rule of law principle, respond to the challenges faced by the existing legal norms, and ensure the balanced development of power and rights.

4.2.2 Ununity of isolation standards

The Law on the Prevention and Treatment of Infectious Diseases, the Emergency Response Law and other laws authorize the quarantine measures for the prevention and treatment of infectious diseases and the response to public health emergencies. However, there are no further detailed provisions in the laws and their lower regulations, methods and regulations on the period of isolation and isolation. The lack of unified standards makes the isolation measures implemented different places in practice, and the standards of isolation measures are an

issue involving equality scale (Xia,et.al.,2020:18-29), the lack of uniform standards is likely to lead to the unequal treatment of citizens' rights in the process of quarantine, departing from the value of the rule of law on the realization of substantive equality.

In terms of isolation methods, isolation and related measures can be classified through different classification methods, such as human isolation control and regional isolation control; further isolation space into hospital isolation, home isolation, centralized isolation, etc.; or voluntary isolation, general isolation and compulsory isolation(Li,et.al.,2020:74-85).However, these classifications are summarized based on practice, which are not clear by law.Due to the lack of what kind of isolation measures, which specific isolation in practice depends on the government's discretion, from the beginning of public health emergency community home isolation, to the widespread implementation of centralized isolation, to the "outbreak" after large-scale remote centralized isolation, and from voluntary cooperation with home isolation to the violation of quarantine management and compulsory centralized isolation.

From the perspective of the isolation period, due to the new specificity of novel coronavirus, in order to better realize scientific prevention and control, it is necessary to dynamically adjust the isolation period with the change of epidemic forms and the deepening of the understanding of the virus.There is no unified standard for the period of quarantine across the country. Except for the 14-day quarantine, Heilongjiang province once adopted a "14 + 7 + 14" quarantine model for returnees. Dalian required "14 + 7" quarantine and calculated the quarantine period for residents who go out without authorization.Relators who need to be quarantined due to public health emergencies are usually not critical, so they should try to protect their existing legitimate rights and interests. However, because there is no uniform standard for various forms of quarantine measures, unequal treatment may inevitably occur.

4.3 Imperfection in the enactment of the law

4.3.1 Generauthorized expansion of quarantine measures

The Law on the Prevention and Treatment of Infectious Diseases, with a high level of effectiveness, adopts the broad meaning of "isolation".It also directly clarifies the concept of "isolation", such as "isolation treatment", and those that do not use this concept but specify the characteristics of restricting personal freedom, such as "medical observation in designated places".Although the narrow sense is inconsistent with the broad sense of "isolation", but

this distinction based on whether the "treatment" can be completely determined by the corresponding implementation object is "infected with the epidemic" distinction.In general, the relationship between inclusion and inclusion in the broad and narrow sense is very clear, and the object of "isolation" with different meanings is clear, and its connotation is also easy to be understood by the public.On the whole, the timing, means, purpose and object of "isolation" in the Law on the Prevention and Treatment of Infectious Diseases are very clear.If the "isolation" as leading, then the corresponding lower specification "isolation" even if the meaning is not clear, then at least also need to include "designated place, restricted activities, until the danger lifted" these three aspects, if stick to the purpose of eliminating the risk of the spread of infectious diseases, so generally not to its implementation and the legal rights of relevant citizens cause substantial effect.

However, in the above discussion of the legal concept of "isolation", one important law is not mentioned, and that is, the Frontier Health and Quarantine Law.In the chapter of "quarantine", the law stipulates measures such as quarantine and detention, which are targeted at infected people and infected suspects respectively.At first glance, the law seems to define "isolation" in a relatively narrow sense, but in fact, the restrictions on the relevant personal freedom are far from what can be solved by discussing the application of "isolation" in a broad or narrow sense.

In the chapter of "Infectious disease Monitoring", the "Border Health and Quarantine Law" stipulates that the border health and quarantine organs should take "necessary prevention and control measures" for "people entering or leaving the country".The expression "necessary control measures" is not rare. For example, the "necessary control measures" in the Law on the Prevention and Treatment of Infectious Diseases exist as the content of the mode of "enumerating + providing the bottom line".Unlike the law on the prevention and treatment of infectious diseases, the border health and quarantine law, this is a regulation is very broad general authorization terms, the border health and quarantine law implementation rules, thus set "control measures" as "necessary health measures", related objects contains "patients, suspected patients, close contact personnel" "entry and exit personnel and (accommodation) staff", etc.There is no doubt that such an explanation will greatly expand the content and target of personal freedom control measures through "infectious disease surveillance".Among the many aspects of the rule of law, the restriction on the abuse of public power is always an indispensable side. Therefore, even if the role of the general authorization in the prevention and control of infectious diseases is recognized, the general terms

should still be excluded. The meaning of explanation. "Many of the laws are not simply parallel to each other, but in various ways, only through their interweaving and mutual cooperation can produce a regularity" (Germany, 2019: 144). At this time, the "isolation" into the legal system is not only the legal form of requirements, its positioning in the system will directly affect the personal freedom rights of the relevant personnel.

Infectious diseases stipulated in the Frontier Health and Quarantine Law are divided into quarantinable infectious diseases and surveillance infectious diseases, among which the quarantinable infectious diseases are plague, cholera, yellow fever and other infectious diseases determined by The State Council, and the monitored infectious diseases are the infectious diseases determined by the administrative department of public health under The State Council. At the same time, the content of the law stipulates the "quarantine, monitoring and health supervision" of infectious diseases. It can be said that in the framework of the law, "monitoring" and "quarantine" are two kinds

Different approaches to infectious diseases, but the legal text does not specify whether the relationship between the two models is opposite or can be transformed from "monitoring" to "quarantine" under certain circumstances. Chapter 3 of the Frontier Health and Quarantine Law is "monitoring of infectious diseases". Article 15 stipulates that "the frontier health and quarantine organs shall monitor infectious diseases for persons entering or leaving China, and take necessary prevention and control measures." "How to understand the" and "here is the relationship between" infectious disease surveillance "and" control measures ". From the structure of the Border Health and Quarantine Law, the "monitoring of infectious diseases" is only specified in Chapter III, so the "monitoring" can also be understood as a special concept of "preventive measures" and "control measures", while targeting "quarantinable infectious diseases" and "monitoring of infectious diseases".

From the perspective of control, the "control measures" can be restricted explained through the legal setting of the relevant control measures of "quarantinable infectious diseases" and "monitoring infectious diseases". When monitoring "quarantinable infectious disease", it can be converted into "quarantine", and the "quarantine" and "retention inspection" measures of Article 12 can apply when the conditions are met; when monitoring "monitoring infectious disease", article 17 can turn to the "retention inspection" measures applied as "monitoring". This more restrictive explanation can achieve better control, but will encounter practical obstacles. Relevant departments only included emerging

diseases into the management of "quarantinable infectious diseases" and did not clarify whether they are within the scope of "monitoring infectious diseases" (the National Health Commission's COVID-19 announcement No. 1, 2020) because not announced it belongs to the "monitoring of infectious diseases", in this kind of interpretation of ordinary people from foreign epidemic restriction measures will appear legitimacy doubt, but the obstacle is not from the lack of legal authorization, but from the relevant departments without the relevant procedures, relevant departments through as can eliminate. Combining the "quarantine" and "monitoring" included in the Border Health and Quarantine Law can clarify the purpose and object of the relevant measures, thus limiting the abuse of power. By limiting the "necessary measures" of Article 15, this can not only provide a basis for the reasonable exercise of power, but also guarantee the legal rights of citizens.

However, the Implementation Rules of the Border Health and Quarantine Law stipulate that "infectious disease monitoring" is "the investigation of infectious diseases" and "the management of relevant personnel", and the "monitoring" here is closer to the general meaning of "monitoring and testing" and the "control measures" of "management" of relevant personnel. In this way, article 15 is to "investigate" relevant infectious diseases first, and then implement "control measures" for relevant personnel. At this time, after the "monitoring" as an "investigation", the relevant departments can implement the "control measures", and the object of the implementation can only need to meet the "entry and exit" personnel. Such restrictions on the object of implementation can only play a formal role. As a special department of border health and quarantine, the people entering and leaving the country are almost equal to all the people contacted within the scope of their authority. Although the word "quarantine" is used in the narrow sense of the Implementation Rules of the Border Health and Quarantine Law, the implementation rules have quite expanded the "control measures" such as "quarantine" involving personal freedom through "infectious disease surveillance".

So far, it can be found that the discussion on whether the connotation of "isolation" is "narrow" or "broad" is of little significance, because here "isolation", "retention examination" and "on the spot examination" can be replaced and included by "control measures". To some extent, the "isolation" at this time has become a means to achieve "control", and whether its own "danger elimination", depends entirely on how the superior "control measures" are implemented. This began with the ambiguity of the connotation of "isolation" measures in the legal norms system - in a narrow sense, There is also a broad sense of this idea, At

the same time, the relationship with the "quarantine" used in the sense of the Chinese code is also unclear (the "quarantine" used in the Chinese code is not exactly the same as the "quarantine" (quarantine) implemented for the uncertain target, "Quarantine" in the National Health and Quarantine Law is a highly holistic concept, "Isolation" can be said to be a "quarantine" treatment method); The ambiguity of the connotation directly leads to the unclear — "isolation" of its required functions in the normative system, which can be a medical measure, But after stripping away the medical orientation, it can become a simple personal freedom control measure; Finally, authorized by the general authority of the law, Relevant implementation departments have achieved the value of stripping off the prevention and control of infectious diseases, The ability to use it entirely as an instrument to exercise personal free control.

The above paper analyzes the "frontier response system" of the Frontier Health and Quarantine Law and the Implementation Rules of the Frontier Health and Quarantine Law. Similar analysis applies to the "domestic response system", such as the Public Health Emergency Response Regulations that authorizes the "Emergency Response Headquarters" to "quarantine" "personnel". The authorization breaks through the setting of "quarantine" in the Law on the Prevention and Treatment of Infectious Diseases, but the Emergency Response Law authorizes local people's governments to take "necessary measures" after "public health incidents" occur. Therefore, how to explain this general authorization will also affect whether the "isolation" of the "personnel" is legal, and whether the purpose of implementing the "isolation" is in line with the original intention of the Emergency Response Law, the Prevention and Treatment Law of Infectious Diseases, and other laws. Network reports of "a family of three playing mahjong was hit" "a family of four in the house poker was mistaken" "teachers in the open running without a mask was isolated 14 days" and other extreme prevention and control measures, all because of mechanical implementation control measures and ignore the isolation should be inherent to eliminate danger, the purpose of the result is to achieve control and control, deviate from the isolation measures in the public health emergency response should realize the function and value.

4.3.2 Lack of enforcement procedures and relief means

The administrative procedure system is an important symbol of the modern administrative rule of law. In order to prevent and control the abuse of

public power, when implementing the administrative compulsory measures involving the personal freedom of citizens, the relevant rights should be guaranteed from the two aspects of entity and procedure. The lack of relevant procedural arrangements will give the administrative subjects the opportunity to use their own powerful public power to arbitrarily expand the implementation scope of the isolation measures, which means that the freedom of citizens will lose an important guarantee.

China has no special administrative procedure law, and the relevant procedures of isolation measures are not included in the Law on the Prevention and Treatment of Infectious Diseases, and the Emergency Response Law and other laws and regulations. The law is not specifically for quarantine measures, and it is far from the "health administration" and its "staff" can fully cover the — medical institutions and other institutions; in the early outbreak, China also launched many social organizations and personnel to participate in the implementation and supervision of quarantine measures, even in necessity, not authorized by laws and regulations. In fact, "after the outbreak of a public health emergency, the procedures for the administrative quarantine taken as emergency measures or temporary measures are basically blank." (Zhang, 2020: 27-33).

A right is a remedy, and the relief party is the right. The direct object of the quarantine measures is the personal freedom of the citizens, so it should provide appropriate relief for the citizens' legitimate rights and interests that are infringed upon. Although the Law on the Prevention and Treatment of Infectious Diseases stipulates that administrative reconsideration or litigation can be brought against the illegal infringement of power, however, the quarantined person is not clear for the limited personal freedom. Can I find a lawyer? What organ should be submitted to? When can a review be filed? What is the compensation standard of illegal administration? No laws or regulations have yet clarified these issues.

5. Suggestions for the isolation measures

Taking this epidemic prevention campaign as an opportunity to further improve China's relevant legal system and practical process is not only necessary to protect the rights of individual citizens, but also to maintain social stability and achieve common prosperity of epidemic prevention and social development. Since the SARS epidemic, China's public health legal system has made great progress. With the Constitution as the core, the existing public health legal system is composed of different levels of laws, administrative regulations and departmental regulations. However, according to the response process of COVID-19, there are still many

problems in China's quarantine measures to deal with public security emergencies.

5.1 institutionalization of the state of emergency

When public security emergencies break out, the country often needs to turn the normal operation of society into an emergency to deal with them. Therefore, isolation measures, as a part of the response to public security emergencies, also need to be examined in the context of normal and abnormal social operation.

Public health emergencies can cause great changes to social order and affect people's daily life and behavior patterns. At this time, the role of the state of emergency is reflected as to enhance the government's ability of emergency management, by redefine the public and private boundaries of power, so as to protect the most core and important rights of citizens.

Although the Chinese Constitution stipulates a "state of emergency", in the absence of a supporting "state of emergency law", the Chinese constitutional "state of emergency" actually cannot actually be implemented. In the early days of the COVID-19 outbreak, many parts of China adopted relatively "hardcore" prevention and control methods, and the indiscriminate blockade and isolation is just one of these "hardcore" measures. Given the absence of understanding of this new disease, this choice is understandable, but in practice, local measures have not been declared as a state of emergency or epidemic areas, which makes the legitimacy of these extraordinary measures inevitably controversial (Zhao, 2020: 94-108). In the absence of a state of emergency, some local administrative authorities punish individuals who violate the measures as the "state of emergency" under the use of "wartime state", "wartime thinking" and "wartime mode" to describe the prevention and control crisis, which also cause some controversy.

In addition, the lack of a "state of emergency" also means that there is no clear boundary between normality and abnormality, and when public health emergencies subside, how to return to normality becomes another prominent problem. In April 2020, the central government stressed the need to accelerate the full recovery of life order in the normal epidemic prevention and control, the outbreak in Beijing in June; from October to November in Xinjiang, Shandong, Tianjin and other places, how to locate the aftermath of public health emergency dissipation, need a set of legal system on the state of emergency (Lin et al., 2020: 130-140). By integrating the factual level emergency into the normative framework, the dynamic state governance in the emergency can be effectively realized; balance public and private rights through the institutionalized

emergency, and provide the standard for the change of social order, so that both normal and abnormal can become the norm of the rule of law.

For the implementation of isolation measures, the institutionalization of the state of emergency can provide strong support and evaluation criteria for its legitimacy and rationality. When the state of emergency of a public health emergency comes, the government can sacrifice the personal freedom of a small number of people for the health and safety of all people, and overcome the crisis through the exercise of centralized emergency power. When the state of emergency gradually eases, it is necessary to turn to the normal state or the excessive transition to the normal state in time, and to return the administrative power expanded in the emergency to the normal state in time to avoid abnormal conditions.

The power operation process becomes normal, breaking through the boundary that power should abide by.

5.2 Improve the detailed provisions of isolation measures

Although the government can reduce the rights of social public security, but in the process of implementation, relevant measures need to have legal basis, and conform to the conditions of the law, relevant measures should be executed by the authorized administrative subject, the ability of relevant functional departments to match the responsibilities, have the corresponding organization, system.

The expression of "isolation" in China's legal norms system is complicated and is not reasonably classified. Although there are corresponding interpretations in the Implementation Rules of the Border Health and Quarantine Law with a low-level level of effectiveness, this interpretation is difficult to adapt to the current actual needs at both the effectiveness level and the accuracy. Therefore, some scholars put forward that the concept of "quarantine" as the upper position of "isolation" should integrate the specific practices that appeared in the practice, and complete the systematization of "quarantine" and "isolation" (Gao, 2020: 631-652).

This is a useful attempt. systematization means further elaboration for that isolation, which, in current practice, should at least include the following:

First, clarify the applicable objects of different measures. Different isolation measures have different degrees of coercion, the compulsory measures taken by citizens to prevent the spread of infectious diseases and the compulsory measures taken in violation of the isolation rules, and the different risks of different transmission and dangerous infectious diseases, and direct infections and close contacts. For the quarantined person, "different characteristics such as the length, way and place of isola-

tion can cause different psychological effects."(Zhang et.al.,2020:31-41).Therefore, according to different reasons and different situations, differentiated measures of "isolation", "isolation treatment", "quarantine treatment" and "retention for inspection" can be clearly defined, which can reflect humanized treatment and effectively alleviate the tension between social and public health security and individual rights.

Second, clarify the implementation subjects and personnel of quarantine measures.The subjects of quarantine measures defined in the Law on the Prevention and Treatment of Infectious Diseases include medical institutions, disease prevention and control institutions and people's governments at or above the county level.But "China's CDC no longer has administrative authority" (Xu,2012)Medical institutions are civil subjects in an equal status with patients.Despite the authorization of the law, the law does not set up the relevant functional departments for it.This means that the relevant functions of isolation in practice can still only be performed mainly by the government.In the public health emergency, on the other hand, the government often need to temporarily hire social organizations and personnel to participate in the implementation process of isolation, because the isolation as a compulsory measure, the implementation personnel is the main contact of public power and civil rights, the implementation personnel is very easy to lead to unnecessary infringement of civil rights.Therefore, the law should be clear from two aspects: the implementation subject and the implementation personnel of isolation measures, so as to ensure that medical institutions and disease control institutions can smoothly perform the function of isolation implementation, and ensure that the implementation personnel of isolation have the corresponding qualifications and quality, so as to promote the unity of the rights and responsibilities of the implementation subject and personnel.

Third, to clarify the rights of citizens, especially the right to seek relief.The previous analysis shows that the relationship between power and rights in the current normative system is not very balanced, which also leads to the basic rights of citizens are often in a weak position, and there is no recourse for help.The Law on the Prevention and Treatment of Infectious Diseases defines citizens' obedience to various epidemic prevention measures and their legal responsibilities for failing to fulfill their obligations.Accordingly, the rights enjoyed by citizens should also be clarified in the process of isolation in the relevant laws and regulations.Should, first of all, the relevant content involving citizens' personal and property rights, such as the isolation phase of life security standards, isolation burden of content, too low standard of living and high cost may lead to

citizens to escape the obligation of isolation, increase the risk of infection and transmission of infectious diseases, it will make the public health emergency response to public welfare and private conflict more obvious and intense.Secondly, after the response to public health emergencies gradually shifts from emergency state to normal prevention and control, the citizens who need to be quarantined can be given the right to make a certain choice, such as for isolation in their own home or in a hotel, in the city or in the suburbs, everyone has their own preferences.In the case of sufficient prevention and control resources and complete facilities, citizens can be given the option to provide a certain degree of convenience and make it easier to accept and cooperate with the implementation of quarantine measures.Finally, but also most importantly, due to the urgency of the public health emergency, the decision and implementation of isolation measures often need to simplify, in order to protect the legitimate rights and interests of citizens from illegal infringement, need to pay special attention to whether citizens enjoy systematic and comprehensive relief means and relief ways, provide convenience for citizens to protect their rights.Therefore, when implementing the quarantine, the administrative law enforcement personnel should inform the quarantined personnel of their rights in accordance with the requirements of the administrative law procedures, and provide necessary legal services such as online meeting with lawyers, so as to help the quarantined personnel understand and safeguard their legitimate rights and interests.

6. Conclusions

In order to minimize the damage and disorder caused by public health emergencies, we not only need the progress and development of science and technology, but also rely on the continuous construction and improvement of the legal system.The improvement of legislation has never been achieved overnight, and the shortcomings in the current legal norms need to be further standardized and clarified, so that the measures stipulated in the norms can achieve the purpose of their intention.The failure of the isolation measures will cause unnecessary personal freedom and property losses to the counterpart, which will further increase the operation cost of the society in the emergency state.If the isolation measures are regulated by the thinking and track of the rule of law, the balance between public and private rights can be more effectively guaranteed.At a time when life, health and risk control are increasingly valued, it will be of great significance to achieve a more scientific and efficient victory over public health emergencies.In addition, the introduction of relevant rights protection measures in the

implementation of isolation process can also effectively solve the public health emergencies.the issue of insufficient civil rights remedy.

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Profile

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