

Application and Improvement of the Principle of Proportionality in the Prevention and Control of the New Crown Epidemic

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Abstract

The nationwide outbreak of COVID-19 has brought most areas of China into a state of emergency. To respond to the crisis in a timely and effective manner, protect the safety of citizens' lives and property, and restore the normal production and life order as soon as possible, the government adopts emergency administrative acts. At this time, the administrative power is highly concentrated, and the basic rights of citizens are relatively infringed. To balance the relationship between the realization of administrative purposes and the protection of citizens' basic rights, the reasonable and standardized use of the proportion principle is particularly important. Taking the COVID-19 measures for prevention and control as an example, this paper aims to explore the applicable benchmark of the proportion principle which, mainly follows the "principle of purpose", "appropriateness" and "minimum damage principle", and puts forward suggestions for strengthening legal publicity and education, appropriate closed management means, and legitimate purpose of enterprise supervision.

Keywords

Epidemic Prevention and Control; Proportional Principle; Protection of Human Rights.

1. Overview of the Proportional Principle

1.1. The Concept of the Proportional Principle

The proportional principle originated from the German administrative law in the European law system, dating back to the provisions of the British Magna Carta, is an important basic principle of the administrative law; the specific administrative act shall be necessary by law, appropriate between the act and the result; and finally, then the damage shall be limited to the minimum possible scope and limit. In recent years, the proportion principle has been gradually applied and improved in the prevention and control of several major epidemics in China, which has been gradually applied and improved, and rich practical experience and achievements have been achieved, which have gradually matured.

1.2. Legal Basis for the Principle of Proportion in Epidemic Prevention and Control

The legal basis for the principle of proportion in epidemic prevention and control mainly depends on the Emergency Response Law, the Law on the Prevention and Treatment of Infectious Diseases, the National Safety Law, and other laws and regulations[1]. According to Article 64 of the National Security Law, an emergency must be particularly important and extremely threatening to social order and the life and health of citizens before entering a state of emergency. In addition, according to article 8 of the Emergency Response Law, in response to particularly major emergencies, people's governments at or above the county level may set up national emergency command agencies according to actual needs[2]. After the emergency occurs, part of the power of the administrative authority is temporarily granted to the agency, which helps to improve the efficiency of the emergency work. Take COVID-19 as an example. In this special state, the two basic rights of citizens 'life, health, and freedom conflict, and the

epidemic has led to severe challenges to citizens' life and health. To avoid the expansion of damage, the government must try to restrict some personal freedom to protect citizens' health.

2. The Necessity of Applying the Principle of Proportion in Epidemic Prevention and Control

2.1. Administrative Acts Bring Hidden Dangers to Citizens' Rights and Interests

In the face of the new outbreak, our government responded, to efficient and quickly curb the spread of the epidemic, protect people's lives and property safety, but the overuse of administrative power can also lead to citizens' basic rights infringed, such as closed community, home quarantine prevention, and control measures limit the citizens, in and out of the shopping malls, government departments, airport health code, travel code, nucleic acid test results, also violated the citizens' privacy, personal information leakage cases during the epidemic prevention and control. In the face of the epidemic, to effectively protect citizens' right to life and health, it is understandable to properly damage their rights, but it is difficult to grasp, excessive decentralization and lack of restrictions greatly increase the risk of abuse of power. It is difficult for administrators to accurately judge the appropriateness and damage of emergency measures in this situation. Therefore, how to regulate and restricting the use of administrative power is urgent. The principle of proportion will make clear provisions on how to limit and to what extent rights should be restricted, to ensure the minimum damage to citizens' basic rights while completing the completion of administrative purposes.

2.2. It is Difficult to Implement Legal Guarantees

Our country has experienced more than once nationwide epidemic challenges, such as SARS in 2002,2013, in the face of the sudden threat of infectious diseases, our government is quick response every time, to ensure to minimize the loss of people's lives, social security work strictly actively implement, but even so in the process of prevention and control measures, still face many problems, virus mutation, foreign input, policy, citizen quality, a lot of administrative work is difficult to go smoothly. For a large number of citizens, while cooperating with government departments, it is difficult to lack legal knowledge, to ensure that their personal information is not violated, and personal information is excessively collected, so the derived network fraud is common. While the prevention and control work is carried out rapidly, it is difficult for the government administrative departments to balance, the supervision and punishment are not enough, and the scope of legal publicity is limited, making it difficult to implement the legal guarantee during the epidemic prevention and control period. At this time, the application of the proportion principle will solve this problem to a large extent. All localities will adopt measures to local conditions and implement epidemic prevention and control in an orderly manner while ensuring the rights of citizens with less infringement.

3. Applicable Standards for the Proportion Principle in Epidemic Prevention and Control

3.1. Principle of Joint Purpose

The "principle of combined purpose" means that the administrative action taken by the government administrative organ must conform to the legal purpose and the principle of public interest. Such as epidemic prevention and control, shopping malls, pharmacies, railway stations, airport requirements show health code, travel code, nucleic acid test results, schools, work units, community statistics residents' identity information, resident information, etc., our country in the law of the government at or above the county level, health departments and disease control departments enjoy the right of information collection, use, the regulation

belongs to the height of administrative exercise, but also the restriction of the basic rights of citizens' personal information. Therefore, when collecting and using personal information, the government administrative departments must take the purpose of epidemic prevention and protecting the public interest, and should not arbitrarily expand the infringement of citizens' basic rights in the name of epidemic prevention, otherwise, it will constitute infringement and cause serious consequences. The implementation of a government administrative act, purpose, utility, and damage to a certain proportion, before the implementation of an administrative act, should first evaluate the damage results and the interests of administrative purpose, in judging whether the "purpose principle" this requirement, should be based on the administrative act specific situation, on the basis, and the nature, level and stage of specific emergency factors for comprehensive analysis.

3.2. Principle of Appropriateness

The "appropriateness principle" means that the administrative measures taken by the government administrative organs to achieve the purpose should be necessary by the law, and there should be legitimacy between the results and the measures. This principle requires not only the correct purpose but also the way to achieve the purpose. During the epidemic prevention and control period, the primary administrative purpose is to quickly and effectively control the spread of the epidemic and protect the lives and health of citizens. On this basis, the administrative act contributes to the realization of this purpose and is the essential requirement of the appropriateness principle. And in the process of judging whether administrative behavior is conducive to the realization of administrative purpose, the speculation of administrative behavior utility is essential, according to the results of the effect of the administrative behavior as a reference, the accuracy of prediction will be greatly improved, but in the epidemic situation, the government to the results of administrative behavior utility is more accurate speculation. Therefore, during this period, it is imperative to reduce the judgment criterion of the "appropriateness principle". In the situation of epidemic prevention and control, the purpose of the government is clear and unique. According to the clear provisions of Article 11 of the Emergency Response Law, the measures taken by the people's government and its departments to deal with emergencies should be commensurate with the nature, extent, and scope of social harm caused by emergencies[3]; Where there are various measures available to choose from, measures shall be taken conducive to the maximum protection of the rights and interests of citizens, legal persons, and other organizations. In general, during the epidemic prevention and control period, administrative acts and administrative purposes can meet the minimum basic requirements, that is, as long as the administrative acts taken by the government have positive effects on safeguarding public interests and protecting citizens' right to life and health, such administrative acts are to meet the requirements of the "appropriateness principle".

3.3. Minimum Damage Principle

Take COVID-19 prevention and control as an example, the core of the "minimum damage principle", that is, the government can use a variety of ways to achieve administrative purposes, should use the minimum harm to the rights of citizens, the administrative act to ensure the spread of the virus, should also be less infringement on citizens' freedom. "Min damage principle" "minimum", "minimum" is compared to civil rights damage, need to have a reference to administrative behavior, and meet the requirements of unified variables, can compare, in the social situation complex epidemic prevention and control, when there is a variety of administrative behavior available, the damage degree is the same, should choose the best way. In this regard, the relative utility calculation formula can be adapted to compare the utility size based on the "damage" of each unit, so that the damage of various means changes from different to "the same", and then the measures with large utility can be selected based on conversion.

While the epidemic is rampant and citizens' lives and property are threatened, the government should take targeted administrative actions to adapt to the complex and volatile epidemic situation, effectively control the epidemic and protect citizens' basic rights.

4. Suggestions for the Improvement of the Principle of the Proportion " in Epidemic Prevention and Control

4.1. Strengthen Publicity and Education on Popularizing the Law

In the face of COVID-19, China has adopted compulsory quarantine measures, which are essentially administrative coercion, and restricts the personal freedom of citizens to achieve the purpose of epidemic prevention and control. During the outbreak, the government by collecting people's travel codes, residence, work location, the personal information is divided into different risk levels, to take health monitoring, home isolation, centralized quarantine measures, in the concrete practice, however, much local government administrative behavior has excessive restriction violated the citizens' rights and interests. For example, some migrant workers encountered forced epidemic control in the community when they returned home. The staff claimed that outsiders were not allowed to enter for the epidemic prevention and control needs. After fruitless negotiations, they were forcibly quarantined for 14 days after showing their community residence certificate, travel code, and negative 48-hour nucleic acid-proof. In this case, community workers blindly violated the "appropriateness principle" and "necessity principle", and failed to understand the principle of proportion in essence. Therefore, the local government should take the lead in organizing law popularization learning activities to strengthen the study of the implementation subject of compulsory isolation measures in the community. At the same time, the community should also strengthen the publicity and education of law popularization, fully understand the principle of proportion, and make it clear that isolation is not the purpose, and the protection of people's life safety is the first criterion.

4.2. Appropriate Closed Management Means

Closed management is also a common and important measure in China to face COVID-19. Compulsory isolation is based on individual communities. Closed management generally refers to the closed management of some specific places according to the needs of epidemic prevention and control, to achieve the purpose of epidemic control. Prevention and control stations are set up at the entrance and exit of each expressway to detect the information of vehicles, and only qualified ones can pass; set the upper number of people to reduce human flow and personnel density; high-risk areas, city closure, and road closure are closed management. The closed management measure has greatly reduced the cross-infection of the epidemic, but in some areas, the local government has taken excessive measures, which has brought great trouble to people's normal life. In some rural areas, for example, the local government takes one size fits all management measures, in each village intersection, set levels, claims for the epidemic prevention and control needs, indiscriminate closed management, some for three months, even seriously delay the farmers farming time, this violates the proportional principle of "appropriateness" requirements. Such situations occur in many rural areas. Due to the low level of culture and education, it is difficult for local governments to fully understand the connotation and importance of the proportion principle. Despite the actual situation and the fundamental needs of the people, they only achieve the purpose of epidemic prevention and control and achieve unified management, but put the cart before the horse. Therefore, people's governments at and above the county level should strengthen the supervision and management of their jurisdictions in the epidemic prevention and control, clearly issue prevention and control instructions, and closed measures should not be used to

prevent and control according to local conditions, and minimize the infringement of citizens' rights and interests while effectively controlling the epidemic.

4.3. The Purpose of Enterprise Supervision is Legitimate

Enterprises originally have the right to operate independently, but can carry out various forms of operation according to their wishes within the scope permitted by law. But when in the face of the severe social challenges of COVID-19, the government has the right to control its businesses to some extent. In the process of epidemic prevention and control, to avoid gathering, the government will strictly control places, such as shopping malls, restaurants, cinemas, and gyms with high mobility, and even closure in areas hit by the epidemic. In addition, some manufacturers of the production and sales of epidemic prevention-related products are also strictly constrained by their independent pricing and even sales channels. For example, the prices of commonly used epidemic prevention products such as masks and disinfectants are stipulated, and all manufacturers are not allowed to arbitrarily raise prices. However, some local governments have excessively intervened in the market, causing some companies to collapse. Local governments should clarify the purpose of market control, fully understand the essential requirements of the proportion principle, measures such as business suspension should not take too long, differentiated management in areas with different risk levels, supervision, and punishment of commodity pricing should be strictly dealt with by the law, and the blow on the market should be reduced.

5. Conclusion

It has been more than two years since the outbreak of COVID-19 occurred in China. With the joint efforts of the Chinese government and people, the achievements of epidemic prevention and control have set an example for the world. But even so, the epidemic situation is still not to be underestimated, the recent epidemic in Jilin, Shanghai, and other places is still severe. The epidemic prevention and control has tended to normalize today, the government abides by the superior orders, strictly implements the epidemic prevention measures at the same time, also should fully understand and apply the proportion principle, summarize the experience and lessons in the process of highly concentrated administrative power, reasonable use of "purpose principle", "appropriateness" and "minimum damage principle", to the unpredictable epidemic situation, reduce the infringement of citizens' basic rights, maximize the safety of people's lives and property. This article tries to analyze the connotation of the proportion principle and applicable standards, put forward should strengthen the franco-Prussian propaganda education, closed management means appropriate, enterprise regulatory purpose, proportion principle can fully meet the practical needs in the process of epidemic prevention and control, better serve the society, maximize the basic rights and interests of citizens.

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