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ISSN 1678-8729

R449

Revista Eletrônica de Direito do Centro Universitário Newton Paiva
n.1 (jan./jun. 2003) – Belo Horizonte: Centro Universitário Newton
Paiva, 2003.

n.42, set. /dez. 2020

ISSN 1678-8729

1. Direito. 2. Pesquisa. I. Centro Universitário Newton Paiva. III.
Título

CDU: 34

(Ficha catalográfica elaborada pelo Núcleo de Bibliotecas do Centro Universitário Newton)

CENTRO UNIVERSITÁRIO NEWTON PAIVA **ESCOLA DE DIREITO**

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LEGAL SYSTEM OF EPIDEMIC PREVENTION AND CONTROL IN CHINA

中华人民共和国传染病防控法律体系

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ABSTRACT: Since the reform and opening up, especially after SARS, China has accelerated its construction of legal system for the prevention and control of epidemic diseases, and has initially formed a legal system for the prevention and control of epidemic diseases with the Law of the people's Republic of China on the Prevention and Control of Infectious Diseases, the Law of the people's Republic of China on Emergency Response, and the Emergency Regulations for Public Health Emergencies as the core. However, the spread of COVID-19 in 2020 made a new challenge to the current national legal system for the prevention and control of epidemic diseases. China should adhere to the concept of overall national security, redefine and classify the epidemic situation scientifically, clarify its connotation and extension, at the same time China should change the concept of prevention and control based on abnormal state, and replace it with a regular, systematic and whole process comprehensive management method. Guided by problems and objectives, China should fully understand the shortcomings of the existing legal system for the prevention and control of the epidemic situation, pay close attention to mending the shortcomings, plugging loopholes, bolster weak spots, speed up the improvement of the legal system for the prevention and control of the epidemic situation, in order to build a sound national public health emergency management system and mechanism.

Keywords: epidemic prevention; emergency management; public health events; governing the country according to law.

摘要: 尤其是非典以后,我国加快了对疫情防治法律制度的建设,初步形成了以《中华人民共和国传染病防治法》、《中华人民共和国突发事件应对法》、《突发公共卫生事件应急条例》为核心的疫情防治法律体系,基本做到了有法可依。然而,2020年新型冠状病毒的蔓延事关国家安危,对当前国家疫情防治法律制度提出了新的挑战,我们必须坚持总体国家安全观的理念,对疫情重新科学定义和分类,明确其内涵和外延,同时改变以往非常态化为主的防治理念,替之以常态化、系统性的、全过程的综合治理方法。以问题和目的为导向,充分认识现有疫情防治法律制度的不足,抓紧补短板、堵漏洞、强弱项,加快完善疫情防治法律体系,构建健全的国家公共卫生应急管理体制和机制,为奋力打赢疫情防治这场人民战役提供牢固的制度保障。

关键词: 防疫;应急管理;公共卫生事件;依法治国。

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1 INTRODUCTION

At the end of January 2020, the original lively and peaceful Spring Festival, was broken by a sudden major epidemic, and the land of China was shrouded in the haze of a COVID-19 threat. Hubei Wuhan, tens of thousands of people were infected, thousands of people died, national economic life was greatly affected. At this critical juncture, the CPC Central Committee made wise decisions and directed all localities to mobilize quickly, and the whole country launched a war of epidemic prevention against the COVID-19. In response to this campaign, which posed a serious challenge to the ability of the party and the state to govern, General Secretary Xi Jinping, when he presided over the third meeting of the Central Committee on the Comprehensive Rule of Law, pointed out that the state “comprehensively improves the ability of preventing and controlling the epidemic according to law and provides strong legal protection.”³

Since the reform and opening-up, especially after entering the twenty-first century, China has successively promulgated the Law of the People’s Republic of China on the Prevention and Control of Infectious Diseases (hereinafter referred to as the Law on the Prevention and Control of Infectious Diseases), the Regulations on Emergency Response to Public Health Emergencies (hereinafter referred to as the Emergency Regulations) and the Law on Emergency Response of the People’s Republic of China (hereinafter referred to as the Law on Emergency Response), which have basically solved the problems of incomplete legal system, unscientific classification and inadequate institutional mechanisms in the prevention and control of epidemic situations, for China to effectively deal with the 2003 SARS epidemic, 2009 influenza A H1N1, 2012 Middle East respiratory syndrome, and Ebola haemorrhagic fever and other major outbreaks play an effective role in guidance, regulation and protection. However, with the emergence of sudden acute infectious diseases in the world, the risk of overseas import of infectious diseases and useless misuse of biotechnology is increasing. In recent years, the epidemic situation in China has entered a period of high incidence, which poses more and more serious challenges to China’s ability to deal with the epidemic situation, especially the major epidemic situation. In response to the COVID-19 epidemic, which has swept across the country and even spread to the world, although all Chinese departments, under the unified leadership of the CPC Central Committee and the State Council, have made decisive decisions in accordance with laws and regulations, made clear division of labor, acted quickly, joined forces, and ensured that the rapid spread of the virus has been curbed in a very short period of time, and good management effects and rule of law effects have been achieved, but many problems have also been exposed. According to the analysis of the 13th Five-Year Plan for the Construction of the National Emergency response system, the development of China’s emergency response system is not suitable for the severe public security situation. The main performance is: “after-treatment, less preparation, risk hidden trouble investigation and management is not in place, laws and standards system is not perfect, information resources sharing is not adequate.”⁴ In view of the fact that the current legal system can no longer meet the overall needs of prevention and control, the Central Committee has proposed that “the relevant legislation on epidemic prevention and control, the construction of supporting systems, the improvement of punishment procedures, the strengthening of public safety and security, and the construction

3 People’s net. Chairman Xi Jinping convenes the Central Committee for the Comprehensive Rule of Law [OL]. Available at: <http://politics.people.com.cn/n1/2020/0206/c1024-31573100.html>. Access on: Feb. 06, 2020.

4 Baidu encyclopedia. Construction of National Emergency Response System [OL]. Available at: <https://baike.baidu.com/item/国家突发事件应急体系建设“十三五”规划/22035756?fr=aladdin>. Access on: July 01, 2017.

of a complete, scientific and operational legal system for epidemic prevention and control should be improved.” General requirements. It is an urgent task to study and perfect the legal system of epidemic prevention and control in China.

2 OVERVIEW OF CURRENT CHINESE LAW SYSTEM

As part of the emergency legal system, China’s current content on epidemic prevention and control is mainly concentrated in the Law of the People’s Republic of China on the Prevention and Control of Infectious Diseases, the Regulations on Emergency Response to Public Health Emergencies and the Law of the People’s Republic of China on Emergency Response. The formulation of these three legal norms has its special historical background. As part of the legal system of administrative emergency, it follows special administrative principles and plays an important institutional support and guarantee role in the prevention and control of the epidemic situation.

2.1 Sources of law for the prevention and control of the epidemic

China has always attached special importance to the prevention and control of infectious diseases. On February 21, 1989, the Standing Committee of the National People’s Congress adopted the Law on the Prevention and Control of Infectious Diseases, which made China have laws to abide by. After the 1980s, with the rise of the concept of administrative emergency, countries, especially in Europe and the United States, began to pay attention to the huge impact of emergencies on the country. It is one of the most important non-technical support systems in the national public emergency system. Chinese academics follow the tide, the emphasis of theoretical research has gradually changed from normal administration to abnormal administration. At the same time, the epidemic situation as an important emergency has been more and more concerned by the theoretical community. However, due to objective constraints, the breadth and depth of the epidemic study has been inadequate, the legal system under the guidance of theory also shows lag. The SARS outbreak in 2003 was an opportunity and a turning point, in order to deal with the shortage of SARS, the State Council enacted the Emergency Regulations that year, this regulation was amended in 2011. After SARS, in accordance with the overall framework of the “one case, three systems” (emergency plan, emergency system, emergency mechanism and emergency legal system), step by step began the construction of the epidemic prevention and control legal system. By time, the Law on the Prevention and Control of Infectious Diseases was amended and perfected by the Standing Committee of the National People’s Congress in 2004 and 2013, on the basis of the State Council’s General Emergency Plan for Public Emergencies (hereinafter referred to as the Emergency Plan), the Law on Emergency Response was enacted on August 30, 2007. These two laws and the Emergency Regulations are the main sources of law for the prevention and management of the epidemic. Laws such as the Martial Law of the People’s Republic of China and the National Security Law of the People’s Republic of China, as part of the administrative emergency legal system, Fill in the lack of epidemic prevention and control.

2.2 Legal characteristics of epidemic prevention and control

As a kind of administrative emergency law, the law of epidemic prevention and control embodies the characteristics of law and policy more than the administrative law in the conventional state. It mainly adjusts the relationship between state power, state power and

civil rights and civil rights under the outbreak of epidemic situation. In terms of legal function, the epidemic prevention and control law “mainly ensures that the abstract administrative regulations formulated by the administrative organs in response to all aspects of the emergency and the specific administrative decisions made can ‘prevent and reduce the occurrence of the emergency, control, mitigate and eliminate the serious social hazards caused by the emergency, protect the safety of people’s lives and property, and safeguard national security, public security, environmental security and social order’.”⁵

According to this requirement, the current epidemic prevention and control law has the characteristics of full inclusion, full coverage and all departments. “Full inclusion” refers to the inclusion of all infectious diseases in the epidemic prevention and control objects, and classified prevention and control. “Full coverage” refers to the whole process of monitoring and tracking the occurrence, outbreak and epidemic of the epidemic situation, to do a good job in the prevention, reporting, control and treatment of the epidemic situation, and to establish a mechanism for accountability. The whole system refers to the establishment of the epidemic prevention and control legal system with the Law on the Prevention and Control of Infectious Diseases as the overall plan, the Emergency regulations and the Emergency Plan as the emergency mechanism, the Emergency Law and other laws as the supporting laws, and the improvement of the public health emergency response mechanism from the central to the provincial and municipal levels.

In order to pay attention to the realization of the goal of epidemic prevention and control, the content of the law pays more attention to the means and measures to achieve the goal. Generally speaking, compared with the conventional state, the law of epidemic prevention and control has a certain degree of super-legal, centralized and expansion, more restrictions on civil rights, less relief, in other words, follow the “no law in emergency” provisions. Specifically, the current epidemic prevention and control legal system has the characteristics of “power priority, emergency treatment, procedural particularity, social cooperation, limited relief” and so on.⁶

2.3 Relevant provisions of the law on the prevention and control of the epidemic

The Emergency Response Law, as a law regulating emergency response activities at the national level, highlights the concept of “comprehensive emergency management”, which is “all kinds of disasters on the object, whole process and multi-agent structure”, and strives to organize and mobilize all subjects. The whole process (including prevention and preparation, early warning and monitoring, rescue and disposal, rehabilitation and recovery) covers all kinds of public emergencies. The corresponding “emergency general plan” is also built into a “vertical to the end, horizontal to the edge” plan. Under this concept of comprehensive emergency response, the Emergency Response Law can not achieve the detailed provisions of the epidemic situation. In addition to Article 3, paragraph 1, of the Emergency Response Law, which explains the meaning of the emergency time, including the epidemic situation, the provisions that refer separately to the disposal of the emergency situation include Article 21 (risk sources, investigation and assessment of dangerous areas, etc.), Article 41 (monitoring system), Article 42 (early warning system), Article 49 (emergency measures), Article 56 (on-site rescue and disposal), and Article 58 (measures to stop emergency disposal). Most of these provisions are similar to the Infectious Disease Prevention and Control Act and the Emergency

5 JIANGANG, Qi. The rise of Emergency Administration and the Construction of Administrative Emergency Law [J]. *Law Research*, 2012, n.4, p.24-26.

6 CHUAN, Mo Yu. It is proposed to establish emergency procedure clause in China’s administrative procedure code [J]. *Politics and Law*, 2003, n.6, p.8-11.

Regulations, but more principled.

The Law on the Prevention and Control of Infectious Diseases, as a special law for the prevention and control of infectious diseases, classifies infectious disease areas into categories A, B and C according to the outbreak, prevalence and degree of harm of infectious diseases, of which category A is the most harmful, and currently only includes plague and cholera (according to article 4 of the Law, three types of infectious diseases, such as infectious atypical pneumonia, are subject to the prevention and control measures of class A infectious diseases). The Law on the Prevention and Control of Infectious Diseases stipulates that people's governments at various levels shall lead the prevention and control of infectious diseases (Article 5), and the health administrative departments at all levels shall be responsible for the prevention and control of infectious diseases and their supervision within the region (Article 6). Starting from the construction of the whole process system for the prevention and control of infectious diseases, the Law stipulates that people's governments at all levels must do a good job in the prevention, reporting, notification and publication of infectious diseases, epidemic control, medical treatment, supervision and administration, and safeguard measures, and stipulate the legal responsibilities of the corresponding responsible departments. It should be said that the revised law is more informative, more hierarchical, more complete and more operational.

In order to solve the problems of inaccurate information, lack of response and insufficient emergency preparedness in the work of SARS period, a unified, efficient and authoritative emergency handling mechanism for epidemic situation was established to ensure public health and life safety, and to maintain social stability. The State Council adopted the Emergency Regulations on 7 May 2003 and revised them in 2011. In terms of content, first of all, the regulations stipulate the departments responsible for the prevention and control of the epidemic, and clarify the relevant principles of the prevention and control of the epidemic; secondly, the regulations establish a more detailed working mechanism from three aspects: prevention and emergency preparedness, reporting and information release, emergency handling, among which prevention and emergency response include early warning monitoring, information collection, analysis and processing, construction and training of emergency teams, and storage of emergency supplies; reporting and information release stipulate the time limits and procedures for reporting information to governments at all levels; and emergency handling prescribes specific measures for emergency disposal in various departments;

3 SHORTCOMINGS IN CURRENT LEGISLATION

3.1 The definition of the epidemic is unclear and the classification is inaccurate

At present, the law does not give an accurate definition of "epidemic situation", it is not scientific in the classification of epidemic situation, and does not distinguish between general epidemic situation and major epidemic situation, which brings some difficulties to the prevention and control of epidemic situation.

The Law on Emergency Response as a law to deal with all emergencies is relatively broad, and does not define the concept, scope and specific operational norms of the epidemic. The Emergency Regulations only define the concept of "public health emergencies", which include not only outbreaks, but also mass diseases of unknown origin, major food and occupational poisoning.

The Law on the Prevention and Control of Infectious Diseases, as the main law regulating infectious diseases, does not define infectious diseases clearly, and the classification is not

scientific. There are four outstanding issues:

First, the names of various infectious diseases are listed only by example, but the concept of infectious diseases is not summed up. The classification of infectious diseases is highly subjective and lacks objective standards.

Second, the word “epidemic” has been used in many places, but there is no accurate definition of “epidemic”, and the use of infectious diseases and “epidemic” is ambiguous. Since ancient times, the word “epidemic” refers to a disease that can be transmitted. In “Shuo Wen Jie Zi”, the word “epidemic.”⁷ In modern times, infectious diseases are generally not distinguished, and the two are equivalent. The term “epidemic” is now generally interpreted as “the occurrence and spread of infectious diseases”, describing the process of epidemic occurrence of infectious diseases. The second chapter of the Law on Prevention and Control of Infectious Diseases, “Prevention of Infectious Diseases”, includes the surveillance system and early warning system of infectious diseases, in which the contents of surveillance and early warning include the occurrence and prevalence of infectious diseases (Article 17). Chapter III Outbreaks in the Report, Notification and Publication of Outbreaks include outbreaks and epidemics (Article 31). It can be seen that “infectious disease” and “epidemic situation” both contain the meaning of occurrence and epidemic, the law does not make an effective distinction between the two, such cases in the Infectious Diseases Prevention and Control Law is not uncommon.

Third, the classification of epidemic situation is not scientific. According to the National Health Commission, the difference between influenza and COVID-19 infection is in four aspects: first, the source of the disease is different. Influenza is not a common cold, it is a respiratory infectious disease, it is caused by influenza virus, and the pneumonia infected by COVID-19 is an infectious disease, and it has a clear epidemiological history; secondly, the onset time is inconsistent. The high incidence of influenza is mainly in winter and spring, and the COVID-19-infected pneumonia is a newly developed disease in winter at the end of 2019; Thirdly, influenza has a very obvious fever, often high fever, but few systemic symptoms of muscle pain or fatigue, but COVID-19 infections often have fever, cough, fatigue, vomiting, abdominal pain, diarrhea, sore limbs, etc. Finally, the severity of the two is different from that of the susceptible population. Although both are susceptible to death in the whole population, the COVID-19 is more severe in the elderly and patients with chronic underlying diseases. People who first understand medical common sense can feel that the National Health and Health Commission is more reluctant to distinguish the two, can not be completely convincing.

Influenza is an acute respiratory infectious disease caused by influenza virus. There are many viruses causing influenza, there are thousands, from the performance, can be divided into simple influenza, pneumonia influenza, toxic influenza, gastrointestinal influenza and so on. Among them, pneumonia influenza and infectious atypical pneumonia have many similarities in the pathogenesis, not only the harm to the human body, but also the symptoms after the illness. Because the two are difficult to distinguish, it is understandable why people who are initially infected with the COVID-19 do not pay attention to it and treat it only as a common influenza.

At the same time, China can find that the Law on Prevention and Control of Infectious Diseases lists rabies, neonatal tetanus and schistosomiasis as Class B infectious diseases, while influenza as Class C infectious diseases. Unlike influenza, other infections are generally transmitted between individuals in one-to-one form, with very little harm. But influenza is very

7 SHEN, Xu. (Eastern Han Dynasty). Explanation of Shuo Wen [M]. *Jiangsu Ancient Books Press*, 2001, p.156.

harmful to society, according to incomplete statistics, hundreds of thousands of people die from influenza every year. Therefore, there are some scholars doubt the rationality of the distinction between infectious diseases.

Fourth, there is no distinction between general and major epidemics. In the Law on the Prevention and Control of Infectious Diseases, infectious diseases are classified only by etiology, not according to the influence of epidemic situation, and the general epidemic situation and major epidemic situation are distinguished, which results in inaccurate judgment of major epidemic situation and untimely disposal, which brings great difficulties to practical work.

3.2 The legal system for the prevention and control of the epidemic is not sound

After years of hard work, China's epidemic prevention and control legal system has been initially established, basically achieved the law to abide by. But from the actual treatment effect, such legal system is still very imperfect, including the following three points: first, the construction of the legal system for epidemic prevention and control is relatively backward.

As early as the 1990s, China promulgated laws such as the Law of the People's Republic of China on Flood Control and the Law of the People's Republic of China on Earthquake Prevention and Disaster Reduction. Compared with the work of flood control and earthquake resistance, China's prevention and control of the epidemic situation is still in its infancy, the relevant legal system is also relatively backward, and the supporting system is not perfect. Second, there is a conflict between the legal norms of the epidemic situation. In terms of content, the contents of the three laws are intersected (as mentioned earlier), and the classification is unreasonable. As far as the legal effect is concerned, the Emergency Regulations, as the regulations promulgated by the State Council, are lower than the other two laws, but they are the main basis for the prevention and control of the epidemic situation. Third, the link with other administrative laws is not enough. First, the link with the normal administrative law is not enough. Major outbreaks may have a huge impact on the normal operation of the economy, industry, medical care, education and culture, making national life and social order completely out of control. For example, Article 52 of the Emergency Regulations stipulates that "In the event of an emergency, the public security organ or the administrative department for industry and commerce shall impose administrative penalties according to law; if a crime is constituted, criminal responsibility shall be investigated according to law." Such provisions are too vague and lack maneuverability. Second, the lack of a unified administrative emergency law coordination mechanism. In the absence of a state of emergency law in China, if the state enters a state of emergency because of the epidemic, how to balance the various administrative emergency laws, especially in the areas of administrative coercive measures such as restricting personal freedom, and traffic control, there is still a certain conflict between the laws, which needs to be coordinated by a unified and perfect legal system.

3.3 The content of the law is not comprehensive and targeted

3.3.1 The lack of Chinese administrative emergency legal theory research

The basic principle of administrative law is the importance that the basic spiritual value of administrative law can be carried out in the administrative legal system, which is the basis or origin of the rules of administrative law. It guides all stages of administrative law, such as administrative legislation, administrative law enforcement, administrative judicial and administrative legal supervision, and runs through the whole of modern administrative law."⁸ At

8 WANGHONG, Liu. Editor in chief. *Administrative Law* [C]. Nanjing: Nanjing normal University Press, 2005, p.57.

present, the mainstream view of China's administrative law circles holds that the basic principles of administrative law are “the principle of administrative legality (including the principle of legal reservation and legal priority), the principle of administrative reasonableness (including the principle of administrative openness, administrative justice, proportionality, trust protection and respect for human rights protection).”⁹ Some scholars have also added the “principle of administrative efficiency”, which focuses on restricting the power of the administrative subject in order to protect the legitimate rights of citizens. However, in the case of emergency, the academic circles of administrative subject exercising power according to what principles are not deep enough. According to the general viewpoint, the principle of emergency is followed in emergency state. Administrative organs will use summary procedures to formulate emergency rules and decisions, and give full play to the functions of administrative limitation and term system. The principle of contingency will weaken the principle of legal superiority and the principle of legal reservation in traditional administrative law”.¹⁰ Under the guidance of this principle, the law of epidemic prevention and control shows the characteristics of “emphasizing entity and procedure, power expansion and human rights protection, punishment and relief.” When the major epidemic comes, many administrative organs do not act or act indiscriminately. During the prevention and treatment of the COVID-19 epidemic, the author found that many areas have issued emergency measures, such as “administrative detention of all people who refuse to wear masks to enter public places, administrative detention of all business owners in advance” and many other restrictions on personal freedom. What's more, in order to prohibit the movement of people, each place is separate, all the highway junctions leading to this area are closed, resulting in the first high speed of the people can not get off the high speed, artificially created in the high speed stranded on the homeless tragedy of more than ten days. These phenomena are different in the epidemic, regardless of whether these acts have a legal basis, whether there is a way for innocent people to recover in the future, the loss of compensation by the laws and regulations are not guaranteed. How to limit the infringement of citizens' basic rights by the expansion of emergency administration and how to guarantee the citizens' basic right of relief is an urgent subject to be discussed in the field of legal theory under the major epidemic situation, and it is also a major problem before legislators, judiciaries and law enforcers.

3.3.2 *The exposure of major outbreaks*

On the one hand, the law stipulates too much principle, not meticulous enough. “Emergency Response Law” contains “all kinds of disasters”, is a large and wide emergency response law, it is impossible to make a detailed special provisions on the epidemic. The Law on the Prevention and Control of Infectious Diseases focuses on prevention and treatment, but one focuses on treatment rather than prevention, with only a few mistakes on how to establish effective preventive measures and early warning mechanisms. It is clearly insufficient to estimate the problems in response to the outbreak, and the other lacks provisions on the content of recovery and reconstruction after the outbreak. The problem of the Emergency Regulations is that one of the targets includes not only the epidemic situation, but also the major food and occupational poisoning events, and the prevention and treatment of the epidemic situation is not strong. Second, the purpose of the Emergency Regulations is to deal with SARS in an

9 HAOCAL, Luo; ZHONGLE, Zhan. Editor. *Administrative Law* [C]. Beijing: Peking University Press, 2016, p.29-35.

10 JIANGANG, Qi. The rise of Emergency Administration and the Construction of Administrative Emergency Law [J]. *Law Research*, 2012, n.4, p.24-26.

emergency. The contents are not only rough, but also the times have changed, which can not meet the needs of the current epidemic prevention and control work.

On the other hand, it is also the most important drawback. The current legal system for epidemic prevention and control does not treat major outbreaks as major sudden disasters. The treatment of major outbreaks is not only a matter of medical level, but can not be summarized simply from the perspective of prevention and control. A major sudden disaster is likely to lead to systemic risk and plunge the whole country into a huge crisis. Therefore, the law must give all the problems at the time of the epidemic to explain and regulate, otherwise it is contrary to the requirements of the rule of law. From the point of view of the prevention and control of the COVID-19 incident, the current legal system lacks the exercise prevention and control mechanism for the daily epidemic situation, the specific standards and procedures for the detection and reporting of the epidemic situation, and the grading standards for the measures taken after the spread of the epidemic situation. And how to rebuild and restore the specific provisions after epidemic control. From the point of view of the specific details involved, there is a lack of provisions on the detailed contents, including emergency state release, public opinion control, blockade of epidemic areas, personnel investigation and isolation, epidemic situation release, medical material support, etc. From the main body involved in the response, there is a lack of authorization and regulation for almost all government departments, including medical and health care, public security fire control, traffic management, industrial and commercial quality supervision, and all non-administrative organizations and individual acts of the army, streets and village committees. Therefore, in the actual work, many administrative acts have no legal basis, many of the content of legal basis is too broad, operability is not strong. Departments are either afraid to act because there is no basis, or more than the principle of proportion of human rights violations occurred in large numbers, seriously affecting the credibility of the government and the efficiency of the epidemic. Therefore, the current legal system of epidemic prevention and control can not fundamentally solve all the problems of dealing with major epidemics, and it can even be said that it is quite pale in many places and has caused many problems in dealing with major epidemics.

4 HOW TO IMPROVE THE LEGAL SYSTEM ON EPIDEMIC CONTROL

4.1 Clarify concepts and scientifically classify outbreaks

China should changing the current practice of defining infectious diseases only by example, which is dangerous when China meet unknown disease. China should combing medical, biological and other knowledge and using semantic hermeneutics to scientifically define infectious diseases. At the same time, the connotation and extension of the epidemic situation are clearly defined, and the meaning of each word such as occurrence, outbreak and epidemic is accurately distinguished, so as to prevent the mixed use of infectious diseases and epidemic situations.

However, the classification of the current Law on Prevention and Control of Infectious Diseases is sublated, and the degree of social harm of infectious diseases under different circumstances is determined from the epidemiological point of view, according to the characteristics of infectious disease transmission, and so on, so as to carry out comprehensive scientific classification. Because of the need of epidemic prevention and control, special regulations can be made on the prevention and control of the epidemic situation above the major level at the legal level, while the epidemic situation below a large degree can be stipulated by the provinces and cities separately.

4.2 Aim-oriented improvement of the existing legal system

The purpose of epidemic prevention and control is to actively and effectively prevent and control the occurrence and spread of the epidemic. On the one hand, the law is formulated as a system guarantee to achieve the purpose, and the advantages and disadvantages of the law are also tested by the effect of prevention and control.

4.2.1 *Building an internal coordinated and unified epidemic legal system.*

China urgently needs to straighten out the internal logic of existing laws and regulations and coordinate the laws in form. As for the way, I put forward two ideas: First idea, because the Law on the Prevention and Control of Infectious Diseases has been relatively perfect in the framework, China can adjust and enrich the original provisions, increase the content of major epidemic disasters, perfect the punishment procedure, and formulate a law such as the Law on the Prevention and Mitigation of Infectious Diseases, which can be named as the Law on the Prevention and Mitigation of Infectious Diseases, on the basis of absorbing the relevant contents of the Law on Emergency Response and the Emergency Regulations, and on the basis of practical experience. The author believes that the benefit is to maintain the stability of the system, and the disadvantage is to make the whole law too large.

Second idea is formulating a separate “Emergency Regulations for Major Outbreaks” to partially absorb the “Emergency Regulations” on the basis of maintaining the original “Prevention and Control of Infectious Diseases” and “Emergency Response Law”, in this way, dealing with all kinds of problems under major epidemic situations as a whole. The advantage is simple and clear, but the disadvantage is that the rank is low, it is not easy to maintain the stability of the system.

4.2.2 *Speed up the construction of legal theory and fill in legal gaps*

Under the premise of scientifically assessing the trend, scope and magnitude of the epidemic situation, according to the “principles of public interest, moderation and necessity, openness and transparency, responsibility and timeliness”¹¹, so it is necessary not only to give the administrative subject full exercise of the power to prevent and control the epidemic situation, but also ask the administrative subject to deal with it in a timely and decisive manner, to ensure the effect of prevention and control, but also to strictly prevent and control the abuse of public power to private rights.

At the same time, the law must clarify the relevant punishment standards and procedures, such as stipulating that the operator’s sale at a price exceeding the entry price is a bid up price, and strictly inform the punished person of the legal basis and discretion standard of punishment in accordance with the procedure. At the same time, after the epidemic situation, the judicial organs are given the corresponding supervision power and the public certain relief right (even if this relief right is reduced compared with the normal), so as to achieve fairness and justice to the greatest extent and ensure the authority of the law.

At the same time, China should improve the content of prevention and control of related epidemic situation. Although the current epidemic prevention and control law has basically achieved “full coverage, full coverage, all departments”, but the content is too simple, all but not detailed phenomenon is more prominent. Therefore, China should start from two aspects to speed up the filling of existing legal gaps. On the one hand, on the basis of the

11 CHENGUANG, Wang. [J]. *Journal of Tsinghua University*, 2003, n.4, p.11-18.

provisions of the original laws and in accordance with the needs of the current situation of epidemic prevention and control, it is necessary to refine the contents of the Emergency Regulations and the Emergency Plan, establish and improve the mechanism for responding to major outbreaks, refine the reporting procedures under early warning of different outbreaks, classify and formulate specific emergency measures for different levels of outbreaks, improve the process of investigation and isolation of suspected patients, and so on, so as to make the Emergency Regulations and the Emergency Plan more operational; On the other hand, China should improve the system and mechanism for the prevention and control of major epidemics, improve the national public health emergency management system, make up for the incompleteness of existing prevention and control links, combine special treatment with systematic management, comprehensive management, legal management and source control, extend the prevention and control process to the maximum extent, reach all stages of early warning, prevention, recovery and reconstruction, strengthen the mechanism of daily prevention and control drills, prepare plans, teams, funds and technical preparations, and strive to stifle the epidemic in its cradle.

At the same time, China should pay attention to perfecting the guarantee mechanism of recovery and reconstruction, restore the normal life of society in time, and carry out psychological guidance and post-disaster propaganda to the masses, so as to make the prevention and control of the epidemic situation more comprehensive and effective.

4.2.3 How to Chain the other laws and regulations

The major epidemic involves all aspects of society, so it threatens national security. Therefore, China must adhere to the concept of overall national security concept, raise the prevention and control of major epidemic situations to the point of view of national security, do a good job in the design of the top level system, and earnestly improve the construction of the legal system for the prevention and control of epidemic situations.

First of all, China must obey the absolute authority of the Constitution and strengthen the docking with the administrative emergency laws such as the National Security Law and the State martial law under the constitutional framework, which not only affirms the universality of the epidemic situation as a kind of emergency, but also highlights the particularity of the epidemic prevention and control, so that these laws become an organic whole. On the basis of the Law on the Prevention and Control of Infectious Diseases and the Law on the Protection of Wild Animals, China should push forward the introduction of bio-safety law as soon as possible and speed up the construction of national bio-safety laws and regulations system and system guarantee system.

Secondly, it is necessary to coordinate and resolve the construction of the relevant supporting legal systems in various fields, such as criminal law, civil law and other fields, all elements and all levels, intensify the crackdown on illegal acts of violence against medical personnel, severely investigate and deal with all kinds of illegal acts that drive up the price of epidemic prevention supplies and people's livelihood commodities, severely crack down on illegal and criminal acts that disrupt the prevention and control of the epidemic situation, such as resisting epidemic prevention and control, violent injury to medical doctors, making fake sales, spreading rumors and spreading rumors, and so as to ensure social stability and order.

Thirdly, it is necessary to do a good job in linking up the laws and regulations among the various departments in various localities, and to appear a farce of detaining medical materials transported elsewhere by any means for local prevention and control, so that the epidemic prevention and control system is sound, the system is complete, the system is scientific and standardized, and the operation is effective.

4.3 Reconstruction of epidemic prevention and control system.

In modern society, public emergencies are often characterized by mass events, diversity (mass disasters) and chain events (derivative and secondary events).¹² This puts forward higher requirements for the ability of the main body of epidemic prevention and control. The main body of prevention and control must be “risk, disaster (emergency), crisis.”¹³ Three levels of prevention and control process forward and backward extension, covering the whole process of epidemic prevention and control. According to Professor Qi Jiangang’s analysis, China must combine “peace with war, need to combine with reality, unified leadership, classification and classification.”¹⁴ The principle of establishing a permanent, professional, can coordinate the various departments of the epidemic prevention and control of the main body. China has established an emergency management department in 2018, responsible for production safety, disaster management and emergency rescue work throughout the country. Therefore, the author thinks that the emergency management department, as the permanent coordination department of epidemic prevention and control, is responsible for the coordination and coordination of daily epidemic prevention, emergency handling during disasters, and disaster recovery and construction, while the health administrative departments at all levels are specifically responsible for the monitoring and early warning of the epidemic situation and the specific medical treatment. On this basis, the law must provide the necessary system guarantee for the grass-roots organizations to exercise the power of epidemic prevention and control, give full play to the great role of the rural and community grass-roots units in the prevention and control of the epidemic situation, and weave the first line of defense. At the same time, using the advantages of non-governmental public organizations in the prevention and control of the epidemic, such as material assistance, psychological assistance and the provision of effective information, China should give full play to the important complementary role of social organizations in the whole process of prevention and control, and create a good legal environment for social organizations to participate in social activities and build a “small government, large society” rule of law country.

To perfect the main body system of epidemic prevention and control, China must further refine the responsibility of compacting the main body and enhance the ability of the main body to deal with the major epidemic situation, including improving the level of medical treatment of medical and nursing personnel and the ability of scientific research departments to tackle key problems. These systems need to be supported by sound laws, so as to jointly build a solid dam to prevent and control major outbreaks.

5 CONCLUSION AND PERSONAL EXPERIENCE

Savigny said that “there is nothing in the law to be self-consistent, but rather the essence of human life itself.”¹⁵ The development of a country’s legal system is not smooth, most of the time will jump forward, or even break away from the original legal framework, this is the need for the law to adapt to reality, so the vitality of the law comes from reality rather than the provisions. The extraordinary period often exposes the gap between law and society and the defects of law itself, which provides a rare opportunity for the deep development of the rule of law. SARS in 2003, as a sudden and important event, prompted China to establish a preliminary legal framework for the

12 RUXI, Gao; SHOUGUI, Luo. A study on the Integrated Management Model of disaster Accidents in Big cities [J]. *China soft Science*, 2002, p.110-113.

13 Child Star. Evolution and current trend of Emergency Management in China [J]. *Public Management and Policy Review*, 2018, n.6, p.11-20.

14 JIANGANG, Qi. Reflection and Reconstruction of the Subject System of Emergency Administration in China [J]. *Law and Commerce Research*, 2007, n.3, p.112-118.

15 SAVIGNY, Friedrich Karl von. *Discussion on the contemporary mission of legislation and law*. Translated by Xu Zhangrun. Beijing: China Legal Publishing House, 2001, p.24.

prevention and control of the epidemic. In this campaign, General Secretary Xi stressed at the 12th meeting of the Central Committee for Comprehensive Reform in order to “ensuring the safety and health of the people is a major task for our party in governing the country”.

Both first author and corresponding author suffer a lot in 2020. The first author lost his grandpa in September and his teacher (who is like grandma for him) in October. Their deaths are indirectly related to the COVID-19. Because of the COVID-19, the hospital for the treatment of other chronic diseases are deeply affected. May the world be a better place in 2021.

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Recebido em: 10.09.2020

Aprovado em: 22.12.2020

Como citar este artigo (ABNT):

CHEN, Yifei; YANG, Mingsun. Legal system of epidemic prevention and control in China. *Revista Eletrônica de Direito do Centro Universitário Newton Paiva*, Belo Horizonte, n.42, p.258-270, set./dez. 2020. Disponível em: <<https://revistas.newtonpaiva.br/redcunp/wp-content/uploads/2021/01/DIR42-16-.pdf>>. Acesso em: dia mês. ano.