

Study on the legal mechanism of local government epidemic management taking COVID-19 prevention and control as example

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Abstract. Living in the risk society described by the sociologist Baker, the free market mechanism cannot regulate the value of risk and choice, which requires the government to break away from the traditional concept of administrative law, integrate the risk theory, and establish an administrative legal system that ADAPTS to The Times. The emergence of COVID-19 is undoubtedly a major test of China's existing legal system for emergency management. This paper will take this epidemic as an example to explore the drawbacks of the current emergency management system in the modern risk era and study how to establish an effective emergency management legal system in the new era.

Keywords: Risk society; Risk regulation; Executive law; COVID-19.

1. Introduction

The development of economy, the increase of population and the complexity of class structure make human society face more and more risks. The modern risk society described by German sociologist Ulrich Beck in Risk Society focuses not only on how to use nature to liberate human beings, but also on how to reflect on the political and economic management of technologies that are actually or possibly used. Therefore, in a risk society, unknown, unforeseeable and unforeseeable consequences become the dominant force.

Due to the universality, randomness, uncertainty and harmfulness of risks, and the fact that risks involve many scientific policy issues, it is difficult for the free market to weigh the risks and benefits contained in many social phenomena, and to choose between different or even difficult to weigh each other's values. That is to say, the role of the government in a modern country needs to go beyond the administrative function under the "industrial society" proposed by Weber, and shift from the traditional administration that focuses on "balancing public power and protecting citizens' rights" to the risk administration that has the function of risk regulation and focuses on the future development to shape the society. This transformation cannot be achieved without the support of the legal system[1-5].

At the beginning of 2020, The COVID-19 pandemic gripped our hearts, testing countries' ability to respond to a major public health crisis[6-7]. Compared with public health events in previous periods, social media and mobile Internet technology have made all kinds of paradoxes and confusion in this epidemic more directly and transparently shown to the public, revealing the current government's deep legal thinking and response mode deviation.

2. Problems existing in the current legal mechanism of emergency management in China

2.1 Government emergency management under the epidemic situation

2.1.1 Absence of management

Looking back at the COVID-19 pandemic in 2020, the government's emergency management was not without its strengths. Lockdown and traffic control strategies in the early stages of the epidemic, as well as timely detection and census measures in the middle and later stages of the epidemic, have

reduced the disaster's significant damage to society. However, while focusing on the success of epidemic prevention and control, it is also regrettable that governments at all levels were slow in emergency response and lack of management in the early stage of the epidemic.

On December 30, 2019, Wuhan Municipal Health Commission issued an Urgent Notice on the Treatment of Pneumonia of unknown cause, mentioning and stating that there were many cases of pneumonia of unknown cause in many medical institutions without human-to-human transmission. The public Security bureau of Wuhan announced on Jan. 1 that eight people had been detained in accordance with the law after some false information about the Wuhan viral pneumonia spread online. However, in a q&a session on the novel Coronavirus outbreak on January 20, Zhong Nanshan said there was "human-to-human transmission" of the virus, noting that 14 medical workers had been infected while caring for a patient. Up to that time, Chinese health authorities had updated the epidemic information, showing that 224 cases had been reported in China, including 217 confirmed cases.

Therefore, the Law on Emergency Response, as a general law, cannot be applied in the event of an epidemic, while the Law on the Prevention and Treatment of Infectious Diseases, which emphasizes vertical public health management mechanism and multi-level review, is a special law applicable to this epidemic. That is, if COVID-19 is regarded as an infectious disease, it must be listed in the "infectious disease list" and go through multiple levels of approval before it can be released. If it is not included in the list of infectious diseases, the relevant system of infectious diseases cannot be applied. The existence of this system can easily lead to the delay in the release of epidemic information, resulting in a great lag. Therefore, it has caused serious consequences in this COVID-19 outbreak.

2.1.2 Abuse of executive power

At noon on February 10, Hangzhou issued the "Coronavirus pneumonia" prevention and control Command No.34 ", which pointed out that residents and tenants are not allowed to enter the community, but many tenants were still banned from entering the community that day.

In this case, the tenant is prohibited from entering the community, which has no legal basis. On the basis of the compulsory administrative law stipulated in article 9, 10, of the citizens' personal freedom to take administrative compulsory measures can only be prescribed by law, but for emergencies like the outbreak of the emergency response law and the law on the prevention and control of infectious diseases, such as law has not stipulated the administrative main body to body health, through the quarantine limit the personal freedom of citizens. In this case, the Hangzhou municipal government did not authorize the neighborhood committees and other grassroots autonomous organizations to exercise administrative power in written form, nor did the neighborhood committees receive corresponding power from the territorial management measures stipulated in the Emergency Response Law. Therefore, the neighborhood committees and other behaviors violated relevant laws and regulations.

In addition to tenants being unable to return home, there have been many cases of forced isolation of healthy citizens and restrictions on travel without masks, which are contrary to the normal operation of society. The emergency management legal system, such as The Emergency Law, endows the government with certain discretion, but does not make restrictions and detailed judicial interpretation to it, which violates the concept of traditional administrative law.

2.2 The emergency plan is still flawed

China is in the stage of high speed and high quality development. Due to the transition period, it has brought many unstable factors of man-made accidents to the society, and the potential risks of natural disasters that cannot be accurately predicted, so that China has become one of the countries most seriously affected by emergencies recognized by the world.

According to data, every year in China, as many as 200 million people are affected by natural disasters such as floods, mudslides and earthquakes, and the annual investment in disaster prevention and relief and economic losses caused by natural disasters are as high as 100 billion yuan. Therefore,

there are still many problems in the legal mechanism of emergency management in China. Both the theoretical basis and the legislation are still in the initial stage, and there is still a lot of room for improvement.

3. Countermeasures and Suggestions

3.1 Improve the emergency response plan system for major public health events in China

The state should be under unified leadership, coordinate all departments and governments, so that their responsibilities are clearly defined, hierarchical management, classified responsibility, and jointly form the emergency plan system.

First of all, the basis of the emergency plan system should not only be limited to the existing public health safety law and other laws in China, but also learn from the successful experience of the past or developed countries to add detailed emergency plan content on the basis of the legal basis, and increase the ability and practicability of the emergency plan system.

Finally the text version of the emergency plan system is of no practical significance, government departments should actively organize the emergency response plan of practical experience, a lot of practical problems will be exposed in the practice, so that you can continue to find problems in the process of continuous improvement and revision plan, called on the public, let more people have a concept of public governance, improve the public participation.

3.2 Details of the emergency plan

The United Kingdom, the United States and Canada have conducted extensive studies on emergency management plans. We are detailed, lengthy and capable of implementation and purposefulness. China's regulations on "emergency law" article 18, contingency plans shall be in accordance with the provisions of this law and other relevant laws and regulations, according to the characteristics and the nature of the incident, may cause social harm, specific provision of emergency management and emergency command system to prevent early warning mechanism, emergency safeguard measures, disposal program and recovery and reconstruction measures. Learning from foreign experience, the content of improving and developing China's major epidemic emergency plan should be refined from the following aspects:

Though unable to accurately determine some emergencies may occur at when, where, but we can adopt the method of hypothesis, will assume a certain type of emergencies when and what place, to risk assessment and events to determine grade, only the first level of emergency defined and risk assessment, Then the rest of the planning work can continue.

At the same time, the plan should be revised and drilled in detail. The conditions and procedures for the revision of the emergency plan and the exercise of the emergency plan shall be stipulated in detail in the emergency plan. Through the revision of the plan, it can obtain the timeliness of information and improve the efficiency of response. Through the exercise, it can make the emergency plan vivid. Ensure success rate of response.

4. Conclusion

In the face of all public health emergencies, should follow the principle of the supremacy of the basic life, so in order to improve the ability of prevention and control of public health events in China, the government departments to continuously improve and perfect the emergency management legal system, guide and standardize the public health emergencies emergency work, clear responsibilities and rights of each department, guarantee responsibilities clear, To ensure the efficient and high-quality completion of the content of the emergency plan, so as to reduce the harm of public health emergencies to individuals, society and the country, and try to minimize the harm.

After an emergency occurs, it is not only the government that has the primary responsibility to maintain public order and ensure people's safety, but also each of us, as Chinese citizens, has the

responsibility to ensure national security and people's safety. Patriotism is the deepest and most sincere feelings, and I as a party member should need I most actively involved in the organization, called on people from all walks of life also actively involved in the management and implementation of contingency plans, during the period of the outbreak, to master the consciousness of strictly carry out all work of the legal system of emergency management, daily report data, Ensure that information is accessible, timely and effective.

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