

The Balance and Protection of the Public Right to Know and the Civil Right to Privacy under Pandemic Control

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Abstract: Under the control of pandemic, the public right to know and the civil right to privacy are conflicting legal issues. Based on the experience and exposed problems of pandemic prevention and control, the concept and protection of the civil right of privacy and the public right to know, as well as the balance between the civil right to privacy and the public right to know in public health emergencies are analyzed and discussed. This paper has also put forward measures for the protection of the civil right to privacy and the public right to know.

1. Introduction

The problem between the public right to know and the civil right to privacy in public health emergencies is exposed in the outbreak of COVID-19 at the beginning of 2020. The early stages of a pandemic are the golden period for pandemic prevention and control, and social citizens will ask the government to disclose information out of fear of a sudden pandemic and the consideration of their own health. Privacy information, such as mobile phone number, ticket information, flight information, and home address must be disclosed in an effort to coordinate with pandemic prevention and control. However, what follows is always harassment and abuse. It is certainly important to protect the public's right to know. However, the rights of COVID-19 confirmed cases should also be valued. Under pandemic control, what are the boundaries and balance between the public right to know and the civil right to privacy? How should we protect them?

2. The Balance of the Public Right to Know and the Civil Right to Privacy under Pandemic Control

2.1 The Concept of the Public Right to Know under Pandemic Control

The right to know is a right given by the Constitution. Article 2 of the Constitution of the People's Republic of China stipulates that everything in the People's Republic of China belongs to the people. The people administer state affairs and manage economic, cultural and social affairs through various channels and in various ways in accordance with the law. The second paragraph of Article 27 stipulates that all state organs and functionaries must rely on the support of the people,

keep in close touch with them, heed their opinions and suggestions, accept their supervision, and do their best to serve them. Although the Constitution of the People's Republic of China did not explicitly use the term "right to know", the execution of the right to know is that the state organs and functionaries maintain close contact with the people, and the people express their opinions and suggestions. This can be regarded as the implicit provision of the right to know in the constitution^[1].

Therefore, the right to know can be defined as follows:

The right to know refers to that the citizens have the right to know and require state organs to disclose certain information in accordance with the law. The scope of protection for the right to know is very wide, including the right to know in government information, social public affairs and public power institutions, personal information of citizens, and many other aspects. The public right to know under the control of a pandemic is an important part of the right to know. In public health emergencies, citizens have the right to know, understand, and require the state organs to disclose the information about the pandemic situation they have in accordance with the law. For the sake of their own security needs, citizens will need to know the information of emergencies for the first time after the outbreak. Therefore, they will have a strong demand for a clear explanation of the emergency in order to understand the severity of the incident and come up with their own countermeasures.

2.2 The Concept of the Civil Right to Privacy under Pandemic Control

The civil right to privacy is first mentioned in Article 42 of the Law of the People's Republic of China on the Protection of Women's Rights and Interests (2005) and Article 2 of Tort Law of the People's Republic of China (2009), but its connotation was not regulated. Article 1032 of the Civil Code of the People's Republic of China defines privacy as "the tranquility of the private life of a natural person, and the private space, private activities, and private information that he is unwilling to be known to others."

From this perspective, the right to privacy includes two core parts: the right to life tranquility and the power to make decisions on private information. Therefore, the right to privacy can be defined as follows:

The right to privacy refers to the right enjoyed by citizens in accordance with the law to ensure that the peace of private life is not infringed by others, and private information secrets are not to be illegally collected, disclosed, or used by others. There are differences between the right to privacy under pandemic control and the ordinary right to privacy. Firstly, the emphasis of the main body whose right to privacy is infringed is different. Under the control of the pandemic, out of the consideration of self-protection, the privacy of confirmed cases, suspected patients, people returning from infectious areas, close contacts, and other related personnel is more likely to be violated than that of the ordinary people. Secondly, the obligation to protect the right to privacy is increased. In addition to medical staff and insiders, government departments have also become the subject of obligation. Finally, the probability of external dissemination of private information is increased. For example, if the sensitive information of the people returning from the infectious area is disclosed impertinently, friends, colleagues, and neighbors around them are bound to crowd them out or discriminate against them. The company may also make discriminatory treatment, or even cause humiliation, which would lead to serious physical and mental harm to the parties.

2.3 Conflict between Public Right to Know and Civil Right to Privacy under Pandemic Control

The purpose of legislation of the public right to know and the civil right to privacy is different, and they are doomed to conflict. Article 19 of Open Government Information Regulation of the

People's Republic of China stipulates that administrative organs should voluntarily disclose government information concerning the adjustment of the public interest, which is required to be known by the public, or in respect of which the public is required to participate in decision-making. The purpose of legislation of the right to know is to ensure that citizens can obtain the information they need about themselves, others, society, the government, and so on, which protects the public interest. Meanwhile, the purpose of legislation of the right to privacy is to protect the tranquility of the private life of a natural person and their right to decide on private information, which protects personal interests.

The conflict between the two is more prominent in public health emergencies. Under the control of a pandemic, the public right to know aims to protect the public's life and health based on government information disclosure.

The public wants the information of the relevant personnel of the pandemic to be disclosed openly and transparently in time, which reflects the willingness of citizens, as well as the administrative and political attributes of public power. However, to ensure the citizens' right to know, individuals' right to privacy would be violated, and vice versa. People returning from infectious areas, close contacts, suspected patients and confirmed cases are rightfully worried that once their whereabouts and detailed information are disclosed, they will be discriminated against, abused, stigmatized, and disturbed for life. Therefore, they hope that their illness and personal information will be strictly confidential. There are even cases of hiding and lying to protect their privacy.

3. Problems in the Protection of Public Right to Know and Civil Right to Privacy under Pandemic Control

3.1 Decentralization of Legislation

There are many laws with provisions relating to the right to information, such as Election Law of the People's Republic of China for the National People's Congress and Local People's Congresses at All Levels, Civil Servant Law of the People's Republic of China, Law of the People's Republic of China on the Protection of Consumer Rights and Interests, Company Law of the People's Republic of China, Advertising Law of the People's Republic of China, Price Law of the People's Republic of China, Law of The People's Republic Of China on Administrative Penalty, and so on. However, there is no connection between these provisions, and there is no special legal system. Meanwhile, the key to the right to know lies in the disclosure of government information, but there is no special law on government information disclosure in China. Open Government Information Regulation of the People's Republic of China, which was revised in 2019, is an administrative regulation, and Article 5 stipulates that an administrative agency should disclose government information to the public in adherence to routine public disclosure and exceptional withholding, by the principles of fairness, equity, lawfulness, and public facilitation. But there is still no clear definition of "right to know".

The civil right to privacy belongs to the content of human rights. Laws such as the Civil Code of the People's Republic of China, Law of the People's Republic of China on the Protection of Minors, Criminal Law of the People's Republic of China, and so on relate to the right to privacy of citizens. Due to the scattered legislation, the protection of citizens' privacy by laws and administrative regulations of various departments is fragmented, lacking unity and coordination.

3.2 Imperfect Law Enforcement Procedure of Public Right to Know

Under the control of the pandemic, it is essential for the government and other relevant

authorities to collect information. The Emergency Response Law of the People's Republic of China only stipulates the right to collect information in case of emergency but lacks procedural provisions on information collection, reporting, processing, and preservation^[2]. In public health emergencies, administrative personnel often only need to say “needed for anti-pandemic purposes” when collecting information, which will greatly increase the probability of irregularity and privacy leakage of information collection.

3.3 Harsh Environment for the Application of Civil Right to Privacy

In China, the protection of private information is not clear. Article 68 and 69 of the Law of the People's Republic of China on Prevention and Treatment of Infectious Diseases stipulate the consequences of “information and data related to personal privacy” disclosed by disease prevention and control institutions and medical institutions. However, the specific contents of information and data related to personal privacy are not explained, which gives the administrative organs great discretion. For example, in the real-time report of the novel coronavirus pandemic, the scope and detail of the information of confirmed cases, close contacts, and people returning from Wuhan published by each provincial and municipal governments are different. On February 5, 2020, Beijing announced the trajectory of action of the patients confirmed on that day for the first time, mainly including whether the patients had contact history with other provinces and the situation of the community where the patients are located. The daily trajectory of action of confirmed cases announced by Hebei province includes not only the community where patients are located but also the gender, ages, and places where the patients stayed before onsets. The details of confirmed cases announced by Wuhan include age, residence, medical history, the trajectory of action, and status of close contacts.

4. Suggestions on the Protection of Public Right to Know and Privacy under Pandemic Control

4.1 Perfection of the Legislation

Perfecting the public's right to know is based on information disclosure. In the process of disclosure of pandemic information, the government's leading legal system of pandemic information disclosure should be improved, including the subject, scope and limit, procedure, legal responsibility, supervision, and management. The protection of citizens' privacy should focus on the confidentiality obligations of government agencies and medical institutions, as well as their responsibilities to protect patients' privacy. When collecting information, we should formulate corresponding measures to prevent privacy leakage, especially from its core.

4.2 Improvement of the Procedures

The normalization of the law comes from the effective control of the procedure over the operation of the law. Its rationality comes from the strict supervision of the legal proceedings over the judicial officers over the application of the law, and its authority comes from the legal procedure, which guarantees the implementation and credibility of the substantive law. Therefore, the normalization of early warning and prevention procedures is urgently needed. Under the control of pandemic, local governments should formulate specific implementation rules to standardize procedures according to local conditions on the basis of legal provisions. The information disclosure of government organs must be carried out in strict accordance with the procedure, which should not only be efficient and convenient but also easy to operate and implement. At the same time, it is necessary to supervise the discretion of the administrative subject to prevent excessive

free operation.

4.3 Administration by Law

The principle of administration by law is not only the primary basic principle of contemporary administrative law, but also the basic requirement of government organs to carry out pandemic prevention, and it should pay attention to the provisions or authorization of the law. At the third meeting of the CPC Central Committee on the Comprehensive Rule of Law, General Secretary Xi Jinping emphasized that: “The more strict the pandemic prevention and control is, the more we must adhere to the law of disease prevention and control. We should coordinate and push forward all kinds of prevention and control work on the track of rule of law, ensuring the smooth development of the pandemic prevention and control. It is necessary to report and disclose the pandemic situation according to the law, and do it in a timely and accurate manner according to the legal contents, procedures, methods, and time limits.” Government organs at all levels should establish the concept of the rule of law. The law-abiding consciousness and the level of law enforcement of government organs affect the credibility of the party and the country. Especially in the case of public health emergencies, only when the government abides by the law and enforces the law can it reflect the credibility of the government. According to the Law of the People's Republic of China on Prevention and Treatment of Infectious Diseases, Emergency Response Law of the People's Republic of China, Regulation on Responses to Public Health Emergencies, Open Government Information Regulation of the People's Republic of China, and other laws and regulations, government organs should balance the contradiction between information disclosure and personal privacy to the greatest extent.

4.4 Principle of Proportionality as Criterion in Practice

According to the public interest principle, it is not allowed to damage the public interest no matter what kind of right is exercised. The protection of social public interest is superior to the protection of individual interest, which does not mean that individual interest can be completely sacrificed when protecting the public interest. Under the control of pandemic, administrative organs should use the principle of proportionality to weigh the purpose of disclosing pandemic information and the protection of patients' personal privacy. The two should maintain an appropriate ratio to find the balance between safeguarding public interests and protecting personal privacy.

When using the principle of proportionality, the following points should be paid attention to. First, the infringement of personal privacy by administrative organs must be for the purpose of protecting public interests. In the novel coronavirus pandemic, the authorities released the information and action track of the flight information of confirmed cases to the public in order to avoid panic and isolate the people who had come into contact with the patient during the trip and isolation in an effort to curb the spread of the pandemic. Second, adhere to the principle of minimum. The focus is that administrative organs should choose to minimize the infringement of citizens' personal privacy in all the pandemic prevention measures to meet the public right to know. Finally, dignity should be protected. Article 38 of the Constitution of the People's Republic of China stipulates that the dignity of citizens of the People's Republic of China is inviolable. As an independent person, the administrative organ should not destroy a person's dignity when disclosing related pandemic information. After the government organs disclose the relevant information, people's irrational attitude towards suspected patients, close contacts, and people returning from the pandemic-affected area is intense out of fear of infectious diseases, and it is often accompanied by harassment, personal attacks, and so on. Therefore, administrative organs should do a good job of explaining and informing the public that the government has taken measures such as disinfection

and isolation to avoid stigmatization and appease the public mood.

4.5 Strengthen Supervision

An all-around supervision system should be improved for the disclosure of pandemic information with wide participation of administrative organs, judicial organs, news media, and the public. Administrative organs should strengthen internal self-supervision, and dereliction of duty should be strictly dealt with. Judicial organs should strengthen administrative supervision over information disclosure and punish infringement. The news media should make use of their own advantages to strengthen the supervision of the government's pandemic control and information disclosure, and to provide proper public opinion guidance. Finally, the public should actively safeguard their right to know and participate in supervision.

5. Conclusion

In the context of the highly threatening COVID-19, pandemic prevention and control is a severe test of a country's level of legalization and governance. Taking into account the experience of pandemic prevention and control, this paper defines the concepts of the civil right to privacy and the public right to know, and puts forward the suggestions on perfecting legislation, improving procedures, administering according to the law, following the principle of proportionality, and strengthening supervision.

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