

Прокурорский надзор. Судебная практика

Судебная практика рассмотрения дел о преступлениях, связанных с воспрепятствием профилактике инфекционных заболеваний и борьбе с ними на фоне COVID-19 (часть I) The Judicial Application of the Crime of Obstructing the Prevention and Control of Infectious Diseases under the Background of COVID-19 (Part I)¹

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Аннотация. Преступление, связанное с нарушением мер по профилактике инфекционных заболеваний и борьбе с ними, предусмотрено ст. 330 разд. 5 «Преступление, связанное с нарушением порядка социального управления» гл. 6 Уголовного кодекса Китайской Народной Республики. В условиях распространения COVID-19 правоохранительная система столкнулась с новым видом преступлений, связанного с воспрепятствием профилактике и лечению инфекционных заболеваний.

В настоящей статье рассматривается теория двухуровневого состава преступления в уголовном праве Германии и Японии. В случае противоправности деяния следует тщательно изучить субъект преступления, чтобы лучше реализовать принцип уголовного права, при-

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держиваться предусмотренного законом наказания за конкретное преступление и в то же время пересмотреть формулировку преступления. Законный интерес, защищаемый уголовным законом, определяется как сложный правовой интерес, а фактический ущерб и конкретная опасность уточняются с использованием «теории непредвиденных обстоятельств». В статье обосновывается тезис, что данная форма преступления является преднамеренной, для компенсации используется теория «объективных превышающих факторов». В статье путем детального рассмотрения экономической и субъективной составляющей уголовной политики данное преступление исследуется с научной точки зрения.

Ключевые слова: COVID-19, препятствие профилактике инфекционных заболеваний, судебная практика; преступления, связанные с эпидемией; уголовная политика

Abstract. *The crime of impairing the prevention and control of infectious diseases is stipulated in Section 5 of the crime of impairing social management order in Chapter 6 of the criminal law of the people's Republic of China (hereinafter referred to as the criminal law), which is article 330 of the criminal law. Under the backdrop of COVID-19, the application of the crime of obstructing the prevention and treatment of infectious diseases is facing new challenges because of the background of COVID-19. This article starts from the theory of the two stratum crime constitution of German and Japanese criminal law. At the illegality, the subject of the crime should be dealt with finely in order to better implement the principle of criminal law, adhere to the principle of a legally prescribed punishment for a specified crime, and at the same time, reconsider blank description of the crime. The legal interest protected by this crime is defined as complex legal interest, and the actual harm result and specific danger are redefined by using "contingency theory". At the level of responsibility, this paper insists on the view that the form of crime is intentional, and uses the objective exceeding factors theory to make up for it, and refutes several other views. In addition, through the detailed consideration, economic consideration and subjective consideration of criminal policy, this paper discusses how to use this crime scientifically.*
Keyword: *COVID-19 Crime of obstructing the prevention and control of infectious diseases Judicial application Epidemic related crimes Criminal policy*

Introduction

In terms of legislation, the crime of obstructing the prevention and control of infectious diseases is a new crime in the criminal law of the people's Republic of China in order to connect with the law of the people's Republic of China on the prevention and control of infectious diseases.²

Since its establishment in 1997, the article has never been amended. In 2021, the Eleventh Amendment to the criminal law has been amended, stipulated as "Whoever, in violation of the provisions of the Law on Prevention and Treatment of Infectious Diseases, Whoever causes the spread of an infectious disease of class A or an infectious disease for which prevention and control measures are determined according to law or is in serious danger of spreading shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the consequences are especially serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years: (1) failure on the part of a water supply unit to supply drinking water in conformity with the hygienic standards set by the State; (2) refusal to give disinfection

treatment, according to the sanitary requirements raised by the health and anti-epidemic agencies, to sewage, wastes or feces contaminated with the pathogen of infectious diseases; (3) approving or conniving at the employment of patients of infectious diseases, pathogen carriers or suspected patients of infectious diseases at jobs, which they are prohibited from taking by the health administration department under the State Council because of the likelihood of causing the spread of infectious diseases; (4) selling or transporting articles contaminated by or likely to be contaminated by pathogens of infectious diseases in epidemic areas without disinfection treatment; (5) refusing to implement the prevention and control measures proposed by the people's government or disease prevention and control institution at or above the county level in accordance with the law on the prevention and control of infectious diseases.

Where a unit commits the crime mentioned in the preceding paragraph, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the offence shall be punished in accordance with the provisions of the preceding paragraph. The scope of A Class infectious diseases shall be determined in accordance

² Gao Mingxuan. Birth, development and perfection of criminal law of the people's Republic of China. Peking University Press, May 2012. 1st edition. P. 554.

with the Law of the People's Republic of China on the Prevention and Treatment of Infectious Diseases and relevant regulations of the State Council.”³

On the Judiciary, through the Chinese Judgment Document Network Case,⁴ we can see that, the number of cases of this crime is 60, there is no abuse of this charge in judicial practice. In sixty cases, the subject of this crime is the individual accounted for 98 %. Although the subject of this crime takes into account both the individual and the unit, the probability of the unit violating this crime is very low. 70 % of them deliberately concealed information to hinder epidemic prevention and control; 52 % of them went out without permission in violation of the isolation policy, these two kinds of behaviors are the main forms of committing this crime.

In practice, the execution of the penalty for this crime does not exceed two years. And 53 % of the cases adopted probation, part of the penalty is in the form of detention, this is the scientific arrangement of the criminal policy that takes full account of the background of COVID-19. But in the collation of the data, we can find that, in each judgment, the distinction between the perpetrator of the crime is not precise; the direction of the legal interest of this crime is vague and the understanding is not unified; the results of actual damage intersect with specific hazards, the boundary between them is vague; there is no clear law between harm result and penalty; the manifestation of the form of crime is mixed with intention and negligence, and different cases have different understanding of the accountability level of the crime or fuzzy judgment. Based on the above considerations, this paper puts forward the following meager views.

1. Raising of the problem

(1) Thinking about illegality

I. Identification and refinement of subject

The subject of this crime is the general subject, it can be seen from the statement in the second paragraph of the article that “a unit commits the crime mentioned in the preceding paragraph” that this crime mainly punishes individual crimes, at

the same time, it also takes into account the unit crime. This paper only discusses individual crime. COVID-19 has the characteristics of strong infectivity, high concealment and so on, which has caused the worldwide spread. In the judicial practice, the judicial organs comply with the opinions on punishing and preventing crimes (hereinafter referred to as “opinions”) that interfere with the epidemic situation of new coronavirus infection pneumonia, which is jointly issued by the Supreme People's court, the Supreme People's Procuratorate, the Ministry of public security and the Ministry of justice, and there is no detailed division of criminal subjects.

However, COVID-19 is different from the characteristics of previous viruses, in medicine, different types of groups have different characteristics, in different situations, actors have different cognitive possibilities, foreseeing possibilities, and have different obligations. It is necessary to introduce the classification of subject in clinical to criminal law. This paper intends to make a fine division of this, in order to provide useful suggestions.

II. Dealing with complex behavior

COVID-19 is a typical RNA virus, which is unstable and easy to mutate. In 2020, the Danish government announced in a survey that COVID-19 was widely spread in mink population, and five new varieties appeared.⁵ This year, hundreds of mutant strains were found in infected population in many countries. With the deep understanding of COVID-19, we will find that COVID-19 has new characteristics, such as the increase of transmission routes, the change of disease strength and so on. A sufficient chain of evidence was found for the first time at the news conference on epidemic prevention and control held by the Qingdao Municipal Government on October 2, 2020, which proved that COVID-19 could be transmitted to people by substance and could survive for a long time under freezing conditions.⁶

From December 2 to 4, 2020, the nucleic acid test results of cold chain food and its outer packaging in many places of China were positive, and then various places issued policies to impose administrative detention on illegal purchase of frozen meat.⁷

The nature of the virus itself, such as the route of transmission and the degree of susceptibility,

³ Law Press, regulation center. Criminal law of the people's Republic of China. Law Press, 3rd Edition, January 2021. P. 290.

⁴ On March 5, 2021, the author searched “the crime of hindering the prevention and control of infectious diseases” in the judicial document website (URL: <https://wenshu.court.gov.cn/website/wenshu/181217bmtkhnt2w0/index.html?pa geid=55e0c6332b09f682ffef3ce4928a82e&s21=%e5%a6%a8%e5%ae%b3%e4%bc%a0%e6%9f%93%e7%97%85%e9%98%b2%e6%b2%bb%e7%bd%aa>), and retrieved and downloaded 60 first instance judgments applicable to this crime.

⁵ The information comes from CCTV network // URL: <http://news.cctv.com/2020/11/06/Videghwaz9ukfgkui6lkahho201106.shtml>.

⁶ The information from People's Daily // URL: <https://baijiahao.baidu.com/s?id=168105002223885215&wfr=spider&for=pc>.

⁷ The information comes from Liaoshen Evening News // URL: <https://baijiahao.baidu.com/s?id=1685292792059291200&wfr=spider&for=pc>.

makes the relevant laws and regulations of epidemic prevention and control change, and the scope of this crime will also change. Adhering to the principle of a legally prescribed punishment for a specified crime, avoiding improper expansion of application in judicial application, and adhering to the principle of suiting punishment for a specified crime to ensure that the punishment is appropriate to the crime are the hidden worries in the application of this crime.

III. Legal interests protected by this crime

There has been a debate about the legal interests protected by this crime in the academic circle. At present, there are theories of social management and health order, public health and safety, and complex legal interests. The judgment of the legal interests protected by this crime is to adhere to the interpretation of form and system, or to consider it in essence, there are still questions. Through the use of dogmatic research methods and criminal policy considerations, this paper discusses the scope of legal interest protection of this crime, so as to better guide judicial practice.

IV. Fuzzy boundary between actual damage result and dangerous result

This crime sets up two kinds of situations for the harmful result, one is that “causing the spread of infectious diseases” belongs to the actual harmful result, the other is that “having the risk of transmission” belongs to the specific danger. There are two questions about this: one is how the relationship between “causing infectious disease transmission” and “having transmission risk” is. How to distinguish the two? Whether there is the possibility of mutual transformation between the two in practice, and how to deal with it. In addition, it should be noted that in the practice of COVID-19’s prevention and control, the results of the spread of the virus are affected by various objective factors such as personal immunity, the ability of government organs to recourse to contact with people, nucleic acid detection ability, and so on, and the harm results can not be immediately judged. In addition, the mutation of COVID-19 may lead to false negative, which is difficult to identify.

(2) Disputes at accountability

As to whether this crime is intentional or negligent, the common theory in academic circles is negligence.⁸ The general view is reasonable, but on the one hand, the judicial interpretation indirectly indicates that the crime can be intentional. On the other hand, some scholars judge from common sense that this crime

is mostly “knowingly committed”, if it is a negligent crime, it is “inconceivable”.⁹ Some scholars believe that there is no “legal provisions” premise to define this crime as a negligent crime, which is contrary to Article 15 of the criminal law.¹⁰ And the interpretation from the literary level seems to allow the existence of intentional circumstances. It can be seen that the controversy on the level of accountability of this crime is still very large, which will cause concerns in the judicial application.

(3) Thoughts on criminal policy

Some scholars point out that the judicial interpretation does not distinguish between the concurrence of articles and imaginative concurrence on the boundary between the crime of endangering public security by dangerous means and the crime of hindering the prevention and control of infectious diseases, which leads to the failure of the policy intention of strict interpretation.¹¹ Compared with other charges, this crime has its own uniqueness. Firstly, this crime is a typical administrative crime, which needs to be treated comprehensively with the administrative law in the face of evaluating the relative person’s behavior. Second, there are two blank description of crime in this crime, and the content of which depends on the relevant administrative laws and regulations.

Therefore, this crime has a large interpretation space and uncertainty; these two characteristics determine that the judicial application of this crime needs to have scientific and reasonable criminal policy constraints, so as to ensure that this crime can be applied in accordance with the law, scientific and reasonable. In addition, in the outbreak, the work of the judicial organs has been seriously affected. Many courts with backward Internet equipment are unable to arrange for court trials and have to postpone the trial.

Moreover, the implementation of some penalties is also facing difficulties. On the one hand, the detention of prisoners suffering from severe infectious diseases increases the pressure of prison control and prevention, on the other hand, increases the risk of potential infection. Therefore, the criminal policy should adapt to the social environment. If we stick to the policy of strike hard, the proportion of freedom penalty will be very large. Furthermore, the above two adverse consequences increase the burden of the state and society during the epidemic period, and administrative punishment can be adopted for the less serious cases, such as compulsory isolation, fine and other forms, which can also play the role of crime prevention.

⁸ Gao Mingxuan, Mark Chang, Zhao Bingzhi, executive editor in chief. Criminal law. Peking University Press, higher education press, September 2019. 9th edition. P. 573.

⁹ Li Hong. Various theories of criminal law. Law Press, July 2016. 2nd Edition. P. 433.

¹⁰ Zhang Mingkai. Criminal law. Law Press Law Press, October 2016. 5th edition P. 1120.

¹¹ Jiang Tao. Controversies on the Dogmatics of Epidemic-related Crimes in Emergency Period // Political Science and Law. 2020. Issue 5. P. 2.

2. Judgment of illegality

(1) Identification of the subject of the crime of obstructing the prevention and control of infectious diseases

As an epidemic related crime, due to the influence of the objective factor of virus, a more rigorous subject classification system will be obtained through the division of clinical medicine and social management methods. Such a division is not only scientific but also practical. First, we can scientifically judge the subjective form of crime through different individuals' cognitive factors and foresight ability. second, the fine division of subjects is conducive to the strict judgment of the constituent elements, so as to better realize the principle of a legally prescribed punishment for a specified crime; third, it is conducive to the realization of effective social governance and crime prevention in line with the economy of punishment discussed later. Fourth, the rigorous division of subjects is the embodiment of the "strict" criminal policy, and the refined classification is conducive to the rigorous and scientific application of justice.

The author thinks that such division should be made, according to the infection and infection possibility of the subject, the subject can be divided into non infection risk group, risk group and infection group. (Figure 1) The non infection risk group is a healthy group with normal life, no suspected symptoms of related diseases, negative nucleic acid test results, living in non epidemic areas and not engaged in related risk work. In order to meet the needs of epidemic management and public safety, their normal activities still need to be controlled. Risk group refers to the people who will cause the risk of virus infection if they are not managed and controlled for public health safety. According to clinical medicine and social management, the risk groups are subdivided into residents in risk areas, epidemic workers, close contact groups, people who are declared as risk and suspected cases (Figure 1).

The residents in risk areas refer to the residents living in the officially declared risk areas. The residents in risk areas have the obligation to understand the local epidemic prevention policies and cooperate with the relevant epidemic prevention and control work. They can not conceal the epidemic information and refuse to cooperate with the epidemic prevention work because they "do not know the laws and regulations"; epidemic workers refer to those who work in hospitals, customs and other anti epidemic workers. In addition to knowing the general laws and regulations and epidemic policies, they have different responsibilities due to different occupations.

The practitioners include not only the front-line anti epidemic workers, but also the rear medical

staff. In practice, there are few cases of the former committing this crime, the latter committing this crime mostly in the form of violating the infectious disease prevention and control law, privately treating fever related patients without reporting, leading to the spread of the epidemic situation or having the risk of spreading the epidemic situation. What it violates is the specific obligations to medical practitioners, that is, the obligations of fever patients to report and comply with the relevant treatment regulations.

In addition, during the epidemic period, many areas stipulate that antipyretic drugs, antibiotics and other drugs must be registered before they can be sold. Hospital pharmacies who violate the regulations to help patients with fever to conceal their illness will also commit this crime; close contacts refer to the relevant personnel who live directly with the confirmed or highly suspected cases of the virus and have the obligation to report their own health status to the relevant departments and cooperate with the work of the epidemic prevention department; declaring risk group refers to those who know that they are highly likely to be infected after being notified, and most of them have a history of living in the epidemic area. When they arrive in another area for other reasons, they need to take the initiative to show their living history and travel history, and carry out home isolation or self isolation.

The risk groups must respond to the national policy in time and report actively. Because they may have been infected, they need to be isolated and observed, and they are not allowed to go out without permission. For example, in the case of Chen Xinai, After the official announcement that people with a history of living in Wuhan were at risk of infection, Chen knew that she was living in Wuhan, but asked her son-in-law Liu to conceal his relevant information and took a walk in the park at night, resulting in the isolation of 88 people and eventually bearing the corresponding criminal responsibility.¹²

After clinical diagnosis, some groups have appeared suspected features, known as suspected cases. According to the way of knowing, they can also be divided into declared suspected cases and self suspected cases. Suspected cases are diagnosed according to the clinical symptoms and epidemiological history of an infectious disease without laboratory examination.

Suspected cases, because of the existence of relevant clinical characteristics, the perpetrator has a high degree of foresight that he has been infected, and knows that if he does not isolate, it will lead to the spread of infectious diseases or have a serious risk of transmission. But in practice, the suspected cases are often the most difficult to prove. In the trial, even if it is finally known that the perpetrator is a

¹² Criminal judgment (2020) min 0824 Xing Chu No. 246.

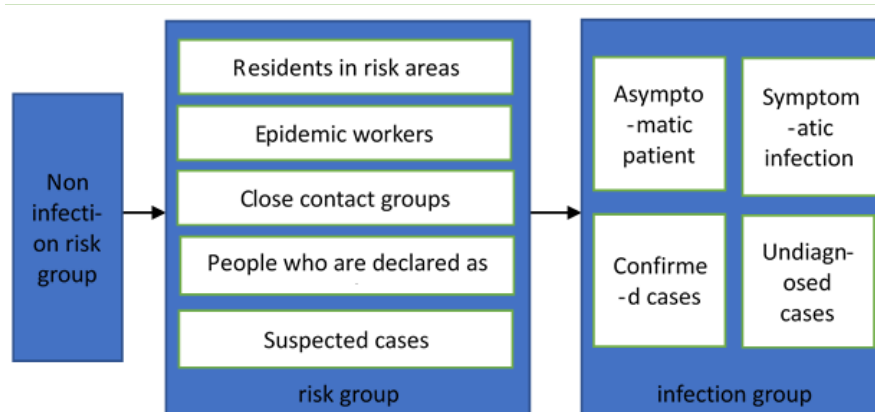


Figure 1. The distinction and division of behavior subject

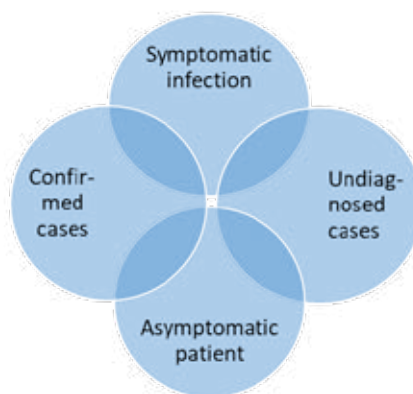


Figure 2. Relationships among the four groups

confirmed case, it is often difficult to find out whether the perpetrator is infected with COVID-19 before or after the act, so it is difficult to judge the subjective form of guilt.

The infected groups were divided into confirmed cases and undiagnosed cases according to whether they were diagnosed or not. A confirmed case refers to a person who has clinical manifestations of an infectious disease, has an epidemiological history, and has one or more of the following laboratory test results, (1) the detection of nucleic acid was positive; (2) the pathogen was isolated; (3) the level of serum specific neutralizing antibody increased four times or more.

However, undiagnosed cases refer to those with the above results in essence but without formal diagnosis confirmation. The confirmed cases are often very well judged in their practice to be aware of their own possibility of spreading the virus. They can predict that their related behaviors may lead to the spread of the epidemic, or trigger corresponding risks. For undiagnosed cases, there is no absolute subjective cognitive factor. According to the presence or absence of symptoms, we can judge the subjective cognitive possibility and the predictive possibility after the implementation of behavior.

Asymptomatic infection refers to those who have no relevant clinical symptoms and are positive in nucleic acid test or serum specific immunoglobulin M antibody test. Patients with symptomatic infection had related clinical symptoms. For asymptomatic infected people, if there is no relevant administrative laws and regulations of the legal reasons, it can not be criticized to fulfill the reporting obligation. The patients with symptomatic infection also have related clinical symptoms, so they should be isolated or reported for treatment independently, and abide by the relevant provisions of isolation treatment. The four have a certain cross relationship, as shown in the figure below. (Figure 2)

(2) The behavior of the crime of obstructing the prevention and control of infectious diseases

It can be found from the judgment of the judicial document network that the behaviors of violating this crime generally include: concealing the contact history and residence history of personnel, deliberately evading isolation, going out from the isolated place, receiving patients in violation of regulations, gathering personnel in violation of regulations, and so on, and mainly concealing the contact history and residence history. But this does not mean that the act

of committing this crime is limited to this. COVID-19 has been proved to be able to survive on frozen food for a long time. Although the relevant administrative laws and regulations were published on December 4 last year, those who illegally purchase frozen products will be subject to administrative detention.

However, if there are harmful results or specific dangers, there is still the possibility of committing this crime. It can be concluded from the explicit provisions that the behavior of this crime needs to have three conditions. First, it violates the provisions of the law on the prevention and control of infectious diseases. Second, it has implemented the prevention and control measures put forward by the health and epidemic prevention institutions in accordance with the law on the prevention and control of infectious diseases. Third, it has caused the spread of the specified infectious diseases or caused the risk of transmission.¹³

If the three conditions are met at the same time, it meets the expression of the constitutive requirements. Judging from the conditions, the former two are both blank crimes. The criterion of illegality lies in administrative law rather than criminal law. Administrative laws and regulations vary from time to time and change greatly. Relevant mandatory laws and regulations will be formulated due to the epidemic situation. Although modern society relies on the Internet to speed up its transmission, information can never be absolutely delivered. The public is delayed by the new law. Knowledge increases the possibility of committing the crime. The following is to discuss the blank counts in this crime, in order to better understand the identification of behavior.

a. One is "violation of the provisions of the law on the prevention and control of infectious diseases." The reasons are as follows. Firstly, this crime is a typical administrative offense, which is highly combined with administrative laws and regulations. If the 'violation of the provisions of the infectious disease prevention law' is narrowly understood as "Law on Prevention and Treatment of Infectious Diseases," it will lead to the loss of the essential meaning of administrative offenses, and can not reflect the nature of the crime of impairing social management, which will make the legal interest protection of this crime fall short.

Second, in practice, in the prevention and control of COVID-19 is not only Law of the People's Republic of China on the Prevention and Control of Infectious Diseases to play the role of prevention and control, Emergency Response Law of the People's Republic of China and other laws and regulations also have the relevant provisions of epidemic prevention and

control, in essence also played the role of infectious disease prevention law.

Third, from the perspective of system interpretation, the third paragraph of this article stipulates that "the scope of class A infectious diseases shall be in accordance with the law of the people's Republic of China on the prevention and control of infectious diseases and the relevant provisions of the State Council". The difference between the two statements indicates that "violation of the provisions of the law on the prevention and control of infectious diseases" should be expanded, and any violation of the relevant laws, regulations and administrative rules on the prevention and control of epidemic diseases is in line with this crime. The rules of the law. At present, the Eleventh Amendment to the criminal law has revised the relevant expression of this crime, including "preventive and control measures proposed by people's governments at or above the county level and disease prevention and control institutions according to law", which actively echoes with practice.

b. "The scope of class A infectious diseases shall be in accordance with the law of the people's Republic of China on the prevention and control of infectious diseases and relevant regulations of the State Council." During the epidemic period, in order to better deal with the medical related crimes, the four ministries and commissions explained article 330. They held that "infectious diseases managed according to class A" should be expanded to be the object of prevention and control of the crime of impairing the prevention and control of infectious diseases. However, the understanding of "Class A infectious diseases" in the elements is still controversial. In other words, whether the semantic range of "Class A infectious diseases" can cover class B infectious diseases "prevention and control according to class A infectious diseases". Supporters have the following reasons.

First, the concept of law is relative, and the concept of administrative law need not be directly relative to criminal law. Second, the understanding of the scope of the object of the crime of impairing the prevention and control of infectious diseases in criminal law can meet the demands of judicial practice. Third, "opinions" are the embodiment of criminal policy. Fourthly, judicial policy should be the important soul direction of judicial activities.¹⁴ Fifthly, the interpretation of the crime of impairing the prevention and control of infectious diseases is expanded to class A infectious diseases, which does not exceed the prediction possibility of the people.¹⁵

¹³ Wang Rui. Judicial application of the crime of interfering with the prevention and control of infectious diseases // Legal Method. Vol. 31. P. 426.

¹⁴ Wang Rui. Op. cit. 419—420.

¹⁵ Deng Yicheng. The nature of refusing the new coronavirus prevention and control measures // Journal of Law Application. 2020. No. 6. P. 104.

The opponents think that although there are realistic needs and the relativity of the concept of law, the interpretation has no source of power, the “opinions” formulated are judicial normative documents, and have no power to expand the understanding of Arts and Sciences. In fact, this practice is “rule spanning”, which blinds the expression of criminal law itself.¹⁶

In addition, in order to achieve the judicial extension, the handling of cases leads to the direct violation of the iron rule of criminal law. This is a disdain for the legal status of criminal law as the highest criminal law and a trample on the dignity of law. Whether the “scope of class A infectious diseases” in this crime includes “class B infectious diseases under the prevention and control of class A infectious diseases” or not, we still need to return to the theory of interpretation, but we need to point out that the “opinions” of the four departments are a kind of policy guidance, which is invalid in essence.

From the perspective of hermeneutics, the pure semantic core of “the scope of class A infectious diseases” refers to the “Class A infectious diseases” announced by who, such as rat plague, judged by natural science. In fact, the controversial issue in academic circles is the fuzzy meaning boundary of “the scope of class A infectious diseases”.

Therefore, from the perspective of the interpretation of the articles, it should be interpreted strictly in accordance with the formal semantic scope of the criminal law, and concepts cannot be confused. No matter how to explain that there are differences in nature between Class A and class B infectious diseases, the equivalence of epidemic prevention measures and methods can not eliminate the differences between them.

Although the expansion of “infectious diseases managed according to class a” as class A infectious diseases is conducive to practical needs and can solve the immediate social problems, violation of the principle of legality will produce potential legal risks and harm to the rule of law. Essentially different, the

two can not be equated by explanation. The impulse explanation caused by the harmfulness of infectious diseases is essentially the analogy explanation of violating the principle of legality. In addition, the determination of the scope of class A infectious diseases is recognized by who. As a member of who, China should actively implement international treaties and be consistent with the class A infectious diseases recognized by the international community.

As some scholars have said, “the time difference in legislation is the cause of contradictions¹⁷.” If the scope of class A infectious diseases in this crime does not include “infectious diseases managed according to category a”, then Article 114¹⁸ and 115¹⁹ can only be applied to the relevant epidemic related crimes. However, such conviction obviously violates the principle of adaptability of crime and punishment and punishes the crime improperly. It is just out of the dilemma and the balance between rule-based and utilitarianism that judicial interpretation has no right to interpret. At present, judicial application can only “make mistakes right”, so as to better apply to practice. In the Eleventh Amendment to the criminal law this year, the infectious diseases with Class A infectious disease management measures are officially defined as the adjustment scope of this crime, realizing the integration of rule-based and utilitarianism.

(3) Legal interests protected by the crime of impairing the prevention and control of infectious diseases

The legal interest protected by this crime is always debated. There are the following views.

The first view is that the legal interest protected by the crime of preventing and controlling infectious diseases is the public health management order,²⁰ reasoning on legal interests protected by criminal law, from the general object — the object under the socialist system, to the similar object — social management order, and then to the direct object — health management order. To a certain extent, the

¹⁶ Chen Wei. The Expanded Interpretation of the Crime of Obstructing Prevention and Control of Infectious Diseases in the Context of the COVID-19 Epidemic and Its Regression // Political Science and Law. Issue 5. P. 23.

¹⁷ Ouyang Benqi. Doctrinal analysis of the objective elements of the crime of obstructing the prevention and control of infectious diseases // Oriental Law. 2020. Issue 3. P. 5.

¹⁸ Law press regulations center. Criminal law of the people’s Republic of China. Article 114 of the criminal law of the people’s Republic of China, page 74, 3rd Edition, January 2021, Law Press Those who set fire, break water, explode, or drop toxic, radioactive, infectious disease pathogens or other substances, or endanger public security by other dangerous means, but without causing serious consequences, shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years.

¹⁹ Law press regulations center. Criminal law of the people’s Republic of China. Article 115 of criminal law of the people’s Republic of China, page 75, 3rd Edition, January 2021, Law Press Whoever causes serious injury or death to a person or causes heavy losses to public or private property by arson, water bursting, explosion, or the dropping of toxic, radioactive, infectious disease pathogens or other dangerous means shall be sentenced to fixed-term imprisonment of not less than 10 years, life imprisonment or death.

²⁰ Zeng Chaohui. Judicial countermeasures for difficult problems of crimes against public health. Jilin People’s publishing house 2000 edition. P. 2.

division of criminal law chapters and the placement of various charges have highlighted the legal interests protected by this crime. Other legal interests are only indirectly protected by this crime, which is the overlapping of cross protection areas between charges.

The second view is that new legal interests have emerged in the context of global epidemic, namely “epidemic prevention and control order”.²¹

The third view is that the legal interest of this crime is the public health.²²

The fourth view is that the crime protects complex legal benefits.²³ The main legal interest protected by this crime is social health management order, and the secondary legal interest is public health safety independent of public safety. The reasons are as follows.

a. The legal interest protected by this accusation is the formal induction of the interpreter, which does not have the final certainty in essence. For example, the realization of public security is to protect the lives and property of the unspecific majority from infringement and loss. Public health directly realizes the stability of social management order, but the realization of management order is to keep the lives and property of the unspecific majority in a stable and safe state. For example, the realization of public security is to protect the lives and property of the unspecified majority from infringement and loss. Although the direct realization of public health is the stability of a social management order, the realization of management order is to ensure that most people’s lives and property are in a stable state of security.

b. The need of practice. With the development of the times, many new forms of crime have been exposed, and the law has a natural lag, which can not achieve comprehensive protection of many legal interests. For example, before the promulgation of the Eleventh Amendment to the criminal law, some rights to education could not be directly protected by the criminal law, so they had to be interpreted with the help of the provisions of the constitution. Judicial practice deals with relevant cases through the accusation of infringing on the type of identity information. On the surface, what we want to protect is personal information, but in fact, what we want to achieve is to attack the behavior of infringing on citizens’ right to education. On the premise of not violating the law of crime and punishment, we can draw the conclusion that the cross legal interest is protected by the crime of interfering with the prevention and control of infectious diseases.

c. For the sake of strict application, we should resist the wide application of “the pocket crime”²⁴. Before the “opinions” was issued, there were obstacles in the application of this crime in practice. It was “because of the close relationship between the act of impairing the prevention and control of infectious diseases and public security, the necessity of punishment did not seem to be limited to the crime of impairing the prevention and control of infectious diseases”, so the application of Article 114 of the criminal law was sought.²⁵ When it comes to the internal relationship, it is necessary to talk about the relationship between the legal interests of the two charges. First of all, we can be sure that the legal interest of the crime of endangering public security by dangerous means is public security, while the legal interest of the crime of impairing the prevention and control of infectious diseases is complex legal interest, and public health security is the second important legal interest. Public health security is the lower concept of public security. There is a special and general relationship between the two. Due to the lack of explanation and guidance of judicial explanatory documents at the beginning, there are practical obstacles in the application of the crime of impairing the prevention and control of infectious diseases. Therefore, the crime of endangering public security by dangerous means is applied to deal with a large number of epidemic related crimes in practice.

Now, the opinion has removed the practical obstacles to the judicial application of the crime of impairing the prevention and control of infectious diseases. It should be pointed out that the public health security protected by this crime should be independent of public security, and the relationship between this crime and the crime of endangering public security by dangerous means is the concurrence of laws. According to the principle that special is superior to general, the crime of impairing the prevention and control of infectious diseases should be chosen. Such a careful treatment can achieve the fine purpose of criminal law, and also achieve the scientific nature of the judiciary.

(4) Cognizance of the harmful result of the crime of obstructing the prevention and control of infectious diseases

The identification of actual damage result and specific danger. As for the harmful results of this crime, the academic circles generally believe that “causing the spread of infectious diseases” belongs

²¹ Jiang Tao. Controversies on the Dogmatics of Epidemic-related Crimes in Emergency Period // Political Science and Law. 2020. No. 5. P. 4.

²² Zhou Daoluan. Interpretation of criminal law charges. People’s court press, March 2013. 4th edition. P. 834.

²³ Liu Yuan. Crimes against public health. China People’s Public Security University Press, 22—23 (1998 edition).

²⁴ Also known as “pocket clause”.

²⁵ Chen Wei. The Expanded Interpretation of the Crime of Obstructing Prevention and Control of Infectious Diseases in the Context of the COVID-19 Epidemic and Its Regression // Political Science and Law. 2020. Issue 5. P. 21.

to the actual harmful results, “there is a serious risk of transmission” belongs to the specific risk.²⁶ But in practice, how to judge which situation belongs to the former. What kind of situation belongs to the latter. In other words, what are the criteria for filing a case for the two. In order to adapt to the current situation, it should be considered that causing the infection of relevant personnel should be regarded as “causing the transmission of infectious diseases.”

However, whether the isolation of relevant personnel caused by the actor’s behavior should be considered as “serious risk of communication”. This kind of judgment is not rigorous. The purpose of isolating the risk group is different from that of isolating the infected group, which is simply to prevent the spread of the epidemic and treat it. Its main purpose is to “observe” whether the isolated person has related symptoms. After isolation, there will be three situations: first, all people are diagnosed with infection; second, some people are infected, some people are not infected; third, all people are not infected. Isolation is not the judgment standard of the final harm result, it is only the means of epidemic prevention and control rather than the specific harm result. This paper does not agree with what some scholars believe that the results of harm will be at the same time, that is, some people are confirmed to be infected, some people are still in isolation and need

to continue to observe.²⁷ If so, the determination of the outcome of the hazard can be changed according to the time of investigation. It is necessary for the relevant personnel to infect COVID-19. There are only two forms of harmful results, one is infected and the other is not infected.

So how to judge the specific danger? Relatively speaking, Germany’s contingency theory is worth learning. The necessary conditions for Germany to separate out two specific dangers in its long-term judicial practice are: firstly, an object constituting an act must exist once and appear within the scope of the danger; secondly, the accused act creates an easy infringement on the object constituting the act. The danger of.²⁸ For example, if the perpetrator drives to deliver the goods to the residents in the epidemic area in violation of the regulations, and the goods are not tested for virus, the health and safety of the residents in the epidemic area is within the scope of this danger, and because of this behavior, the residents in the epidemic area are at the risk of being infected. If someone is found to be infected after isolation, it should be considered as the composition of the actual harmful result, if no one is infected. In other words, as long as it causes isolation, it has already constituted the establishment of specific danger. Whether it constitutes the result of actual harm needs later clinical testing.

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²⁶ *Ouyang Benqi*. Op. cit. P. 10.

²⁷ *Ouyang Benqi*. Op. cit. P. 11.

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