

Legal Regulation and Improvement of Quarantine Measures in Major Epidemic Prevention and Control

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Abstract:*In order to curb the serious situation of the spread of epidemic, isolation measures are more widely applied. Isolation measures are, by nature, coercive measures to restrict the personal freedom of citizens, so their application must be in accordance with the provisions of the law. The implementation of isolation measures in the prevention and control of major epidemics has its necessity, but there are many problems in practice. The isolation measures in China's current law are characterized by mandatory means, specific purposes and objects, temporary time and medical evaluation, and there are also shortcomings such as unclear and specific specifications and lack of systematic legal provisions. For the legal regulation and improvement of isolation measures, we should adhere to the principles of legal reservation, proportionality, and the combination of regulation and discipline, clarify the legal nature and types of isolation measures, establish specific and reasonable legal norms, and improve the systematic normative system from both substantive and procedural aspects. At the same time, we should make appropriate use of criminal law to clarify the relevant crimes and improve the mechanism for handling cases of refusal of isolation, so as to protect the implementation of isolation measures.*

Keywords: epidemic prevention and control; isolation measures; coercive measures; legal regulation

Introduction

Compared to SARS 17 years ago, the spread of the new coronavirus has been greatly accelerated. In order to contain the critical situation of the spread of the epidemic, isolation measures have been more widely used. Isolation of patients, suspected patients, and close contacts to varying degrees is necessary to stop the spread of the virus and is one of the most effective measures to control the epidemic, and it can even be argued that until effective drugs and vaccines are researched, isolation measures are a key move in the fight against the epidemic. Nowadays, Newcastle pneumonia has spread. Nowadays, New Coronary Pneumonia has spread to the whole world, and comparing with the prevention and control status of various countries, it can be seen that the more strict quarantine measures taken in China have been effective in reducing the number of infections and inhibiting the spread of the virus. However, the quarantine measures for citizens also restrict their personal freedom to varying degrees. Therefore, the quarantine measures for citizens should follow the provisions of the

law and be strictly regulated by the law.

On February 5, 2020, the Central Committee for Comprehensively Adhering to the Rule of Law specifically The Central Committee for the Comprehensive Rule of Law deliberated and adopted the Opinions of the Central Committee for the Comprehensive Rule of Law on the Prevention and Control of the New Crown Pneumonia Infection Pneumonia Epidemic in accordance with the Law and the Effective Protection of People's Lives and Health Safety. In his speech, General Secretary Xi Jinping pointed out that it is necessary to improve the legislation related to epidemic prevention and control, strengthen the construction of supporting systems, improve the penalty procedures, strengthen public safety, and build a complete, scientific and effective legal system for epidemic prevention and control. The plan was adopted and issued for implementation. In order to strengthen the protection of public health rule of law, China intends to enact and amend 17 relevant laws in the next two years. At present, China has initially established a legal framework for public health protection, but the epidemic still reveals some problems in legislation, and there is a need to systematically revise and improve the relevant laws. As an important measure to prevent and control epidemics, the legal provisions of isolation measures are not specific, clear and adequate. This paper will analyze the necessity of isolation measures in the prevention and control of major epidemics, point out the problems faced by isolation measures in the prevention and control of epidemics, and put forward some suggestions for the improvement of the relevant laws in light of the provisions of isolation measures in the existing laws of China.

1. The necessity and problems of incorporating isolation measures into the laws for the prevention and control of major epidemics

Isolation measures in the prevention and control of major epidemics are an important measure to prevent the spread of the virus and contain the spread of the epidemic. However, during the implementation of quarantine measures, the personal freedom of citizens will be restricted. In this context, what is the need to include isolation measures in the law? What are the problems faced by the quarantine measures adopted in the prevention and control of this major epidemic?

1.1 The need to incorporate isolation measures into the law for the prevention and control of major epidemics

The necessity of including isolation measures in the law for major epidemic prevention and control infectious disease prevention and control is not only a scientific issue in infectious disease medicine, but also a social governance and legal issue. The typical mode of transmission of serious infectious diseases, including novel coronavirus pneumonia, is human-to-human. New viruses cause major outbreaks, and the wait for specific drugs and vaccines to eradicate and prevent the virus is long, so the focus of outbreak prevention and control is "The focus of epidemic prevention and control is therefore on isolation measures to keep people in control and manage them well".

First, the right to personal freedom is a basic human right. Article 9(1) of the International Covenant on Civil and Political Rights states that "Everyone has the right to liberty and security of person. No one shall be

subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law”. Article 37 of our Constitution also protects the right to personal liberty as an important constitutional right. Article 37 of our Constitution also protects the right to personal freedom as an important constitutional right. In order to prevent the rapid spread of the epidemic, it was necessary to take appropriate isolation measures for some people, which in fact imposed certain restrictions on their personal freedom rights. According to the Legislative Law, “coercive measures to restrict personal freedom” are “regulated by law”, and can only be regulated by law. Therefore, in order to protect the person's right to personal freedom from unlawful infringement, isolation measures should be included in the law.

Second, the real needs of the prevention and control of major epidemics, since the beginning of 2020, the emergency response mechanism of public health emergencies around the world, the epidemic prevention and control of some sensitive personnel in violation of the law occurred from time to time, seriously endangering the lives and health of the people and public safety.

On April 3, 2020, the online publication hall of the Supreme People's Procuratorate released the eighth batch of typical cases involving the new pneumonia epidemic handled by the national procuratorial organs in accordance with the law, including the case of Ding Moumou in Ningxia Hui Autonomous Region, in which the defendant concealed his illness when entering Shanghai and took public transportation to and from public places several times, resulting in the quarantine of more than 200 close contacts. In the case of Guo Moupeng's obstruction of infectious disease prevention and control in Henan Province, the defendant Guo Moupeng concealed his illness and denied leaving the country after his illness and still went out to work, resulting in more than 40 close contacts being isolated for observation, which also made the prevention and control of the epidemic in Henan Province a "lost cause". It is clear that only by including isolation measures in the law can we fundamentally stop these behaviors that endanger public health and safety.

During the major struggle against SARS 17 years ago, the State Council enacted the Regulations on Emergency Response to Public Health Emergencies to ensure that the SARS epidemic was effectively prevented and controlled through the use of the rule of law and the adoption of strong isolation measures in all areas. We have been able to achieve victory in the fight against SARS. The number of people infected by the new coronavirus pneumonia outbreak far exceeded that of SARS. The State Council approved its inclusion as a Class B infectious disease and the adoption of measures to prevent and control Class A infectious diseases. Compared with the temporary notification of citizens to take quarantine measures when an epidemic strikes, the implementation and supervision of quarantine measures are systematically stipulated in the law, which makes it easier to ensure the implementation of various epidemic prevention and control measures, maintain the order of epidemic prevention and control, maintain social stability, and guarantee public health safety.

1.2 Problems faced when taking isolation measures in the prevention and control of major epidemics problems

The type of isolation measures in the non-emergency state is relatively single, mainly concentrated in the

relevant provisions of mandatory isolation drug treatment. In the epidemic prevention and control, isolation measures carry not only the health and safety of individual personnel, but also include public order, public health and safety, public morality and economic order as the core of the public interest of society. In this context, through the practice of isolation measures in the prevention and control of this major epidemic, we can see the following issues. In this context, we can see the following problems through the practice of quarantine measures in this major epidemic.

First, the scope of quarantine measures to expand the subject. The main subjects of isolation under the current law are patients, carriers of pathogens, suspected patients and close contacts, which means that the application of isolation measures is mainly limited to these four cases. However, after the outbreak, China has adopted more stringent isolation measures, not only for suspected patients and close contacts, but also for people returning to their homes for medical observation, centralized isolation for medical observation, and home isolation for people returning to work. And these isolation measures are much more lenient than those for patients and suspected patients, and the isolated persons may still have contact with other people such as family members, but the personal freedom of citizens who are subject to isolation measures is still restricted to varying degrees.

Second, the conflict between public health security and individual rights. In order to prevent the spread of the epidemic and ensure public health security, the relevant departments in the epidemic. In order to prevent the spread of the epidemic and ensure public health safety, the relevant departments have to take isolation measures for citizens in the prevention and control of the epidemic, and citizens' travel is subject to different restrictions, and even in the process of staff law enforcement, there are inappropriate behaviors such as excessive restrictions on citizens' personal freedom. In addition, the key prevention and control areas such as natural villages, building units, and neighborhoods where the new coronavirus outbreak has occurred are strictly managed in a closed manner during the quarantine period, and no one is allowed to go out except the epidemic prevention and control staff, which makes the personal freedom of other residents in the area who are not infected with the virus restricted. In this case, the purpose of quarantine measures for citizens is for public health security and epidemic prevention and control, the relevant departments can take the quarantine measures to restrict personal freedom, and citizens can not be restricted by personal freedom as a reason not to cooperate.

Third, the lack of uniform implementation standards. Isolation measures are striction of personal freedom of citizens of the coercive measures, but the specific implementation of isolation measures lack of clear and unified norms, so there is a certain arbitrariness in the use of around. For example, for the determination of quarantine sites and areas, many regions will quarantine the whole unit or district once a suspected case appears, but it may result in some unrelated people also being blocked inside. The degree of isolation also varies widely, with some isolation measures being very strong, such as closed management, while others are less strong and the isolated person may have contact with other people, such as family members, during the isolation period.

In conclusion, in the prevention and control of major epidemics, the implementation of isolation measures in accordance with the law is an inherent requirement of a society governed by the rule of law. In the context of epidemic prevention and control, isolation measures also face problems such as the expansion of the range of

isolated subjects, the conflict between public health security and individual rights, and the lack of uniform enforcement standards. This indicates that the current public health laws in China are not sufficient to solve the problems of isolation measures in the prevention and control of major epidemics, so the laws must be more comprehensive in regulating isolation measures, so as to Therefore, the law must be more comprehensive regulation of isolation measures to ensure the implementation of preventive and control measures to protect public health safety and the interests of life and property of the general public.

2. Characteristics and shortcomings of isolation measures in China's current law

At present, the provisions on isolation measures in China's existing laws are mainly concentrated in the Prevention and Control of Infectious Diseases Law, the Emergency Response Law, and the Emergency Response Regulations for Public Health Emergencies and other regulatory documents. Article 39 of the Prevention and Control of Infectious Diseases Law stipulates the isolation measures for different personnel, and Article 41 stipulates the subjects of isolation measures, the procedures for taking isolation measures, and the release of isolation measures. Article 45(7) of the Emergency Response Law stipulates the conditions for closing or restricting the use of fixed places by local people's governments at or above the county level. Article 33 of the Regulations on Emergency Response to Public Health Emergencies stipulates the conditions for taking isolation measures and cordoning off infected areas; Article 38 stipulates the procedures for taking isolation measures when patients or suspected patients are found on transportation; Article 40 stipulates that grassroots self-governing organizations shall assist the competent health administrative departments and other relevant departments and medical and health institutions in taking isolation measures for citizens; Article 41 stipulates the procedures for taking isolation measures for infected patients and suspected patients. Article 41 stipulates that patients with infectious diseases and suspected infectious diseases shall follow the principle of "local isolation, local observation and local treatment"; Article 42 stipulates that relevant departments and medical and health institutions shall detect, report, isolate and treat infectious diseases as early as possible, cut off the transmission channels and prevent the spread of the disease; Article 44 stipulates that for patients who refuse to cooperate with isolation measures, and for those who refuse to cooperate with isolation measures, they shall be treated as early as possible. Article 44 provides for disciplinary measures for patients, suspected patients and close contacts of infectious disease patients who refuse to cooperate with isolation measures. These are the relevant provisions of our current law for isolation measures. In addition, in response to the epidemic, on February 4, the General Office of the National Health Commission issued the "Guidelines for Prevention and Control of Infections under Medical Observation in Home Isolation in the Prevention and Control of Pneumonia Infected by Novel Coronavirus (for Trial Implementation)", which provides guidelines for the prevention and control of infections under medical observation in home isolation. On February 6, the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, and the Ministry of Justice jointly issued the Opinions on Punishing Illegal Crimes that Obstruct the Prevention and Control of the New Coronavirus Infected Pneumonia Epidemic in accordance with the Law. Examining the provisions of these regulatory documents on isolation measures, it can be found that China's current law on isolation measures show the

following characteristics and shortcomings.

2.1 The type of isolation measures in China's current law

The types of isolation measures are stipulated in Articles 39 and 41 of the Prevention and Control of Infectious Diseases Law, which are divided into four types: first, isolation and treatment of patients and carriers of pathogens; second, separate isolation and treatment of suspected patients and pre-confirmed patients in designated places; third, isolation and treatment of patients, carriers of pathogens and close contacts of suspected patients in medical institutions in designated places, medical observation and other necessary preventive measures in designated places; fourth is the isolation measures for people in places where cases of Class A infectious diseases have occurred or in specific areas within the place. Thus, it can be seen that the main basis for the classification of the types of isolation measures in China is the difference in the object to be isolated. The first three types of isolation are more specific, based on medical judgment, and are clearly specific natural persons. The fourth type of quarantine measures are not specific, as long as they belong to the area of the occurrence of infectious diseases in category A, will become the target of quarantine. This target is not based on medical judgment, but on factual judgment. In addition, the first three quarantine measures are implemented by medical institutions, and the public security organs can assist medical institutions in enforcing them when necessary. While the fourth isolation measures of the main body of the decision is the people's government at a higher level, the implementation of the main body of the people's government above the county level.

2.2 The characteristics of isolation measures in China's current law

From the provisions of China's current law on isolation measures and isolation measures taken in practice, we can conclude that isolation measures have the following characteristics.

First, the means is mandatory. Although the nature of isolation measures is still controversial, but the isolation measures belong to the restriction of personal freedom of citizens is undoubtedly compulsory measures. Therefore, the most basic and important feature of isolation measures is the compulsory means. Isolation measures to ensure the effective implementation of the measures by limiting the personal freedom of the isolated person, if the compelled person refuses to comply, the coercive force will be activated, and those who have the ability to be responsible will also face ex post facto disciplinary action. The Prevention and Control of Infectious Diseases Act, the Emergency Regulations for Public Health Emergencies, and the Opinions on Punishing Offenses against the Prevention and Control of the New Coronavirus Pneumonia Epidemic issued as a result of the epidemic all clearly state that those who refuse to cooperate should be subject to mandatory quarantine measures, and that they should be held legally responsible and, in serious cases, criminally liable. In the prevention and control of the new pneumonia epidemic, there are citizens who have been held criminally responsible for violating the regulations or refusing to cooperate.

Second, the purpose is specific. Isolation measures for citizens have a specific purpose. First, it is to protect the lives and property of individual citizens. Isolation treatment of the isolated person to protect the right to life

and health of the isolated person, but also to prevent the lives and health safety of others from being compromised. Second, it is to safeguard the public health interests of society. By taking isolation measures for specific people, it creates the necessary conditions for disease research, timely detection of disease and interruption of disease transmission, thus safeguarding public health safety and maintaining social order.

Third, the object is specific. According to the relevant provisions of China's current law provisions, isolation measures are only applicable to patients, carriers of pathogens, suspected patients and close contacts of the above three kinds of people. For different isolation objects, take different levels and intensity of isolation measures, to achieve a different treatment of isolation objects. In addition, for a specific place or area to take isolation measures, also reflecting its object specificity. The law also provides that the people's government during the isolation period should provide livelihood security for isolated persons, to ensure that the other rights and interests of citizens in the period of isolation.

Fourth is the medical evaluation of sex. Isolation measures for citizens is not based on legal or moral negative evaluation, but based on medical evaluation and judgment. When certain medical requirements are met, the quarantine measures should be taken for citizens. "Such isolation does not contain a negative evaluation, much less a punitive, sanctioning nature." The quarantine measure cannot be taken as a punitive measure, but is based on the preservation of the public interest, and its purpose is to treat the infected person's disease, as well as to preserve the lives and health of other citizens, and is of public interest. Therefore, society should not act in a discriminatory manner against those who are quarantined. "We need to isolate the virus, not our fellow citizens." However, in this outbreak prevention and control, because the new coronavirus was found in Wuhan, people assumed that if they were "Wuhanites" they were infected with the new coronavirus and became the target of avoidance, leading to the stigmatization of non-infected people in the outbreak area and further leading to social exclusion. When an outbreak occurs in a particular area, certain quarantine measures against the outbreak area are required to prevent the spread of the epidemic and to maintain the right to health of residents in other areas. In this process, the government has the obligation to protect the residents of the outbreak area from discrimination and prevent the stigmatization of the residents of the outbreak area as a result. (Chang, 2020)

2.3 The relevant provisions of the current law on quarantine measures in China have deficiencies

Examining the provisions of China's current law on isolation measures, it can be seen that after a major public health emergency, the current law has failed to meet the needs of reality, and its shortcomings are mainly manifested in the following aspects.

First, the lack of a definition of the concept of "isolation". Although isolation as a legal concept, but currently in the National People's Congress and its Standing Committee of the relevant legislation can not be seen in the concept of interpretation. Although isolation is a mandatory measure, there are different views on the definition of its nature in the academic community. Some scholars believe that its nature should belong to a medical coercive measures, "compulsory isolation of personnel in the prevention and control of infectious diseases, as well as compulsory quarantine, compulsory treatment, etc., the nature of medical coercive measures" (Long,

2003); while some scholars directly.

The quarantine is an administrative coercive measure in terms of its legal nature, also known as immediate coercive measures. It is a temporary restriction of personal freedom based on public security, social interests and citizens' own safety. It is completely different from the concept of internment, detention, arrest and other coercive measures. (Cui & Chen, 2003) Because the concept of isolation measures is not well defined, resulting in China's isolation measures for the provisions of very narrow, although the maximum protection of the individual rights of citizens, but also limit the discretion of the administrative organs, is not conducive to the outbreak of major health emergencies, the administrative organs to take scientific, timely and appropriate preventive and control measures.

Second, the specific norms are not clear and specific, easily leading to the implementation of arbitrary. First, the pre-requirements for isolation measures are too high. The Infectious Disease Prevention and Control Law provides for the occurrence of Class A and several Class B infectious diseases can take isolation measures, and enumerated. This time, the new crown pneumonia was reported to the State Council for approval and classified as a Class B infectious disease, and the preventive and control measures for Class A infectious diseases were taken. In the prevention and control of major epidemics, the speed of expansion of the epidemic often catches people off guard, but the clear characterization of the infectious disease may take a long time. As a result, the antecedent requirements for implementing isolation measures are too high, and it is difficult to initiate isolation measures. Second, there are not enough subjects to implement isolation measures. Article 39 of the Prevention and Control of Infectious Diseases Law stipulates that the main body to implement three types of isolation measures for specific people is the medical institution, which can be assisted by public security organs if necessary, while Article 41 stipulates that the main body to take isolation measures for specific areas is the people's government at or above the county level, and the main body to decide is the people's government at the higher level. After the outbreak of the new epidemic, Hubei Province's slow response to the spread of the epidemic and the untimely adoption of the "city closure" measures also reflect the overly narrow regulations on the subject of quarantine implementation. Again, the quarantine measures are too narrowly applied. The Infectious Disease Control Law limits isolation to patients, pathogen-infected persons, suspected patients, and their close contacts. However, in this new epidemic, it is difficult to determine the transmission route of the virus in a short period of time, so people from infected areas and epidemic-endemic areas should also be quarantined. Currently, most of the local measures are to quarantine people who are returning from overseas.

Most of the measures taken by the local authorities are to quarantine people returning from abroad at home or in designated residences for 7 to 14 days. Most of the people who return from abroad need to be isolated in designated residences, so the application of isolation measures should be broadened, so that the implementation of these isolation measures can be based on the law. Finally, the lack of regulations on isolation places. China's current law has almost no provisions for isolation places, how to define isolation places? What is the scope of isolation places? Are not sure. In this epidemic prevention and control, many people were arranged to be quarantined in designated residences, and many hotels and guest houses were also requisitioned as quarantine

places, so quarantine places should meet. There is a gap in the law as to what standards should be met in order to prevent safety accidents during the quarantine period, resulting in loss of life and property, and how compensation should be made after the expropriation of these places.

Third, there is a lack of systematic legal provisions. The provisions of the Prevention and Control of Infectious Diseases Law on isolation measures are limited to a few articles, and other regulatory documents for the determination of isolation measures are also fragmented, and do not form a systematic legal system, so in the event of a major epidemic, the implementation of isolation measures will face arbitrariness. For example, there are no specific provisions for isolation treatment and medical observation sites, only the "Infectious Disease Management System" designated by the state health administrative department, the content of which is mainly for epidemic managers, medical institutions and their staff, and the obligations of the subjects under isolation treatment and medical observation are not involved, nor do they have the authority to provide for them. In addition, although the law provides that people who are isolated inside medical institutions should be treated as patients and suspected patients, and their medical conditions and living standards are guaranteed, there are no provisions for the livelihood of the more isolated people outside medical institutions. In this epidemic, many of the quarantines are homeless vagrants, and there are no regulations on how they should be housed after the quarantine measures are lifted.

3. Institutional improvement of isolation measures in the prevention and control of major epidemics

As we can see above, the provisions of isolation measures in epidemic prevention and control in China are not specific and clear, and the provisions are scattered in various laws and regulations, so a systematic and systematic legal system is missing. The lack of a systematic and systematic legal system is lacking. This "multi-disciplinary" legislative model makes it more difficult to adopt isolation measures during epidemic prevention and control, and increases the possibility of citizens' rights being violated due to the lack of relevant systems. In order to realize the interface between the quarantine system, infectious disease prevention and control, and emergency response, China should accelerate the improvement of the relevant system and its provisions.

3.1 Legal regulation of isolation measures in the prevention and control of major epidemics should comply with principles to be followed

In order to improve the legal regulation of isolation measures and establish a system of isolation measures that meet the needs of disease prevention and control in China. The "Emergency Response Law", "Prevention and Control of Infectious Diseases Law" and other laws need to absorb these principles, and its corresponding amendments and refinements.

3.1.1 The principle of legal reservation

According to Article 8 of the Legislative Law of China Provisions, the restriction of personal freedom of coercive measures can only be prescribed by law. Isolation measures are obviously a kind of coercive measures to restrict the personal freedom of citizens, and should be regulated by law. The National Human Rights Action

Plan (2016-2020) requires that "administrative organs shall not extra-legally

The National Human Rights Action Plan (2016-2020) requires that administrative organs shall not set powers, and shall not make coercive measures and penalties that restrict citizens' personal freedom without constitutional or legal basis. The National Human Rights Action Plan (2016-2020) requires that "administrative organs shall not set powers outside the law and shall not impose coercive measures or penalties that restrict citizens' personal freedom without constitutional or legal grounds" and regulate the implementation, treatment, management and supervision of coercive medical treatment.

In order to ensure that the rights of citizens' personal liberty are not violated, the government has adopted the following measures In order to ensure that citizens' personal freedom rights are not violated, the relevant government departments must pay attention to the law and act in accordance with the law when taking such measures. In order to ensure the procedural legitimacy of isolation measures, in accordance with the principle of administration according to law, isolation measures should be systematically regulated by law.

3.1.2 The principle of proportionality

The principle of proportionality, as the "imperial clause" in the field of public law, has its logical starting point in the protection of human rights, which is in line with the intrinsic value of the Constitution. (Men, 2014) In the prevention and control of major epidemics, the principle of proportionality can be used to determine whether the prevention and control measures taken by administrative organs exceed the necessary limits, that is, whether the infringement of individual interests caused by the prevention and control measures is proportionate to the public interest pursued. (Mei, 2020) In the face of unexpected situations such as large-scale infectious disease outbreaks, the relevant authorities should comply with the principle of proportionality when taking isolation measures to prevent unnecessary damage to citizens' rights. In the prevention and control of the epidemic, some places have adopted strong quarantine measures such as "persuading all people to return" and "locking the doors of their homes", which has caused many controversies. Zang Tiwei, spokesman and director of the Research Office of the Standing Committee of the National People's Congress (NPC), pointed out that "the prevention and control measures taken by each place should be based on the development of the epidemic in the local area, and should be guided by appropriate measures and classification. It is not advisable to adopt 'one-size-fits-all' 'hard quarantine' measures, such as 'locking the doors of homes' to quarantined residents. These measures exceed the necessary limits and affect the legitimate rights and interests of citizens and the normal operation of the economy and society, which are neither legal nor reasonable.

3.1.3 The principle of combining regulation and discipline after the fact

The improvement of the legal system of isolation measures not only need to take isolation measures when the behavior of regulation, but also need to refuse isolation and other acts to provide for certain legal responsibility, when necessary to initiate the protection of criminal law. China's current law for isolation measures ex post facto discipline is mainly concentrated in the criminal norms, in other norms there is almost no specific embodiment. Therefore, in addition to criminal provisions, disciplinary measures for refusal of isolation should also be provided for. During the prevention and control of this epidemic, some refusals to quarantine are so harmful that

criminal liability is required. (Zhang, 2020) Therefore, the regulations on isolation measures should adhere to the principle of combining regulation and discipline afterwards, so as to improve the legal regulation of isolation measures.

3.2 Specific institutional concept of isolation measures in the prevention and control of major epidemics

At the level of specific systems, the following should be clearly stipulated.

3.2.1 To clarify the legal nature and type of isolation measures

The nature of isolation measures similar to administrative coercive measures, but its own characteristics and administrative coercive measures are different, so the author prefers that it belongs to the medical coercive measures. The current law is more focused on criminal coercive measures, administrative coercive measures, but medical coercive measures are regarded as medical treatment aids, and less regulated by the law.

Therefore, the relevant laws should clarify the legal nature of isolation measures, provide clear explanations and definitions of their legal concepts, and lay the foundation for the construction of a legal system of medical compulsory measures. The classification of isolation measures is a further refinement of the concept of isolation measures. Firstly, according to the degree of morbidity of the isolated object can be divided into isolation measures: isolation treatment, isolation medical observation and preventive isolation. The isolation measures for patients, carriers and suspected patients are isolation treatment; the isolation measures for close contacts of the above three groups are isolation medical observation; the isolation measures for other people who have been to the infected area and returned to their hometown or foreign population are preventive isolation. Secondly, the nature of the quarantine objects can be divided into: quarantine of people, quarantine of places and quarantine of goods. Thirdly, according to the different places of isolation, they can be divided into: hospital isolation, designated residence isolation and home isolation. Finally, according to the subject of implementation, it can be divided into isolation measures implemented by administrative agencies, isolation measures implemented by medical institutions, and isolation measures implemented by the community. The law should classify isolation from different perspectives and provide specific regulations for each isolation measure.

3.2.2 To establish clear, specific and reasonable legal regulations

Firstly, we should clarify the prior requirements for isolation measures. For what kind of infectious diseases need to take. The first is to clarify the pre-requirements for isolation measures. The pre-requirements for isolation measures should be specified in conjunction with the medical judgment of infectious diseases, so that corresponding isolation measures can be taken in a timely manner in the prevention and control of epidemics. Secondly, we should expand the subjects of isolation measures. Based on the urgency and contagiousness of infectious diseases, township people's governments and epidemic prevention and control institutions may be the first to discover the epidemic, so the subject of quarantine measures should be expanded. Thirdly, we should expand the targets of quarantine measures and define specific criteria. According to the different classifications of isolation measures, the target of isolation measures should be expanded to include not only patients, carriers, suspected patients and their close contacts, but also people who have been to the area where the outbreak

occurred. In major epidemics, it should even be extended to foreigners and people entering the country. At the same time, there should be specific criteria for determining different targets, so as to prevent deprivation of civil rights. Fourth, we should improve the regulations on places of isolation. As mentioned above, the different places of isolation can be classified as hospital isolation, designated residence isolation, and home isolation. Then, what criteria should be met for designated residences? The living conditions in the designated residence should be specified; the standards of home isolation should also be specified.

3.2.3 To improve the systematized system of substantive and procedural regulations

we must take into account both the physical and procedural aspects. Both to strictly limit the conditions of its use, but also to improve the relevant procedural requirements.

In terms of substance, the conditions for the application of isolation measures should be clearly defined, with both positive and negative elements. The use of isolation measures should be enumerated, but also to specify the circumstances in which isolation measures are prohibited. For example, isolation measures can not be for the convenience of management, discipline, coercion and other purposes, and certain coercive means can not be used in isolation measures. In addition, should also provide for the rights of the isolated person. First, attention should be paid to protect the privacy of the quarantined, especially the privacy of those infected with the virus, to prevent them from being discriminated against and treated unfairly; second, the government should be obliged to compensate for the necessary losses suffered by the quarantined during the quarantine period.

The procedure includes the following aspects: First, the decision of quarantine measures. Because quarantine measures restrict the personal freedom of citizens, they should be subject to a relatively strict decision procedure, but due to the special background of major epidemics, the decision procedure should be appropriately simplified to prevent delays in the prevention and control of the epidemic. Individuals eligible for quarantine should be quarantined directly, but should be notified of the location, duration, and avenues of defense and relief, while regional quarantines should be reported by the principal and approved by the higher level of government. Second, the implementation of quarantine measures. In order to ensure the effective implementation of isolation measures, not only to provide that citizens and organizations have the obligation to obey the decision to isolate, but also to provide that the breach of this obligation should be subject to legal liability. Third, the lifting of isolation measures. Isolation measures are a temporary coercive measures, the purpose is to eliminate the risk of infectious diseases. In the isolated person has been eliminated after the danger, the isolation measures should be lifted in a timely manner, the law should provide for the release of isolation conditions, for the release of isolated personnel to provide health certification. Fourth, the relief of isolation measures. In case the quarantined person does not accept the quarantine measures, he/she can file an administrative review, but due to the urgency of the quarantine measures, the implementation should not be stopped during the filing of the administrative review again to avoid the spread of the epidemic.

3.3 Criminal safeguard mechanism of quarantine measures in major epidemic prevention and control

The improvement of Criminal law is the most powerful legal means to ensure the implementation of measures to prevent and control infectious diseases. Judicial authorities should accurately apply the law, improve the working mechanism, and implement criminal safeguards for epidemic prevention and control measures. (Jiang, 2020)

Firstly, to adhere to the principle of statutory crime and punishment, and clarify the crimes related to the refusal of isolation. According to the Opinions on Punishing Illegal Crimes against the Prevention and Control of New Coronavirus Infected Pneumonia Epidemic according to Law, if a person refuses to implement the preventive and control measures proposed by the health prevention and epidemic prevention agencies in accordance with the Infectious Disease Prevention and Control Law, causing the spread of new coronavirus or other serious risks of transmission, he shall be convicted and punished for the crime of obstructing the prevention and control of infectious diseases in accordance with Article 330 of the Criminal Law. Obstructing state agencies by means of violence or threats.

If a person obstructs the staff of the state authorities in the performance of measures to prevent and control the epidemic in accordance with the law, such as epidemic prevention, quarantine, compulsory isolation and isolation treatment, he shall be convicted and punished for the crime of obstructing official duties in accordance with the provisions of Article 277(1) and (3) of the Criminal Law. If a patient or carrier of the new coronavirus infection who has been diagnosed with pneumonia refuses treatment or leaves isolation treatment before the expiration of the isolation period and enters a public place or public transportation, he shall be convicted and punished for the crime of endangering public security by dangerous means; if the suspected patient commits the above-mentioned acts and causes the spread of the new coronavirus, he shall also be convicted and punished for the crime of endangering public security by dangerous means.

Secondly, to adhere to the criminal policy of leniency and severity, and improve the mechanism for handling cases of refusal to isolate crimes. First of all, actively apply the leniency procedure of pleading guilty and punishments, and guide the suspects and defendants to plead guilty and punishments for cases suspected of obstructing epidemic prevention and control work, but the circumstances are minor and not harmful, so as to avoid unnecessary pressure on the judicial organs for epidemic prevention and control. Second, the proper use of criminal coercive measures to ensure the effectiveness of isolation measures. Public security organs and procuratorial organs should be prudent and appropriate for different situations, the appropriate use of criminal coercive measures. For example, if the suspected crime meets the conditions for arrest, the public security authorities should request the procuratorial authorities to arrest. If isolation treatment is still required or the isolation period has not yet expired, the procuratorial authorities may apply residential surveillance in the isolation place. Finally, the establishment of a mechanism to safeguard litigation rights in line with the needs of epidemic prevention and control. Due to the special background of epidemic prevention and control, the relevant authorities can realize the questioning and interrogation by remote video, etc. While conducting investigation and obtaining evidence, attention should also be paid to safeguarding the rights of the suspects and defendants undergoing isolation treatment.

References

- [1.] Chang Jian. (2020). Human rights protection in epidemic prevention and control. *Academia*, (2).35-49.
- [2.] Cui Li, Chen Jieren. (2003). Experts say: isolation is not an infringement of citizens' personal rights,China Youth Daily, 04-30 (2).
- [3.] Jiang Wei. (2020). Implementation and guarantee of epidemic prevention and control measures for people in major public health emergencies. *Journal of Shanghai Public Security Academy*, 30 (1): 42-48.
- [4.] Long Zongzhi. (2003). The legal system of isolation measures needs to be improved. *Jurisprudence*, (6): 35-40.
- [5.] Men Zhongjing. (2014). The constitutional status and normative basis of the principle of proportionality: the Concept of tolerance in the constitutional sense as an analytical perspective. *Law Forum*, 29(5): 94-102.
- [6.] Mei Yang. (2020). The scope and limits of application of the principle of proportionality. *Law Research*. 42(2): 57-70.
- [7.] Zhang Kaijun. (2020).Criminal liability for refusal to quarantine during epidemic prevention and control. People's Court Daily, 04-09 (6).