ОТВЕТ УГОЛОВНОГО ПРАВА КИТАЯ НА ЧРЕЗВЫЧАЙНЫЕ СИТУАЦИИ В ОБЛАСТИ ОБЩЕСТВЕННОГО ЗДРАВООХРАНЕНИЯ

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Аннотация: *В чрезвычайных ситуациях общественного здравоохранения порядок профилактики и борьбы с эпидемией стал новым юридическим преимуществом, требующим защиты уголовного права. После вспышки COVID-19 Китай в целях обеспечения жизни и здоровья людей и поддержания стабильности общественного порядка внес систематические и динамичные изменения в уголовное законодательство и уголовное правосудие, с тем чтобы применение уголовного права оставалось динамичным и гибким. После длительных практических исследований опыт уголовного права Китая в борьбе с COVID-19 можно обобщить как полное использование ценности уголовного предупреждения, соблюдение широкой и строгой уголовной политики и инновационную онлайн – судебную деятельность. Однако сочетание мер по профилактике и борьбе с эпидемией и неотъемлемых характеристик уголовного права может легко привести к потенциальным правовым рискам, таким как воздействие на систему уголовного права, размывание границ применения уголовного права и ослабление процедурных гарантий, и требует дальнейшего уточнения.*

Ключевые слова: *чрезвычайные ситуации в области общественного здравоохранения, уголовные право Китая, опыты, размышления.*

CHINA'S CRIMINAL LAW RESPONSE TO PUBLIC HEALTH EMERGENCIES

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Abstract. *In public health emergencies, the order of epidemic prevention and control has become an emerging legal interest that needs to be protected by criminal law. Since the outbreak of COVID-19 epidemic, China has made systematic and dynamic adjustments to its criminal legislation and criminal justice in order to protect people's lives and health and maintain the stability of social order, so that the application of criminal law remains dynamic and flexible. After a long period of practical exploration, the experience of China's criminal law response to the COVID-19 epidemic can be summarised as giving full play to the preventive value of criminal law, Standing by the criminal policy of temper justice with mercy, and innovating online judicial activities. However, the overlap between epidemic prevention and control measures and the inherent characteristics of criminal law may easily lead to potential legal risks such as the impact on the criminal law system, the blurring of the boundaries of criminal law application and the weakening of procedural safeguards, which need to be further improved precisely.*

Keywords: *public health emergencies, criminal law, experiences, reflections.*

China's Criminal Law Response to Public Health Emergencies

1. Introduction

Since the beginning of 2020, the outbreak of the COVID-19 epidemic has plunged the world into a global public health crisis that continues to threaten the physical health of all humanity and the international social order. The issue of the COVID-19 is no longer a purely professional issue in the medical field, but a major issue of social governance, directly reflecting a country's ability to manage an epidemic under the rule of law in the event of a public health emergency. In fact, before the outbreak, the Chinese government had forward-lookingly put forward the requirement of "strengthening public health prevention and control of major infectious diseases" in a meeting, which is both a requirement for achieving a healthy China and a necessary way to modernise the country's governance capacity. This goal cannot be achieved without the intervention of the rule of law in public health, which can provide a strong

legal guarantee and institutional foundation for the improvement and good operation of public health governance mechanisms. It is now widely acknowledged that the construction of a public health rule of law system can not be accomplished by the moderate intervention of one sectoral law alone, but requires the formation of a comprehensive and holistic system of norms, and the continuous improvement of this normative system at the practical level.

Although China had experienced an epidemic two decades ago and had basically developed a practicable public health emergency management system with Chinese characteristics, a series of governance shortcomings were still revealed during the prevention and control of the COVID-19 epidemic. Against the backdrop of the shift from the normal rule of law to the extraordinary rule of law during an epidemic, it is clear that the social policies and antecedent legal norms relating to the epidemic during the normal period cannot effectively deal with the complexities involved. As the most direct and effective legal means of regulating social order and resolving social conflicts, a complete criminal law code is necessarily an important part of the public health rule of law system at this time, assuming the role of a pillar. Therefore, criminal law, as an important weapon for balancing the freedom and security of Chinese citizens, can not passively look at the process of epidemic prevention and control from the sidelines, but should take up the important task of epidemic prevention and control in response to the development of the new social situation, respond to the problems in the process of responding to public health emergencies in a timely manner and make corresponding adjustments and changes in order to make up for the shortcomings and deficiencies required for the governance of public health criminal law in a normalized mode.

2. Criminal law's Response to the Public Health Emergencies

2. 1. New Developments of Criminal Legislation

Criminal legislation is a dynamic activity in which a specific subject formulates, endorses, supplements, amends or repeals criminal law norms in accordance with a certain procedure and in accordance with its authority, following a specific legislative technique.[1] Under the real

[1] *See: Yao L. Research on the Basic Principles of Criminal Law Legislation. Beijing: China University of Political Science and Law Press, 2014. P. 3.*

threat of particularly serious public health emergencies, China has become more experienced in rapidly legislating, amending laws and effectively linking health laws with criminal laws. after the SARS outbreak in 2003, China amended the "Law on the Prevention and Treatment of Infectious Diseases" twice, in 2004 and 2013, stipulating that malpractice by state employees, medical institutions, blood collection agencies, national health quarantine authorities, and animal epidemic prevention agencies, and units shall be held criminally responsible for violating the provisions in accordance with the law. At the same time, the "The Law on Emergency Responses", adopted in 2007, reiterates the procedures and authority for activating a state of emergency, and adopts a general approach to stipulate that those who violate the provisions of this Law and constitute a crime shall be held criminally liable in accordance with the law. 2018 saw amendments to the "Frontier Health and Quarantine Law", mainly stipulating that acts causing the spread of quarantined infectious diseases, acts with a realistic risk of serious spread, and acts by staff of health and quarantine authorities at the State Border shall be held criminally liable in accordance with the law. criminal liability for acts of dereliction of duty by the staff of the authorities.

In order to prevent the spread of the COVID-19 in 2020, in addition to the improvement of laws in the field of public health such as the "Law on the Prevention and Treatment of Infectious Diseases" and "The Law on Emergency Responses" on the agenda, the "Amendment (XI) to the Criminal Law" adopted on 26 December 2020 quickly summarised the experience and needs of the prevention and control of the epidemic and supplemented the provisions of the Criminal Law on public health safety: firstly, it amended the offence of obstructing the Firstly, it amends the crime of obstructing the prevention and control of infectious diseases, mainly clarifying that Class A infectious diseases such as COVID-19 fall within the scope of adjustment of the crime of obstructing the prevention and control of infectious diseases, while supplementing and improving the circumstances constituting the crime, and clarifying in legal form the acts and criminal liability for violating the provisions on the prevention and control of epidemics. Secondly, the offence of "illegally hunting, acquiring, transporting and selling terrestrial wild animals" has been added to increase the penalties for indiscriminate con-

sumption of wild animals, to address public concern about the public safety risks posed by indiscriminate consumption of wild animals, and to avoid and control public health risks at source. Thirdly, in order to safeguard biosecurity and prevent biological threats, three types of crimes have been added, namely crimes of illegally engaging in human gene editing and embryo cloning, crimes of seriously endangering the safety of national human genetic resources and crimes of illegally disposing of invasive alien species. From the perspective of the objective need to maintain public health security and public order, the response at the level of China's criminal legislation to this emergency of the COVID-19 epidemic has been very positive, both from the perspective of tightening the legal net and the response time perspective.[2]

2. 2. New Developments of Criminal Justice

In the early stages of the COVID-19 epidemic outbreak, the epidemic prevention and control measures made it difficult to hold court hearings in criminal cases from the norm. In order to minimise the risk of movement of people and infection in criminal proceedings and to ensure that criminal proceedings are conducted normally, courts at all levels in China started to conduct online "Cloud Trial" during the epidemic. During this period, the Supreme People's Court issued the Notice on "Strengthening and Regulating the Online Litigation Work during the Period of Prevention and Control of the COVID-19 Epidemic", which actively encouraged the exploration of criminal tele-court hearings, with remarkable results. After preliminary exploration, the applicable forms of criminal remote court hearings in China can be divided into three categories: first, the defendant remote model, i.e. the defendant is located in a detention centre and the judge, public prosecutor and other litigation participants participate in the court hearing in the same trial court; second, the public prosecutor remote model, i.e. the public prosecutor's side conducts public prosecution via video in the procuratorate and the judge, defendant and other litigation participants are in the same trial court; third, the three-party model The third is the three-way model, in which the judge, the prosecutor and the defendant are all in different

[2] *See: Feng J. Crime Prevention and Control of the Conduct Concerning Endangering the Public Security — A Discussion on the Related Provisions of Amendment(XI) to the Criminal Law // Law Science. 2021. No. 2. P. 19-29.*

physical spaces participating in the trial.[3] With the continuous progress of video call technology and the experience of the people's courts, the defendant remote mode has now become the main mode of criminal remote court hearings in China.

According to relevant data,[4] 2021 Chinese courts have filed 11.439 million cases of various types, including criminal cases, online, an increase of 8.94% year-on-year; 1.275 million court sessions were held online, an increase of 48.94% year-on-year, achieving the goal of maintaining order and guarding fairness and justice in accordance with the law for the prevention and control of the epidemic. In addition, the length of time taken by the people's courts to conclude criminal cases of first instance in 2021 was 11.1 days shorter than that of last year, which not only fully illustrates the significant improvement in the efficiency of the courts in handling cases, but also shows that China's criminal justice has helped prevent and control the epidemic while at the same time modernising its own trial capacity to a new level. On a deeper level, the move from offline to online has not only changed the form and scenario of litigation activities, but has also brought about an innovation in China's litigation rules. Over the years, the data formed by the aggregation of a large number of cases has contributed to the realisation of the goal of informatisation of the judiciary. An increasingly intelligent office and case handling system will certainly greatly improve the case handling capacity and office level of judicial staff, enhance the scientific level of judicial decision-making, and will also help to strengthen the effective supervision of the operation of trial and execution powers throughout the process. The deeper integration of information technology with prosecution, trial and enforcement operations will give criminal justice the wings of information technology and promote a more mature and scientific socialist judicial system with Chinese characteristics on the road to long-term development in the future.

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[3] *See: Chen W. On the Practices and Theories of Remote Criminal Trial // Peking University Law Journal. 2021. No. 6. P. 1484-1502.*

[4] *Because the latest data of 2022 has not been published yet, the article selects the data of 2021. See:* Zhou Q. *Report on the Work of the Supreme People's Court of the People's Republic of China // court.gov.cn. 15 March 2022. URL: https://www.court.gov.cn/zixun-xiangqing-351111.html (accessed: 25.12.2022).*

3. Experiences with Criminal Law's Response to the Public Health Emergencies

3. 1. Giving Full Play to the Preventive Value of Criminal Law

The criminal law, as a law that guarantees the deprivation of liberty, property and even life, is at its most powerful in emergency situations and is particularly effective in combating the various offences that have arisen in the fight against the COVID-19 epidemic. Today's criminal law doctrine also considers the prevention of crime to be a legitimate aim of punishment.[5] In emergency situations, in order for people to understand the boundaries between what is legal and what is illegal, it is essential that they understand and grasp the legal norms relating to the epidemic and that they have the ability to anticipate the possibilities of their behaviour. In China's fight against the epidemic, the preventive value of criminal law is reflected throughout the process, from the activation of criminal law to the deterrence of penalties, from deterring criminals to preventing crime from occurring. China attaches importance to the promotion of the rule of law in the context of the epidemic, presenting in the public media, by way of typical examples, the serious violations of criminal law that have occurred during the current campaign against the COVID-19, thus making the general public aware of the serious consequences of violations. The Supreme Prosecutor has used the cases of arrests and prosecutions handled to explain the law according to the characteristics of the different stages of the epidemic prevention and control, and has released 18 batches of 95 typical cases involving the COVID-19 epidemic. The cases not only accurately and timely conveyed the relevant judicial concepts and spirit to every law enforcement officer, unified the scale of punishment for epidemic-related crimes, and provided strong examples and guidelines for front-line law enforcement departments in handling cases, but also helped guide and regulate the behaviour of the public during the prevention and control of the epidemic, quickly formed a demonstration effect, enhanced the perception of potential risk groups on the penalties for epidemic-related crimes, and gave full play to the criminal law's The new media technology, however used, can also be used to help the public's behaviour during epidemic prevention and control. Of course, no matter how the new media tech-

[5] *See: Zhang M. Criminal Law. Beijing: Law Press China, 2016. P. 510.*

nology is used to publicise, it must be strictly limited to the framework of the rule of law and the requirements of procedural justice, and must not be reduced to a "trial by public opinion".

3. 2. Standing by the Criminal Policy of Temper Justice with Mercy

The policy of temper justice with mercy is China's basic criminal policy, and is an important policy in response to the call to build a harmonious society. During the period of epidemic prevention and control, the scientific nature of this policy, as reflected in criminal law norms and the practice of the criminal rule of law, has certain significance for other countries.

In early 2020, the Supreme People's Procuratorate issued a notice explicitly requesting that "crimes against the prevention and control of epidemics should be punished strictly and severely in accordance with the law". and the addition and adjustment of a number of offences in the "Amendment (XI) to the Criminal Law" demonstrate China's determination and attitude to severely punish epidemic-related crimes. In the prevention and control of public health emergencies, taking advantage of people's panic to infringe on the personal or property rights of others, malicious disinformation, price inflation and manufacturing of counterfeit goods are more serious social hazards and reflect the greater subjective malice of the perpetrators, which should be dealt with severely in accordance with the law, which is not only in line with the principle of adaptation of crime and punishment, but also a requirement of individualized implementation of criminal law. In order to effectively combat epidemic-related crimes in special times, more emphasis should be placed on the "strict" side in order to effectively stabilise the situation and restore the normal operation of social order within a short period of time.

China has always regarded respect for people and life as an important principle in the fight against epidemics, and it is not the goal of modern criminal law to emphasise social protection to the exclusion of humane care for people. In the early stages of a public health emergency, those who acted inappropriately because of deception, ignorance or fear should be treated lightly in accordance with the law, taking into account their subjective malice and social danger at the time they committed the act. If the victim in the prevention and control has acted inappropriately, the criminal law should be applied carefully, taking full account of his or her physical and psychological condition at a particular time, and

even if the criminal law is applied the punishment should generally be lighter.[6] For criminals with mitigating circumstances such as surrender, confession and occasional offences, they should still be given leniency as appropriate according to the specific actual situation. In the special period of epidemic prevention and control, it is necessary to see the dialectical and unified relationship between leniency and strictness, so as to truly realise the human rights protection function of criminal law.

3. 3. Innovating Online Judicial Activities

In recent years, countries around the world have achieved remarkable results in the stages of smart justice. Judicial authorities have responded to the development trend of the Internet, and new platforms and technologies such as blockchain, 5G and AI have been applied in the field of criminal justice, providing efficient and convenient judicial services to the parties and minimising the impact of the epidemic on criminal trials. Collectively, online judicial activities in the epidemic focus first and foremost on multi-disciplinary synergies. Prosecution authorities can rely on remote online platforms to handle cases by telephone or video, avoiding as much as possible the need to interrogate suspects, question witnesses and other participants in proceedings and hear defence lawyers in person, in order to reduce the movement of people, gatherings and meeting and talking. Subsequently, the judiciary should standardise the trial venue for online court hearings, verify the identity of the parties through the online platform, archive electronic litigation information in a timely manner, and broadcast live court hearings for the public when eligible. The government should simultaneously build a good online service platform for each judicial authority and a coordination and cooperation mechanism between them, which should not be overlooked, in order to ensure the smooth operation of the online judicial process. After practical testing, public security organs, procuratorates and courts should not only standardise their respective electronic case management systems, but also build a good network service platform for each judicial organ and a coordination and cooperation mechanism between them with the assistance of administrative organs. They should also develop unified standards for the flow of case information between judicial organs and promote the standardisation of

[6] *See: Peng W: Criminal Policy Pattern in Major Public Health Emergencies // Global Law Review. 2022. No. 1. P. 100-115.*

network platforms in order to ensure the smooth operation of online judicial procedures and to share the benefits of intelligent justice across the rule of law.

Second, the key to online judicial activity in the epidemic is innovation. China has creatively launched various applications such as "Smart Court" and "Smart Prosecution", which provide comprehensive and fast online services for lawyers and clients to view case files and participate in litigation. Such unique and innovative services are dedicated to creating a higher level of "digital justice" and allowing the people to feel more "digital dividends". It is worth noting that countries and localities, especially underdeveloped and underfunded local judiciaries, should focus on their own problems and needs and explore electronic systems that suit their own realities, rather than just pursuing cutting-edge technology. Achieving maximum benefits at minimum cost is what sustainable development should be all about. The Russian "Federal Programme for the Digital Transformation of Prosecutorial Agencies and Organisations (until 2025)" is also actively promoting the reform of domestic judicial mechanisms, and it is believed that Russian-Chinese cooperation in online criminal justice will have great prospects.

4. Reflections on the Criminal Law's Response to the Public Health Emergencies

4. 1. Emergency Legislation Shakes up the Criminal Law System

The security of the criminal law system requires criminalisation and penal provisions to be justified and subject to rigorous procedural scrutiny, while also satisfying the principle of legality and the predictability of the law itself. The essence behind the emergency legislation model is that it puts the need for security first, reflecting a paradigm shift from the traditional fight against crime to the maintenance of public order and the expansion of public power, while putting the rules of legal procedure and human rights safeguards on the back burner, i.e. to meet the requirements of efficiency and the pursuit of a strict and speedy fight against crime, and the adequacy of the arguments for the content and extent of criminal law intervention in states of emergency needs to be further examined. However, judicial documents issued for emergency purposes, influenced by national security, public welfare or other value objectives, may over-emphasise the maintenance of security and order in emergency situations, while limiting the protection of individual

rights, thus appearing emotional and irrational legislative tendencies. The specific manifestation of this is that the offences added or amended in emergency situations, in terms of the form of guilt, dilute the boundaries of intentionality and negligence, and in terms of the description of the offence, abstract and general, and adopt the mode of underwriting provisions. Due to the lack of refinement and precision of the norms, it leads to a lack of degree of grasp on the boundary between crime and non-crime, and may break through the principle of statutory crime and punishment in the concrete application.

Furthermore, the security of the criminal law system requires that criminal law should be predictable. Legal norms must be clear and unambiguous so that citizens can foresee the possible legal consequences of an act and so that each individual can adapt his or her behaviour to the legal norms. As current criminal law provisions rarely address states of emergency, and as there is no judicial mechanism for states of emergency in judicial practice, neither criminal legislation nor criminal justice can effectively respond to a state of emergency once it has occurred.[7] The resulting emergency legislation, which takes into account all violations of prevention and control measures that may cause danger, may undermine the predictability of criminal law and may even unconsciously expand the circle of crime. In the case of the epidemic, the criminal law was amended in an emergency manner, based on practice, to respond quickly and efficiently to the problems that arose. However, the question of whether the regulation of certain acts requires criminal law, and whether the adoption of criminal law to prevent and control emergencies will bring instability to the criminal law system, is open to further debate and requires criminal legislation to be more forward-looking.

Therefore, the improvement of criminal legislation on public health in the context of normalized governance needs to absorb past experiences, both to curb the undesirable rule of law orientation of excessive penalties and to overcome the criminal legislation dilemma of insufficient provisions, to promote the scientificization of criminal legislation techniques, and to form a legislative technique characterized by both ratio-

[7] *See: Lin H, Kong L. On Reformulating China's Legal System of Emergency State // Journal of Shanghai University (Social Science Edition). 2020. No. 5. P. 130-140.*

nality and experience in parallel.[8] Specifically, firstly, we should resolve and balance the conflict between specificity and looseness in criminal legislation. Overly broad legislation will inadvertently expand the power of special classes of people, leading to the creation of strong power, when the clarification of criminal law provisions can help to reasonably limit the state's penal power; while overly specific legal norms will limit the discretionary power of the judiciary, thus making it difficult to achieve substantive justice. In the process of public health criminal legislation, it is necessary to correctly grasp the boundaries and articulation between the two, so as to ensure efficiency and fairness in the management of special problems. Second, the stability of criminal legislation should be enhanced by reforming the range of statutory penalties. To a certain extent, it is the lack of clarity in the setting of statutory penalty ranges that leads to the specialisation of the application of penalties during epidemics and undermines the stability of criminal legislation. When the practice of public health criminal law enters a normalised stage, expressions such as "aggravating circumstances" can be added to the relevant offences at an appropriate time,[9] and situations such as public health emergencies can then be included in the scope of "aggravating circumstances", so that they can be legally enforceable. This preventive mode of legislation can better implement the principle of statutory penalties.

4. 2. Blurred Boundaries in the Application of Criminal Law

Although the illegal and criminal acts carried out in the epidemic period have more serious social harm than usual, it is necessary to crack down on them "severely and seriously", but the lack of experience of the judicial organs and the lack of thorough understanding of "severely and seriously", so that some citizens' substantive legal interests suffered damage. As the last line of defense of social protection, criminal law should clearly define the boundary of its application and should not be blindly expanded.

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[8] *See: Wang Z. Fact and Norms: Reconsideration of Traditional Methodology of Criminal Legislation // Law and Social Development. 2011. No. 1. P. 57.*

[9] *See: Shi J, Jin Z. The Perfection of the Criminal Law Norm System of Crimes Concerning Public Health Emergency — Based on the Investigation and Outlook from "Management" to "Governance" // Academic Exploration. 2020. No. 8. P. 102-111.*

Firstly, there is a misunderstanding in the "application of crime" by the judiciary. In the current judicial practice of epidemic-related cases, the judicial authorities have actually applied the "strict and serious" policy at the stage of crime characterization, i.e. when faced with the "critical point" between crime and non-crime, this crime and the other crime, based on the "strict and serious In other words, when confronted with the "critical point" between a crime and a non-crime, or between this crime and the other crime, the policy of "severity and severity" requires an enhanced interpretation of incrimination or felonisation. However, due to the ambiguity of the "critical point" of crime and the fact that it mainly relies on the subjective judgement of judges in their discretion, it is easy to weaken the requirement of the "critical point" as a limited situation in the judicial process, making the determination of crime in individual cases slip into a comprehensive and unrestricted incrimination. In such extraordinary times as public health emergencies, the criminal law should adhere to the principle of modesty, apply the undercover provisions and pocket crimes with caution, and maintain rationality and restraint.[10] Judicial authorities must always adhere to the principle of unity of subjective and objective criminal justice convictions, systematically consider the criminal object, objective aspects of the crime, the subject of the crime and the subjective aspects of the crime in criminal justice practice, avoiding both subjective evaluation and objective dilemmas, so as to accurately evaluate the criminal offences constituted by the perpetrator.

Secondly, there is a misunderstanding in the judiciary's approach to "penalty discretion"" Whether the criterion of "committing a crime during an epidemic" is a direct substitute for a specific judgement on the social and personal danger of the perpetrator is still open to question. For example, the danger of a crime committed during an epidemic may be less than that of a crime committed in ordinary times, such as the spontaneous closure of roads during an epidemic due to the normalisation of social panic and the lack of timely relief measures by the State. Therefore, this "one-size-fits-all" approach to aggravation inevitably ignores the requirements of specific crimes and situations, resulting in a

[10] *See: Jiang T. Controversies on the Dogmatics of Epidemic — related Crimes in Emergency Period // Political Science and Law. 2020. No. 5. P. 7.*

mismatch between crime and punishment. Although China and many countries around the world are typically codified countries, the mediating guidance and complementary role played by guiding cases should not be overlooked. In the future governance of public health criminal law, there is still a need to increase the number of guiding cases issued, to interpret legal norms through specific cases, to provide an important reference basis for the application of law and the determination of penalties in similar cases, and to promote the process of precise selection of offences and uniformity in the application of penalties.

4. 3. Weak Procedural Safeguards

The immaturity of remote court hearings and the excessively fast flow of proceedings at the beginning of the COVID-19 epidemic first made the protection of the defendant's right to defence a formality. In the particular context of the epidemic prevention and control, most defenders had difficulties in obtaining face-to-face communication with the defendants in custody and could only meet remotely by video. This is not only detrimental to the defence's ability to understand the facts of the case and conduct an effective defence, but may also affect the defendant's psychological state during the trial session. In court, the advocate has an active role in giving moral support and psychological comfort to the defendant.[11] The imbalance between the prosecution and the defence will be further exacerbated by the difficulty for the defendant to gain psychological support or even distrust from the advocate during the criminal remote court session. The right of confrontation, which is the main element of the defendant's in-court defence, is also difficult to create pressure on witnesses to testify truthfully because they do not testify in court. Whether remote court sessions and video testimony infringe on the defendant's procedural rights, including the right to a fair trial, in a remote trial is a question that deserves serious consideration.

Secondly, the authority of criminal justice is difficult to manifest. Judicial authority comes from judicial impartiality, which includes both substantive and procedural justice. Procedural justice, as "visible justice", requires procedural transparency, procedural participation, pro-

[11] See: Liu R. Analysis and Reform on the Design of the Defendant's Seat in our Country's Criminal Court // Tribune of Political Science and Law. 2017. No. 4. P. 112-124.

cedural rationality and effective defence as guarantees. However, the "Cloud Trial" contradicts the principle of open trial, the indirectness of procedural participation and the lack of effectiveness of the defence, which undermines judicial authority. In addition, the rules of court are generally not read out, bailiffs are not present in court, gavel is rarely used, and witnesses and experts do not sign affidavits, which, if these symbols of judicial authority are diluted, would mean the shrinking of judicial authority. Judicial authority is a key part of building a state under the rule of law, and technology should be used to serve the rule of law. We should eliminate the cult of technology and have more faith in the rule of law.

The "Cloud Trial" cuts off the direct physical contact between the parties and the judge in a specific space and time, and if this is a loss of procedural interests for the parties, then the necessary protection of rights should be given.[12] The application of " Cloud Trial" should take full account of the nature and characteristics of the case, the type of evidence and other factors, and in practice should focus on preventing the deliberate pursuit of all cases heard online. For the many participants in the litigation, the case is important, complex, complicated evidence, the trial takes a long time of the case, generally not online trial. The parties have the freedom to choose the mode of litigation, and also the freedom to realize the interchangeability of electronic and offline litigation. The court should fully respect and safeguard the proper exercise of the parties' right to choose the procedure. Respecting the parties' right to choose and safeguarding their free will is a reflection of the parties' status as litigation subjects and is conducive to enhancing judicial credibility.

5. Conclusion

The outbreak of the COVID-19 epidemic is not only a test of the early warning and prevention and control mechanism of public health emergencies in various countries, but also a major exercise and test of the concept, principles and practice of the modern rule of law in various countries. Only the rule of law that adheres to basic principles and norms despite the severe test of an epidemic can truly reveal the bright colours of the modern normative rule of law and realise the purpose of human

[12] *See: Zhang L. Secret Worries and Countermeasures of Technological Dependency in Intelligent Justice // Law and Social Development. 2022. No. 4. P. 180-200.*

rights protection. Past experience has shown that the application of criminal law in major public health incidents has also left some regrets. To a certain extent, these problems can affect the function and role of criminal law, and at the same time put forward higher requirements for the control of risks in criminal law. Therefore, with the further development of economic globalisation and social informatisation, it is all the more important for countries to exchange experiences with other countries on the basis of their own roads, theories, systems and cultural self-confidence, learn from each other and complement each other's strengths and weaknesses, so as to proactively intervene in the management of public health emergencies and demonstrate the responsibility and commitment of criminal law, thereby achieving better management results.

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Меры реагирования уголовного законодательства Китая на чрезвычайные ситуации в области общественного здравоохранения

Введение

С начала 2020 года вспышка эпидемии COVID-19 ввергла мир в глобальный кризис общественного здравоохранения, который продолжает угрожать физическому здоровью всего человечества и международному социальному порядку. Проблема COVID-19 больше не является чисто профессиональной проблемой в области медицины, а является важной проблемой социального управления, непосредственно отражающей способность страны справиться с эпидемией в рамках верховенства закона в случае чрезвычайной ситуации в области общественного здравоохранения. Фактически, перед вспышкой китайское правительство на совещании, ориентированном на перспективу, выдвинуло требование "усиления профилактики основных инфекционных заболеваний в области общественного здравоохранения и борьбы с ними", что является одновременно требованием для достижения здорового Китая и необходимым способом модернизации потенциала управления страной. Эта цель не может быть достигнута без вмешательства верховенства закона в общественное здравоохранение, которое может обеспечить надежную правовую гарантию и институциональную основу для улучшения и надлежащего функционирования механизмов управления общественным здравоохранением. В настоящее время широко признано, что построение правовой системы общественного здравоохранения не может быть достигнуто за счет умеренного вмешательства только одного отраслевого закона, но требует формирования всеобъемлющей и целостной системы норм и постоянного совершенствования этой нормативной системы на практическом уровне.

Хотя Китай пережил эпидемию два десятилетия назад и в основном разработал практичную систему управления чрезвычайными

ситуациями в области общественного здравоохранения с китайскими особенностями, в ходе профилактики эпидемии COVID-19 и борьбы с ней все еще был выявлен ряд недостатков в управлении. На фоне перехода от обычного верховенства закона к чрезвычайному верховенству закона во время эпидемии становится ясно, что социальная политика и предшествующие правовые нормы, относящиеся к эпидемии в обычный период, не могут эффективно справиться с возникающими сложностями. Являясь наиболее прямым и эффективным правовым средством регулирования общественного порядка и разрешения социальных конфликтов, полный уголовный кодекс в настоящее время обязательно является важной частью системы верховенства права в области общественного здравоохранения, выполняя роль опоры. Поэтому уголовное право, как важное оружие для обеспечения баланса между свободой и безопасностью китайских граждан, не может пассивно смотреть на процесс профилактики эпидемий и контроля над ними со стороны, а должно взять на себя важную задачу профилактики эпидемий и контроля над ними в ответ на развитие новой социальной ситуации, своевременно реагировать на проблемы в процессе реагирования на чрезвычайные ситуации в области общественного здравоохранения и вносить соответствующие коррективы и изменения с целью устранения недостатков, необходимых для управления уголовным законодательством в области общественного здравоохранения в нормализованном режиме.

Меры реагирования уголовного законодательства на чрезвычайные ситуации в области общественного здравоохранения

Новые изменения в уголовном законодательстве

Уголовное законодательство – это динамичная деятельность, в ходе которой конкретный субъект формулирует, одобряет, дополняет, изменяет или отменяет нормы уголовного права в соответствии с определенной процедурой и в соответствии со своими полномочиями, следуя определенной законодательной технике. В условиях реальной угрозы особо серьезных чрезвычайных ситуаций в области общественного здравоохранения Китай приобрел больший опыт в быстром принятии законов, внесении поправок в них и эффективной увязке законов о здравоохранении с уголовным законодательством. после вспышки атипичной пневмонии в 2003 году Китай

дважды, в 2004 и 2013 годах, вносил поправки в "Закон о профилактике и лечении инфекционных заболеваний", предусматривающие уголовную ответственность за халатность государственных служащих, медицинских учреждений, агентств по сбору крови, национальных карантинных органов здравоохранения, агентств и подразделений по профилактике эпидемий среди животных за нарушение положений в соответствии с законом. В то же время "Закон о реагировании на чрезвычайные ситуации", принятый в 2007 году, подтверждает процедуры и полномочия для введения чрезвычайного положения и использует общий подход, предусматривающий, что те, кто нарушает положения этого Закона и представляет собой преступление, должны привлекаться к уголовной ответственности в соответствии с законом. В 2018 году были внесены поправки в "Закон о здравоохранении и карантине на границе", в основном предусматривающие, что действия, приводящие к распространению карантинных инфекционных заболеваний, действия с реальным риском серьезного распространения и действия сотрудников органов здравоохранения и карантина на государственной границе, подлежат уголовной ответственности в соответствии с законом. уголовная ответственность за неисполнение служебных обязанностей сотрудниками органов власти.

В целях предотвращения распространения COVID-19 в 2020 году, в дополнение к совершенствованию законов в области общественного здравоохранения, таких как "Закон о профилактике и лечении инфекционных заболеваний" и "Закон о реагировании на чрезвычайные ситуации", на повестке дня "Поправка (XI) к Уголовный закон", принятый 26 декабря 2020 года, быстро обобщил опыт и потребности в области профилактики эпидемии и борьбы с ней и дополнил положения Уголовного закона о безопасности общественного здравоохранения: во-первых, он внес поправки в состав преступления, заключающегося в воспрепятствовании осуществлению первой, он вносит поправки в преступление воспрепятствования профилактике инфекционных заболеваний и борьбе с ними, главным образом разъясняя, что инфекционные заболевания класса А, такие как COVID-19, подпадают под действие поправки к преступлению воспрепятствования профилактике инфекционных заболеваний и борьбе с ними, дополняя и улучшая обстоятельства, состав-

ляющие преступление, и разъясняя в юридической форме деяния и уголовная ответственность за нарушение положений о профилактике эпидемий и борьбе с ними. Во-вторых, было добавлено преступление "незаконная охота, приобретение, транспортировка и продажа наземных диких животных", чтобы ужесточить наказания за неизбирательное потребление диких животных, обратить внимание общественности на риски для общественной безопасности, связанные с неизбирательным потреблением диких животных, и избежать рисков для здоровья населения у источника и контролировать их. В-третьих, в целях обеспечения биозащиты и предотвращения биологических угроз были добавлены три вида преступлений, а именно преступления, связанные с незаконным редактированием генов человека и клонированием эмбрионов, преступления, связанные с серьезной угрозой безопасности национальных генетических ресурсов человека, и преступления, связанные с незаконной утилизацией инвазивных чужеродных видов. С точки зрения объективной необходимости поддержания безопасности общественного здравоохранения и общественного порядка, реакция уголовного законодательства Китая на эту чрезвычайную ситуацию, связанную с эпидемией COVID-19, была очень позитивной, как с точки зрения ужесточения правовой системы, так и с точки зрения времени реагирования.

Новые достижения в области уголовного правосудия

На ранних стадиях вспышки эпидемии COVID-19 меры по профилактике эпидемии и контролю над ней затрудняли проведение судебных слушаний по уголовным делам, отклоняющимся от нормы. Чтобы свести к минимуму риск перемещения людей и заражения в ходе уголовных разбирательств и обеспечить нормальное проведение уголовных разбирательств, суды всех уровней в Китае начали проводить онлайн-"облачные судебные разбирательства" во время эпидемии. В течение этого периода Верховный народный суд опубликовал уведомление "Об усилении и регулировании работы по судебным разбирательствам в режиме онлайн в период профилактики эпидемии COVID-19 и борьбы с ней", которое активно поощряло изучение уголовных телесудебных слушаний, что дало замечательные результаты. После предварительного изучения применимые формы дистанционных судебных слушаний по уголовным

делам в Китае можно разделить на три категории: во-первых, удаленная модель подсудимого, т.е. обвиняемый находится в следственном изоляторе, а судья, государственный обвинитель и другие участники судебного разбирательства участвуют в судебном заседании в том же суде первой инстанции; во-вторых, дистанционная модель государственного обвинителя, т.е. сторона государственного обвинителя осуществляет государственное обвинение по видеосвязи в прокуратуре, а судья, обвиняемый и другие участники судебного разбирательства находятся в одном суде первой инстанции; в-третьих, трехсторонняя модель Третья – это трехсторонняя модель, в которой судья, прокурор и подсудимый находятся в разных физических пространствах, участвуя в судебном разбирательстве. Благодаря постоянному развитию технологии видеозвонков и опыту народных судов удаленный режим подсудимого в настоящее время стал основным режимом проведения удаленных судебных слушаний по уголовным делам в Китае.

БОРЬБА МЕДИЦИНСКИХ РАБОТНИКОВ С НАСИЛИЕМ И ДОМОГАТЕЛЬСТВАМИ НА РАБОЧЕМ МЕСТЕ

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Аннотация. *Медицинскому сообществу необходимо обратить внимание на рекомендации ВОЗ в области борьбы с насилием. Для этого важно регулярно повышать уровень правового образования медицинских работников, а также проводить обучение, которое будет направлено на усиление реагирования системы здравоохранения на насилие. Также необходимо обеспечить медицинские учреждения специализированной инфраструктурой для реализации возможности конфиденциальных консультаций с пациентом (в отсутствие другого персонала).*

Ключевые слова*. Медицинские работники. Пациенты. Насилие. Защита медицинских работников и пациентов.*