

State of Emergency and Limitation of Basic Rights

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ABSTRACT

In early 2020, novel coronavirus pneumonia broke out in Wuhan and spread rapidly to the whole world, causing great losses to the entire human race. In this epidemic, Wuhan has taken some measures, such as closing the city and roads, imposing compulsory isolation on febrile patients, etc. These measures limit the basic rights of citizens. In fact, the state organs are exercising the emergency power to protect the social and public interests. Although the state only claims that China has entered a "state of war" and "state of emergency", Wuhan and other places have actually entered a state of emergency. An important reason why China has not declared that China has entered into a state of emergency is that the construction of the legal system for the state of emergency in China is not complete. In order to better protect the basic rights of citizens in the state of emergency, the author thinks that the basic law of the state of emergency should be promulgated.

Keywords: State of emergency, limitation of fundamental rights, fundamental human rights

1. INTRODUCTION

China has novel coronavirus pneumonia and two new major pneumonia cases in the early twenty-first Century. How to protect the basic rights of citizens in crisis situation is more important. Through the study of the exercise of state emergency power and the limitation of citizens' basic rights under the state of emergency, we can further improve our existing laws and better protect citizens' rights and interests.

2. CONCEPT INTRODUCTION

2.1. State of emergency

The author believes that the state of emergency refers to a temporary special legal state, which is decided and announced in a region or the whole country by the state organs authorized by the Constitution and law when a very important and urgent event or threat suddenly occurs, in order to maintain the stability of social and national order. Under the state of emergency, the relevant state organs can break through the general legal provisions and take some compulsory measures to limit certain basic rights of citizens to protect the collective interests of the whole society and country. When the state of emergency is lifted, the temporary legal compulsory measures of these special periods will be cancelled. That is to say, the characteristics of

emergency power are "temporary, exceptional and limited"[1]

Emergency covers a wide range, which can be divided into two categories: one is political emergency, such as riots, unrest, etc; One is social emergency, such as serious natural disasters, major technical accidents and other events. According to its coverage, it can also be divided into national emergency and local emergency. In the COVID-19, Wuhan has implemented compulsory measures to restrict civil liberties, such as Feng Cheng, while other areas in China have not implemented the city closure. Therefore, this special legal status in Wuhan is a regional legal state.

In the state of emergency, in order to protect the basic rights of citizens and social public interests, and quickly restore the normal state of economy and society, it is necessary to give the state organs certain emergency power[2] In order to better protect social public interests, it needs the people to undertake some obligations. For example, during the outbreak of infectious diseases, state organs require all citizens to wear masks.

2.2. Restrictions on the fundamental rights of citizens

China's constitution stipulates that citizens enjoy freedom of speech, personal freedom and other basic

rights, while the basic rights of citizens involved in the state of emergency are mainly personal freedom, privacy, right to know and so on. The basic rights of citizens are protected by the constitution, laws and regulations. When the State exercises its emergency power, it will inevitably involve the problem of restricting the basic rights of citizens. It is legitimate to restrict the rights and freedoms, because sometimes restrictive measures need to be taken to protect the public health in an emergency[3] During the period of emergency, in order to make the whole national order continue to exist, the state can exercise a more arbitrary emergency right to restrict and derogate from the basic rights of citizens, which is a special act of state sovereignty[4] However, there are limits to its exercise, which should be exercised in strict accordance with legal norms, that is, "the launching of emergency power must be aimed at restoring national order and constitutional order" [5], "if there is no strict legal norms, emergency power can easily become a monster, a powerful Leviathan, and a killer of citizens' basic rights." [6]The author believes that the restrictions on the basic rights of citizens must abide by the principle of non derogability and proportionality of basic human rights. The principle of non derogability of basic human rights contains two meanings: one is that the basic rights such as the right to life are absolutely non derogable; the other is that the basic rights such as the right to personal freedom are relatively derogable.

The principle of proportionality should be followed when limiting the basic rights of citizens in the state of emergency. That is to say, any restrictions must be proportional, the least restrictive alternative should be adopted, and the duration of these restrictions should be limited and subject to review. In the case of COVID-19, even though the mandatory requirement of home segregation is adopted for citizens, family members are allowed to go out to buy food to maintain their basic living needs. The health code will show the citizen's action track within 14 days, but after 14 days, the previous action track will disappear on the health code.

On the one hand, the principle of proportionality is the protection of the principle of non derogability of basic human rights, so we should choose the method which has the least damage to the basic rights of citizens. Especially in the state of emergency, the protection of citizens' basic rights is more important when the state reduces private interests to protect collective interests.

3. THE CURRENT SITUATION OF EMERGENCY LEGISLATION IN CHINA

3.1. Legislative background

After the SARS epidemic in 2003, China added the provision of state of emergency in the subsequent

constitutional amendment, but it was indeed the emergency response law that was finally promulgated. The content of state of emergency was deleted, only in Article 69 [... Where it is necessary to enter a state of emergency, It shall be decided by the Standing Committee of the National People's Congress or the State Council in accordance with the limits of authority and procedures prescribed by the Constitution and other relevant laws. Extraordinary measures taken during a state of emergency shall be implemented in accordance with the provisions of relevant laws or otherwise prescribed by the Standing Committee of the National People's Congress Just a little bit of an emergency. In 2004, China was supposed to issue a state of emergency law, but considering that it is more urgent to enact a conventional emergency law than to enact a state of emergency law (that is, to give priority to the allocation of legal resources to issues with great social demand), the content of restrictions on basic rights in a state of emergency is bound to affect the change of constitutional order, and the legal system construction in China was not mature at that time, China's final issue is "emergency response law". Regardless of the consideration of the legislature at that time, the emergency law has not been formulated, which undoubtedly has hidden trouble for many future legislative practices.

3.2. Legislative model

The legislative mode of emergency state in China is to formulate various laws and administrative regulations under the constitution. The constitution of our country stipulates in principle the state of emergency. On March 14, 2004, the fourth amendment to the Constitution adopted by the second session of the Tenth National People's Congress of the people's Republic of China replaced martial law with a state of emergency. The state of emergency includes but is not limited to martial law. The extraordinary legal state stipulated in the constitution includes three categories: state of emergency, war and mobilization. The Constitution also stipulates the decision-making organ and authority of the state of emergency The announcement organ and authority of the state of emergency. Article 69 of the emergency law also refers to the legislative authority and subject of the state of emergency.

There are many separate laws in our country, such as the martial law, the law on prevention and control of infectious diseases, the emergency regulations for public emergencies, etc. but there is no unified emergency code. The Constitution clearly stipulates three special legal states in China. Except for war and mobilization, all other crisis states can be classified as emergency state, and the content is vague. In addition, China's legislation for the state of emergency provisions are extremely limited, only the provisions of the main body,

organs, authority, on how to implement the emergency power has not made specific procedural provisions. There are only a few articles about the content of the state of emergency, which can't define the whole content of the state of emergency exactly.

4. NOVEL CORONAVIRUS PNEUMONIA IN CHINA'S LEGAL STATUS

4.1. The deficiency of legislation

After the outbreak of New Coronavirus pneumonia before and after the Spring Festival in 2020, Wuhan and other places actually entered a state of emergency, but it did not declare a state of emergency. This is also an important reason why some local state organs began to wonder how to act as well as the restrictions on the basic rights of some citizens. 7] The reason why China does not officially declare a state of emergency is that there is no unified emergency code in China at this stage, only emergency regulations and other laws. At that time, if we did not use the words of "state of emergency" or "unconventional state" to declare these compulsory measures of restricting civil liberties, it indicated that our country had entered a crisis period, so as to provide legal basis for the implementation of these measures.

During the new crown epidemic, many of the policies issued by relevant agencies were actually beyond our existing laws and policies, but had to expand in previous legal provisions to meet the needs of the emergency. This shows that the existing legislation cannot meet the basic needs of the existing society, although there are already "infectious disease prevention and control law", "public health emergency regulations" and other laws to regulate the crisis situation. The relevant legal provisions of our country need to be improved to meet the needs of how the state controls the society in emergency.

Novel coronavirus pneumonia control headquarters novel coronavirus pneumonia in Wuhan, for example, requires the four categories of personnel to be segregated and segregated in the February 2, 2020. The object of isolation should be isolated from medical institutions under the thirty-ninth prevention of infectious disease prevention law. The Wuhan city's regulations have more than one category of "hot patients who cannot definitely exclude new crown pneumonia." For another example, according to the Circular of Wuhan new type pneumonia prevention and control headquarters (No. 10), as long as the object of compulsory execution is a febrile patient, regardless of the specific cause of fever, compulsory isolation should be carried out, which is larger than the scope of the object of compulsory execution in Article 39 of the infectious disease prevention and control law. In addition, Article 39 of the law on the prevention and

control of infectious diseases stipulates that the period of medical observation and the period of isolation of patients should be determined according to the results of medical examination. In short, there is no explicit provision on the specific period of isolation and the period of observation.

The legislation mode of emergency law in China is based on the Constitution and many individual emergency laws. The drawback of this legislative model is that one case one law strengthens the division of departments, which is not conducive to the comprehensive planning and unified layout of state organs in the face of emergency.

4.2. The impact on the basic rights of citizens

In novel coronavirus pneumonia, various coercive measures, vague and vague in duration, inevitably limit the basic rights of citizens, especially the restriction on the right of personal freedom of citizens led by compulsory isolation measures. Health code has become a necessary document for people to travel, whether it is by means of transportation, hotel accommodation or even a variety of entertainment and catering activities, all need to show the health code. And the health code is marked with your travel information activity track, which is in fact an infringement on citizens' privacy.

Compulsory isolation measures can protect the life safety of individual citizens and other people. Showing the health code is convenient for the relevant authorities to find the action track of the possible infected person in time, and then track and investigate the possible infected person, and take compulsory isolation measures in time to avoid further expansion of the scope of infection. No matter the compulsory measures of restricting citizens' personal freedom or infringing citizens' privacy rights, although they are to protect the collective public interests at the expense of citizens' personal interests, the enforcement of these compulsory measures of restricting citizens' basic rights must follow the principle of comparison, which has a certain period of time, we should lift the compulsory measures against citizens and restore the protection of their basic rights. For example, although the action track of citizens in the past 14 days will be displayed on the health code, it is only for the convenience of the quarantine personnel to track the close contacts of the epidemic situation and prevent the epidemic from expanding. If there is no special situation after 14 days, this unnecessary information will disappear from the citizen health code, etc.

5. CHINA'S EMERGENCY SYSTEM

5.1. Making clear the legislative goal of the basic law of state of emergency

The law is pre-emptive. For common and frequent emergencies such as fire, it is possible to formulate specific emergency plans and standby plans. However, for unforeseen emergencies such as emergency, it is impossible to formulate complete plans like other conventional crisis laws. Therefore, the emergency law is more of a general basic law. The focus of legislation is not to set up prior provisions like the emergency law, such as forecast, early warning and monitoring. Therefore, to formulate the basic law of state of emergency, it is more important to make corresponding norms during and after the occurrence, such as how to declare, relieve, extend and restore the state of emergency, the promulgation and steps of special laws and regulations on emergency measures, how to rebuild the society after the state of emergency, and how to remedy and compensate the damaged rights and interests of citizens.

It is the legislative goal of the emergency law to exercise the emergency power and maintain the stability of the society and the country under the emergency. It is also the legislative goal of the emergency law to reasonably limit the basic rights of citizens and improve the compensation for the basic rights of citizens after the event.

5.2. Introduction of the basic law on state of emergency

The emergency response law issued in 2004, in essence, still stays at the level of conventional administrative emergency law, unable to provide legal basis for the three kinds of special legal states stipulated in the constitution. There are only 70 provisions in the emergency response law plus the supplementary provisions, and the content of the state of emergency is only covered in Article 69 of the supplementary provisions, which stipulates the subject of the declaration of the state of emergency and how the state of emergency operates (the provisions stipulate that the state of emergency operates in accordance with the Constitution and other laws). However, there is no specific legal regulation on how to operate under the state of emergency in China. The state of emergency is a more serious and urgent level of a state of crisis. It is a more scientific choice to stipulate the basic law of the state of emergency on the basis of enacting laws on conventional crisis events.

To divide the emergency response law into the conventional crisis response law and the basic law of the state of emergency does not mean to deny all of the emergency law. The valuable experience stipulated in

the emergency law, such as beforehand (prevention and emergency preparedness, monitoring and early warning), in the event (emergency response and rescue), afterwards (post recovery and reconstruction), is worth learning and inheriting. In order to reduce the burden of legislation, the existing separate legislation can continue to exist. In order to maintain the unity of the legal system, the inconsistency between the old law and the new law needs to be improved. The relationship between emergency law and separate legislation is similar to that between general law and special law, which not only maintains the stability of the existing legal order, but also supplements the shortcomings of the existing legislation.

6. CONCLUSION

At the present stage, China's laws on conventional emergency events have been basically formulated, such as infectious disease emergency law, fire emergency law and so on. However, most of them are one case one law, which actually strengthens the division of departments and is not conducive to the cooperation of multiple departments to comprehensively cope with the crisis. The basic law of state of emergency can play a comprehensive role. In 2004, the original legislative goal was to establish a complete set of legal system based on the constitution, the "emergency law" and the emergency special laws and administrative regulations. Today, with the development of China's legal construction, it should be considered again.

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