

Research on the Rule of Law in Social Security Emergencies in the Context of the Regular Epidemic Prevention and Control

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Abstract: As a major public health emergency, the new crown epidemic poses a serious challenge to the order and security of social life, and could easily lead to secondary disasters such as social security emergencies. The normalisation of epidemic prevention and control poses challenges to economic security, political ecology and social security, which in turn raises the risk of economic security incidents, mass incidents and major criminal activities arising. The law does not pay enough attention to social security emergencies, the legal mechanisms for emergency response are incomplete and there is insufficient disclosure of information. It is necessary to strengthen the rule of law response to social security emergencies in the context of the normalisation of epidemic prevention and control by improving legislation, sound legal mechanisms for emergency response, and improving information technology for social security.

Keywords: regular epidemic prevention and control; social security emergencies; emergency legal mechanisms

1. Introduction

Regarding the concept of social security emergencies, existing legal norms do not provide a direct definition. Article 3 of the 2007 Emergency Response Law of the People's Republic of China defines "social security incident". According to the provisions of this article, emergencies can be divided into natural disasters, accidents and disasters, public health events and social security events. The first three types of events in accordance with the degree of social harm and the scope of impact can be divided into particularly significant, major, large and general four levels. Social security emergencies do not provide for the degree of classification. In 2006, the State Council's General Emergency Response Plan for National Public Emergencies specified social security incidents as one of the major types of emergencies, including terrorist attacks, economic security incidents and foreign-related emergencies. Regional public emergencies emergency plans also make enumerated provisions for social security emergencies, for example, Article 1.3 of the General Emergency Response Plan for Public Emergencies in Sichuan Province proposes that social security incidents mainly include various types of terrorist attacks, ethnic and religious incidents, economic security incidents, foreign-related emergencies and mass incidents.

The academic community has different views on the definition and classification of social security emergencies. Dingpin Zhou classified social security events into large-scale mass events, major criminal activities, terrorist events, foreign-related events, and economic security events based on the mechanism of the events themselves.^[1] LI Zhu identified social security emergencies as social emergencies based on the nature of the emergencies, which are mainly divided into four types of social security emergencies: economic, political, cultural and social security.^[2] Ping Jiang pointed out that social security incidents are major events that threaten social security and social development, mainly including terrorist attacks, ethnic and religious incidents, economic security incidents, mass incidents and other major criminal cases.^[3] Yuchuan Mo classified social security events in multiple dimensions based on different perspectives, for example, based on the causes of common event triggers and the areas where they occur, they classify social security emergencies into five categories: terrorist attacks, foreign-related emergencies, economic security events, major criminal activities, and mass events.^[4] The sudden social security events discussed in this paper, i.e., the social security events listed in the Emergency Response Law, focus on the rule of law response to sudden social security events such as economic security events, major criminal activities, mass incidents, and foreign-related emergencies, which are easily triggered in

the context of the normalization of epidemics.

2. The impact of the normalization of epidemic prevention and control on social security

In the white paper *China's Action to Combat the New Pneumonia Epidemic* released by the Information Office of the State Council in 2020, it is stated that the national epidemic prevention and control will be normalized from April 29, 2020. The normalization of epidemic prevention and control means the continuation of the epidemic, which poses a serious challenge to people's production and social security governance.

2.1. The impact of the normalization of epidemic prevention and control on economic security

The outbreak of the new crown epidemic has hit the global economy hard and poses a serious threat to the domestic economy. At the macro level, economic growth has declined, tourism, manufacturing, foreign trade and other industries have fallen on hard times, and many small and medium-sized enterprises have had difficulties in production and operation and have gone bankrupt due to broken capital chains. At the micro level, the large-scale shutdown of production and business has led to mass unemployment, making it difficult to secure people's income, coupled with insufficient supplies and rising prices, threatening people's livelihood security. The normalization of the epidemic has led to a continued downturn in the tourism and catering industries, where individuals are at risk of losing their jobs and the already unemployed are in a state of chronic anxiety and insecurity. Some scholars conducted a questionnaire study on the social security risks caused by the new crown pneumonia epidemic,^[4] and the survey analysis showed that 6.56% of the respondents were worried about the difficulties in production and operation of enterprises, and 5.69% of the respondents said that it was difficult to secure their income, and the public's concern about economic security was evident. These tensions can easily become a trigger for social security incidents, a potential risk in social security, inducing economic security incidents and further triggering mass incidents such as marches and demonstrations that seriously disrupt social order or public safety. An example is the mass protests that erupted in the Argentine capital in September 2021, when large numbers of people took to the streets of the capital to protest against poverty and unemployment in the country exacerbated by the epidemic.^[5]

2.2. The impact of the normalization of epidemic prevention and control on the political ecology

The normalization of epidemic prevention and control tests the ability and results of governments at all levels to implement the general strategy of "external prevention of importation and internal prevention of rebound" and the implementation of normalized prevention and control measures. On the one hand, the epidemic as a state of exception, this tension directly affects the daily state of life of the population and the handling and management of the normal order by the administrative system.^[6] The inaction of government departments on epidemic prevention and management, irregularities in law enforcement, and unfairness in law enforcement are very likely to lead to public discontent and produce emergencies such as non-cooperation with epidemic prevention and control work, mass protests and even retaliation against society by extreme individuals. On the other hand, the epidemic prevention and control work may become a "tool" for domestic and foreign unscrupulous forces to provoke conflicts between the people and the government. On February 1, 2020, a health care strike broke out in Hong Kong. The strike, spearheaded by the HA Staff Front, was not a defense of health care workers' rights, but a political tactic against the Hong Kong government.^[4]

2.3. The impact of the normalization of epidemic prevention and control on social security

Whether for patients with COVID-19 and their families, or for the general public living in long-term confinement, the normalization of epidemic prevention and control is a dual psychological and physical challenge, and the resulting psychosocial imbalance is likely to trigger retaliatory incidents that threaten social security. On the one hand, people infected with the new coronavirus may have thoughts and actions to retaliate against society and maliciously spread the virus due to fear and anger. Cases of obstructing the prevention and treatment of infectious diseases, endangering public safety by dangerous methods, and obstructing official duties are common. On the other hand, the psychological depression of the general public caused by the prolonged closure, personal unemployment and the suspension of production activities further aggravated their anti-social psychology, which manifested itself in the form of intentional disruption of the epidemic prevention order and unprovoked trouble. For example, in the

Gou provocation and nuisance case in 2020, Gou repeatedly took advantage of the situation during the prevention and control of the new crown epidemic, abused and intimidated the staff on duty at the card point, causing panic among the people and disrupting the normal work of epidemic prevention and control, threatening and intimidating government staff with a knife in order to demand temporary assistance, and threatening and intimidating community staff. Other scholars have found that in the context of epidemic prevention and control, although the number of homicides continues to decline nationwide, vicious homicides and extreme personal violence caused by family conflicts and disputes are still the main factors that seriously crisis social security.^[7]

3. Legal response and deficiencies of sudden social security incidents

3.1. Legal response to social security emergencies

3.1.1. Legal norms related to social security emergencies

Article 67 of the Chinese Constitution gives the Standing Committee of the National People's Congress the authority to decide on a state of emergency nationwide or in individual provinces, autonomous regions and municipalities directly under the Central Government, and article 89 gives the State Council the authority to decide on a state of emergency in some areas within the scope of provinces, autonomous regions and municipalities directly under the Central Government in accordance with the law, which provides a constitutional basis for emergency management of social security emergencies. The 2007 Emergency Response Law systematically stipulates the response principles, response subjects, prevention and emergency measures, and legal responsibilities for emergency events. Other laws have provisions that partially address social security incidents in their areas of regulation, such as Article 2 of the Martial Law Act of 1996, which provides that the state may decide to impose martial law in the event of a state of emergency in which unrest, riots or serious disturbances seriously endanger the unity or security of the state or the public safety of society, and where extraordinary measures are insufficient to maintain social order and protect the lives and property of the people. Article 58 of the 2017 Cybersecurity Law stipulates that, due to the need to maintain national security and social public order and to deal with major sudden social security incidents, temporary measures such as restrictions on network communications can be taken in specific areas upon the decision or approval of the State Council. Local government regulations also have provisions related to responding to social security emergencies, such as the 2012 Sichuan Emergency Response to the administrative region of the province's emergency prevention and emergency preparedness, monitoring and early warning, emergency response and rescue, post-event recovery and reconstruction and other response activities, as well as legal responsibilities are detailed.

3.1.2. Emergency legal mechanism for social security emergencies

The response to sudden social security events is also called emergency management of sudden social security events^[1]. According to the author, the legal mechanism of emergency response to sudden social security events can be divided into emergency prevention mechanism, disposal mechanism, and recovery mechanism according to the development stage of sudden events. (1) Emergency prevention mechanism. Emergency prevention mechanism mainly includes emergency plans, forecasting and early warning mechanisms. After the State Council issued and implemented the National General Emergency Response Plan for Public Emergencies in 2006, local people's governments at the provincial, municipal and county levels have also formulated their own general emergency response plans for public emergencies, and some local public security bureaus have also formulated special emergency response plans, such as the Ruichang Public Security Bureau's Work Plan for the Prevention and Disposal of Emerging Mass Events issued by the Ruichang Municipal People's Government. Predictive warning mechanisms, on the other hand, monitor emergencies in advance of their occurrence and communicate information about risks to potentially affected people in a timely manner so that they can take the necessary actions and preparations.^[3] (2) Emergency disposal mechanism. Emergency response is the most critical part of the response to social security emergencies, and is also a systematic project, led by the government, requiring the cooperation of multiple forces such as experts, security departments, information technology departments and even the public. According to the provisions of Article 50 of the "Emergency Response Law", the disposal measures for social security emergencies are divided into five main categories: mandatory isolation measures, protection and control measures, blockade and restriction measures, key defense measures and other legitimate measures. (3) Emergency recovery mechanism. Emergency recovery mechanism is a mechanism to take necessary measures to restore social order and resolve conflicts and disputes as soon as possible after a sudden social security incident is controlled or eliminated. The

emergency recovery mechanism mainly includes stopping emergency disposal measures, restoration and reconstruction, compensation and relief for the people concerned, etc.

3.2. Deficiencies in legal response to social security emergencies

3.2.1. Inadequate legislation

First of all, the Constitution does not provide a complete regulation of the exercise of governmental power and the restriction of civil rights during a state of emergency. China's Constitution gives the Standing Committee of the National People's Congress and the State Council the power to declare a state of emergency, which provides the basis for the government's exercise of emergency powers in the event of a social security emergency, but the two provisions of the Constitution on the state of emergency are too concise. From an extraterritorial comparison, the German Basic Law provides for judicial and legislative oversight to supplement the exercise of governmental emergency powers with a strict monitoring mechanism. The U.S. Constitution gives Congress and the President different degrees of emergency powers and makes strict provisions and distinctions regarding the limitation of civil rights in different states (protection of public safety, state of siege, and state of emergency). In China, on the other hand, the Constitution makes no restrictive provisions on the exercise of governmental power during a state of emergency, which could easily lead to excessive governmental administrative discretion and arbitrary expansion of its administrative emergency powers. Without a constitutional definition of the limits and restrictions of civil rights in different states, it is difficult for civil rights to receive proper protection in emergencies, let alone effective legal remedies afterwards.

Secondly, the *Emergency Response Law* is not operational, and the norms for responding to social security emergencies should still be refined. The implementation of the *Emergency Response Law* for more than ten years has proved that it has not functioned well as a basic law in the field of emergency response.^[8] The main reason is that the abstract provisions of the law is too much, can not effectively guide the practical operation. From the social security incidents mentioned in Articles 3, 21, 22, 46, 50, 56 and 58 of the law, most of them are principle provisions, assigning the authority and responsibility for timely response to social security emergencies to the corresponding government departments, and the procedural provisions only include the reporting procedures and emergency disposal measures for social security incidents.

Finally, the legal definition of social security emergencies is not clear. The *Emergency Response Law* does not define an emergency social security event or delineate the warning levels for social security events. The scope of the enumeration of social security emergencies in the *National General Emergency Plan for Public Emergencies*, the emergency plans for public emergencies and emergency management measures of provinces and municipalities are not uniform.

3.2.2. Inadequate legal mechanism for emergency response

Lack of special prevention mechanism. An emergency plan is the "compass" for dealing with social security emergencies, and a complete emergency plan can provide guidance for the government and relevant departments to solve social security emergencies in a timely and effective manner. Although China has established a more complete emergency prevention mechanism, there are still two deficiencies in general: first, there are fewer special emergency plans specifically for social security events or certain types of social security emergencies; second, there is a lack of early warning classification and prediction and warning mechanisms for social security emergencies.

Lack of regulation and supervision of the exercise of administrative power. The unsoundness of emergency plans and emergency management methods leads to a lack of basis for citizens to supervise the exercise of government departments' power in social security emergencies. The emergency administrative expropriation in the emergency disposal mechanism lacks procedural norms and clarity on the scope and conditions of expropriation, as well as complete regulations on the process, scope and relief of compensation after expropriation. In the absence of strong supervision of administrative organs, it is very easy for administrators to abuse their power and expand their administrative power in the process of law enforcement, resulting in infringement of citizens' rights and likely to intensify the confrontation between the public and the government in unexpected social security incidents.

Insufficient protection of civil rights under unconventional conditions. "People's aspirations for the rule of law are not diminished by the fact that society has entered an extraordinary state."^[8] Even in the extraordinary state of a sudden social security event, civil rights should be respected and guaranteed. China's current legislation on emergencies focuses on emergency response and ignores reasonable

restrictions and protection of civil rights. Some scholars have criticized China's legislation to deal with emergencies as being "more politically charged" and close to blank in terms of civil and commercial law remedies and provisions.^[9]

3.2.3. Incomplete information disclosure system

With the normalization of epidemic prevention and control, citizens rely more on information and pay extra attention to information on new crown cases, prevention and control policies, and news events in their locations. The increasingly developed network media makes the spread of public opinion fast and wide. Rumors and inaccurate information about unexpected social security events are very easy to incite a wider range of social opinion and panic under the rapid fermentation of the Internet and new media, as they have a wide range of influence and danger and are the first to bring threat and panic to the people around the events. Therefore, it is necessary for government departments to publish timely and accurate information about sudden social security incidents to reduce public panic and quell wrong public opinion. However, the information disclosure system for social security emergencies is not yet complete, and the *Emergency Response Law* only stipulates that local people's governments at all levels should report and report information on emergencies to higher-level people's governments in a timely, objective and truthful manner. In practice, government departments are often unable to release correct information to the public in a timely manner due to various considerations.

4. Rule of Law Improvements in Response to Social Security Emergencies in the Context of Epidemic Normalization

4.1. Improve the corresponding legislative establishment

First of all, refine the boundaries of the exercise of power of administrative organs in the constitution and laws. It is necessary to draw on the mature experience of foreign countries to give the executive authorities different degrees of power in different social states, while making different degrees of restrictions on the rights and obligations of citizens. Second, refine the provisions of the Emergency Response Law to further clarify the principle provisions and supplement the procedural rules. For example, Article 21 of the law provides that the county-level people's government and its relevant departments, township-level people's government, street offices, residents' committees, and villagers' committees shall promptly mediate and deal with conflicts and disputes that may lead to social security incidents, and shall refine the process and norms of mediation and handling, and give different treatment to incidents of different degrees. Finally, the concept and scope of social security emergencies should be unified at the legislative level by clarifying the definition of social security emergencies in the Emergency Response Law and adding social security emergencies to the warning classification.

4.2. Sound emergency legal mechanism

Improve the work of special plans for social security emergencies. Governments at all levels can establish special emergency plans for social security emergencies or special emergency plans for a particular type of social security emergencies on the basis of emergency plans for public emergencies. In December 2021, the Office of the People's Government of Zhoushan City issued the Emergency Plan for Foreign-related Emergencies in Zhoushan City. The plan has detailed provisions on the scope of application and grading of foreign-related emergencies, exhaustive enumeration of the circumstances of the four levels of foreign-related emergencies respectively, and sets up a special organizational command system, emergency response and post-disposal procedures for dealing with foreign-related emergencies. Combined with the focus and difficulties of local social security governance, the targeted development of special emergency social security incident contingency plans will help the government to address local social security emergencies in a targeted manner.

Improve the prediction and early warning of sudden social security events In the context of the epidemic, it is necessary for the government to strengthen the monitoring and early warning of public opinion, with specific departments collecting and collating information on public opinion from multiple channels such as online media, accurately locating information and inflammatory statements that pose social security risks, and promptly notifying public security authorities and other relevant departments to assist in the investigation.

Regulate the exercise of emergency powers by the executive branch. The new crown epidemic has brought social governance into a special period, and civil rights have already made greater concessions

for the public interest in this special state. The normalization of epidemic prevention and control is bound to continue to sacrifice some of the rights of citizens, and under this premise, the government's response to emergency social security events may result in a secondary deprivation of citizens' rights. Clarifying the scope of the government's emergency powers and the conditions and procedures for exercising them at the level of legal norms is an inevitable path for protecting citizens' rights and regulating the exercise of the powers of administrative organs^[10]. In addition, it is still necessary to strengthen the supervision and discipline of administrative power.

Improve the administrative emergency requisition system. "Emergency Response Law" Article 12 provides that the relevant people's government and its departments in response to emergencies, can expropriate the property of units and individuals. Requisitioned property in the use of the end or emergency response to emergencies, should be returned in a timely manner. Property requisitioned or requisitioned after the destruction or loss, should be given compensation. Article 245 of the Civil Code limits the conditions for expropriation by the executive to "emergency needs such as rescue and relief, epidemic prevention and control", and the objects of expropriation to "movable and immovable property of organizations or individuals". It is necessary to refine the expropriation provisions in the Emergency Response Law on the basis of the Civil Code, and clarify the ways for expropriated persons to apply for compensation and relief in the corresponding administrative regulations in order to protect the legitimate rights and interests of citizens.

4.3. Improve the information construction of social security

Improve the information disclosure system. Strengthening the disclosure of social security information is conducive to both restoring social order and citizens' supervision of government departments. The best way to control rumors is to publish the truth and put citizens' right to know and supervision into practice, in order to fundamentally eliminate the spread of inaccurate information.[4]

Build an information and communication platform between the government and the people. In the context of the normalization of epidemic prevention and control, the people's demands have become a single channel of expression. The normalization of epidemic prevention and control requires administrative organs to pay more attention to the comparability of means and ends in the process of law enforcement, and should be more "humane", while focusing on "case-by-case" differences and flexible responses.

Strengthen the supervision and management of online media. In recent years, there have been few cases of extremist forces and individuals at home and abroad using information networks to spread false terrorist information and disrupt social security order. The government should strengthen the supervision and management of online media to maintain network security.

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