

# CHINA'S PREVENTION AND CONTROL EXPERIENCES ON NOVEL CORONAVIRUS INFECTION IN THE CRIMINAL JUSTICE SYSTEM

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## INTRODUCTION

So far, 40246 cases and 23589 cases of suspected cases of Novel coronavirus pneumonia (novel coronavirus pneumonia, NCP) has been confirmed, and the cases of cure and death have been on the rise (see chart 1), but the inflection point has not yet appeared. Since novel coronavirus pneumonia has the characteristics of human transmission, and the serious situation of the epidemic is still not decreasing, medical experts call on everyone to wait at home, which can minimize the transmission route and control the spread of the epidemic. At present, according to the unified arrangement and notice of the relevant departments of the state, all kinds of schools and enterprises at all levels are postponed to start school and return to work after Chinese New Year. However, the various "breaking through" actions, which have been reported on media, not only endanger public order, but also cause public nuisance, and have become one of the major risks during the epidemic period. Since those actions seriously disrupted the order of prevention and control of new crown pneumonia and endangered the lives and health of others, the Opinions on Punishing crimes in accordance with the law against the preventing and controlling of novel coronavirus infectious diseases were issued by the Supreme People's court, the Supreme People's Procuratorate, the Ministry of public security and the Ministry of justice on February 6, 2020. It is explicitly required that someone uses violence or threat to obstruct state functionaries from carrying out measures such as epidemic prevention, quarantine, compulsory isolation, isolation and treatment for epidemic prevention and control according to law, it shall be convicted and punished for the crime of obstructing public service in accordance with the provisions of the first and third paragraphs of Article 277 of the criminal law. Whoever violently attacks the people's police who are performing their

duties according to law shall be convicted of the crime of obstructing public service and given a heavier punishment.

In view of the severe situation and the danger of obstructing actions against preventing new crown pneumonia, On February 5, 2020, Xi Jinping, general secretary of the CPC Central Committee, chairman of the CPC Central Committee, chairman of the Central Military Commission and director of the Central Committee of the comprehensive rule of law, chaired the third meeting of the Central Committee for the comprehensive rule of law and delivered an important speech. He stressed that at present, it is in a critical period of epidemic prevention and control, and it is essential to prevent and control in a scientific and orderly manner according to law. The more arduous the epidemic prevention and control is, the more we should adhere to the prevention and control in accordance with the law, promote the prevention and control work in a coordinated manner on the track of the rule of law, and ensure the epidemic prevention and control work. Therefore, to intensify the crackdown on crimes against the prevention and control behaviour of the novel coronavirus pneumonia must also be legal, appropriate and necessary.

## **PREVENTION AND CONTROL OF THE NOVEL CORONAVIRUS PNEUMONIA IS THE MOST IMPORTANT NATIONAL OFFICIAL BUSINESS, AND THE CRIMINAL LAW INTERESTS IS IN URGENT NEED TO PROTECT**

At present, the situation of the epidemic situation is not optimistic. Closed management is carried out in many urban communities, temperature detection measures for the people in and out of the communities are strictly implemented, visitors and vehicles are strictly controlled, and the service management for the people in isolation at home is strengthened. In this case, the legal interest of the criminal law should also be adjusted accordingly.

The legal interest protected by the criminal law is the smooth execution of official acts. From the perspective of Article 277 of the criminal law, the object of this crime article is to protect the normal management activities of the state organs, with the focus on ensuring the smooth performance of civil servants' official duties, rather than protecting the body and freedom of civil servants. When the body and freedom of civil servants are violated, it may involve other

crimes, but it needs to be combined and punished for several crimes (no punishment for minor injuries).

Under the background of novel coronavirus pneumonia, new orders to reduce personnel flow and personnel contacts have been established, which require people stay in home for segregation, adjustment and office work. Under the situation of fighting severe epidemics, this new public order is affecting everyone, so violating this order or causing disorder will constitute an offence or even a criminal act. In addition to the normal legislative, administrative and judicial activities, the most important public service activities are all kinds of closed management activities that prevent and control the epidemic. If the perpetrator disobeys the closed management, it is obviously a crime of obstructing public service that hampers the official behaviour and affects the control of the new crown pneumonia.

### **‘VIOLENCE AND THREAT METHODS’ TO OBSTRUCT STATE FUNCTIONARIES FROM CARRYING OUT PREVENTING AND CONTROL MEASURES FOR NOVEL CORONAVIRUS PNEUMONIA SHOULD BE IDENTIFIED**

According to Article 277 of the criminal law, the main behaviour of this crime is to obstruct relevant state personnel from performing their duties ‘by means of violence and threat’. But the crime also includes ‘intentionally obstruct state security organs and public security organs from performing state security tasks and causing serious consequences without using violence and threat methods in accordance with the law.’ That is to say, although violence or threat means are not applied, if it causes severe serious consequences, the behaviour is still constitute ‘crime of obstructing public service’.

The so-called violence and threat methods of this crime should be understood in a broad sense. The violence and threat of this crime do not matter whether direct or indirect. All illegal tangible forces against civil servants belong to the "violence and threat method" of this crime.

Generally speaking, the main behaviours that hinder the public service in the process of epidemic prevention and control are as follows: to obstruct the public servants from taking their body temperature and to refuse to cooperate with them in taking their body temperature by

means of violence or threat; to resist the inspection, quarantine or forced isolation by the police, epidemic prevention workers and other prevention and control personnel by means of violence or threat; to disobey or not cooperate with the workers who carry out the epidemic prevention and control measures, and even injure the public servants who come to dissuade him(her), and destroy the warning signs, isolation facilities or traffic control facilities set up by the police or other law enforcement personnel; insult, push or threaten the enforcement personnel with infectious viruses, which made it difficult to carry out the epidemic inspection, seriously disturbing the public order and hindering the prevention and control of the epidemic.

According to the current cases, when the epidemic prevention and control staff carry out the prevention and control tasks, the perpetrator obstructs the normal epidemic prevention and control measures, by implementing the corresponding abusive, beating the personnel or destroy the prevention and control warning signs. Although some acts are indirect, they are aimed at the prevention and control of the epidemic. At present, the prevention and control of the epidemic is implemented in a nationwide management mode, and most of communities are implementing closed management, which is the control measure issued by the government. Therefore, all kinds of threats or violence by the perpetrator violate the government's management activities. If the actor's behaviour of violence do not have indirect physical influence on civil servants, it is difficult to be identified as the crime of obstructing public service.

In addition, the threat of spitting and other means to transmit the virus to civil servants carrying out prevention and control measures and make them feel afraid, which is the main threat method of this crime at present.

According to the content of Article 277 of the criminal law, It should be noted that, as long as the violence and threat methods of this crime are enough to hinder civil servants from performing official duties, it is not required that the way of conduct of this crime is serious, that is to say, it is not necessary to have the result of hindering the performance of official duties. Of course, during novel coronavirus pneumonia, some refuse to cooperate to check, who' violence and threat do not reach the extent of obstructing public service. The behaviour of disrupting public service is not suitable to be considered as a crime of obstructing public service. It may violate the relevant regulations of the 'Public Security Management Punishment Act' and be regulated by administrative regulations.

## **‘CIVIL SERVICE’ RANGE IN THE NOVEL CORONAVIRUS PNEUMONIA PREVENTION AND CONTROL SHOULD BE DEFINED**

Under the background of serious epidemic situation, the closed management of all places includes the corresponding measures of temperature detection, dissuading and reducing going out, among which the management personnel include village cadres, street office staff, community property management personnel, medical staff, on duty police and other public servants, etc. Some of the above-mentioned persons are not public servants, and the protection of legal interests in the law about the crime obstructing public service is the execution of public affairs. To ensure the public order of the control of the flow of people during the epidemic period, the scope of the duties of public servants and the meaning of the public servants of this crime are very important.

It is stipulated, in Article 277 of the criminal law, that the object of conduct is ‘functionaries of state organs. From the content of the article, the object of conduct mainly includes staff of state organs, representatives of the National People's Congress and local people's congresses at all levels, staff of the Red Cross Society, staff of state security organs and public security organs, etc. As far as the meaning of public servants is concerned, it is stipulated in Article 93 of the criminal law that ‘State functionaries as mentioned in this Law refers to persons who perform public service in State organs. Persons who perform public service in State-owned companies or, enterprises, institutions or people's organizations, persons who are assigned by State organs, State-owned companies, enterprises or institutions to companies, enterprises or institutions that are not owned by the State or people's organizations to perform public service, and the other persons who perform public service according to law shall all be regarded as State functionaries.’ ‘The civil servant law’ stipulates that “the civil servants mentioned in this Law refer to the staff who perform their duties according to law, are incorporated into the administrative staff of the state, and are paid by the state finance.’ From the perspective of the provisions of the civil servant law, the essence of public servants lies in the staff who ‘perform public duties according to law’. Therefore, in combination with the provisions of the criminal law and the civil servant law, the scope of public servants is quite wide at present, but its substantive focus is ‘performing official duties according to law’.

In addition, as early as 2000, the Supreme People's Procuratorate issued an official reply to Chongqing People's Procuratorate. The official reply of the Supreme People's Procuratorate is

on whether it can punish the infringer for the crime of obstructing public service when he obstructs the personnel of establishment institutions by means of violence and threat from performing administrative law enforcement duties in accordance with laws and administrative regulations. It is prescribed that the offender may be investigated for criminal responsibility for the crime of obstructing public service when he, by means of violence or threat, obstructs the establishment personnel entrusted by state organs to engage in administrative law enforcement activities from performing administrative law enforcement duties. Therefore, if the object of the act is entrusted by the state organs to carry out epidemic inspection, or the epidemic inspectors are the personnel of establishment institutions, because the nature of their work is "official", they exercise the functions and powers equivalent to the staff of the state organs. When the perpetrator violence or coercion impacts the epidemic inspection work of such personnel, it should be considered as the act of obstructing public service.

However, there is another problem involved here that sometimes the object of the act is not the public servants, but the cadres of the villagers' committee, street offices, property staff and other non-public personnel. If the actor refuses to cooperate with their epidemic inspection work, it will not cause any harm to the public service from the current case. But after the above-mentioned personnel report to the police, or there are public officials present under the circumstances, its acts of violence and threat are suspected of obstructing public service.

The so-called performing official duties in accordance with the law should be understood in a broad sense, that is, both "law" and "official duties" should be understood in a broad sense. The law should include laws and relevant orders that their performance of their duties is based on. For this epidemic, the control basis should also include the policies to deal with the epidemic. The laws mainly include the Law of the People's Republic of China on the Prevention and Control of Infectious Diseases, the Law of the People's Republic of China on the Response to Emergencies, the Criminal Law on Punishing the Illegal Crimes during the Epidemic Period, and the Law on Punishing Public Security Administration, etc., while the orders or policies mainly include the Notice of the Central Committee of the Communist Party of China on Strengthening the Leadership of the Party and Providing Strong Political Guarantee for Winning the Prevention and Control of the Epidemic (January 28, 2020), Novel Coronavirus Working Plan issued by the State Council on the Prevention and Control of New Coronavirus Infection (January 27, 2020).

The focus of this epidemic situation is whether all kinds of closed management measures (temperature check, restriction of access to communities, setting of checkpoints, etc.) should be set up to meet the needs of national control of the epidemic situation, and whether management measures of the epidemic situation headquarters are official. From the current cases suspected of the crime of obstructing public service, it tends to be identified as public service. Therefore, all kinds of violent and threatening behaviours such as abusing, pushing, beating, spitting and so on, which impact the checkpoint, should be identified as obstructing public service.

## **NOVEL CORONAVIRUS PNEUMONIA PREVENTION AND CONTROL AND JOB SCOPE**

Although the scope of duties in the crime of obstructing public affairs is all kinds of affairs with the nature of "to the public" handled by the civil servants, the main content of the scope of duties in the crime of obstructing public affairs in the current epidemic situation should be all kinds of inspection related to the epidemic situation carried out by the epidemic prevention and control checkpoints set up according to the requirements of the unified deployment of the central government. However, it should be noted that not all those who obstruct the inspection of epidemic situation and refuse to cooperate with the inspection of epidemic situation constitute crimes of obstructing official duties. Judging from the current cases of suspected crimes of obstructing public service, those who impact the warning signs of the community, refuse to cooperate with the temperature test and beat the non-civil servants on the scene, or there are no civil servants on the scene, do not constitute crimes of obstructing public service (according to the specific circumstances, they may be suspected of the crime of provoking and causing trouble or the crime of obstructing the prevention and control of infectious diseases). When the on-site personnel call the police or there are civil servants on the scene to dissuade them, If the perpetrator still refuses to cooperate with the requirements of body temperature test and other epidemic prevention and control, and beats or reviles public servants, medical staff with career establishment and other public officials, he shall be punished as the crime of obstructing public affairs. In the current situation of serious epidemic situation, the staff of epidemic inspection should be protected and dealt with strictly. In addition, when the

perpetrator attacks the people's police at the scene of the inspection, he shall be given a heavier punishment in accordance with the provisions of the criminal law.

## **NOVEL CORONAVIRUS PNEUMONIA PREVENTION AND CONTROL IN ACCORDANCE WITH THE LAW ENFORCEMENT DUTIES BOUNDARIES**

The crime of obstructing official business protects the smooth progress of official activities. Therefore, the violent and threatening acts against civil servants should be carried out during their duties, that is, during the official activities related to the epidemic situation, such acts as violence and threat should be carried out during the period when the civil servants carry out the corresponding temperature test and dissuade the personnel from entering and leaving the relevant areas. Then, from the current cases, during the epidemic prevention and control period, the scope of performing duties should be limited to the duties related to the epidemic, such as starting to test body temperature, dissuading personnel from entering and leaving, and within a period of time after the completion of the epidemic detection, this period of time should be regarded as a whole as the scope of performing duties. When the perpetrator refuses to cooperate with the epidemic detection, but there is no civil servant on the scene, and after the on duty personnel report to the police, the perpetrator still fails to cooperate with the corresponding epidemic prevention and control work such as temperature monitoring, it shall be regarded as a hindrance to the official duties, but the former refusal to cooperate with the epidemic detection shall be excluded from the scope of performing duties. If the perpetrator's beating or abusing the on-duty personnel constitutes the crime of intentional injury, the crime of insult or the crime of endangering public safety by dangerous means, he shall be convicted and punished according to the crime. According to the current view of the case of criminal detention or arrest for the crime of obstructing official duties, other acts should be excluded from the performance of official duties, except the acts in the performance of official duties and the acts of immediately starting to perform official duties (such as preparing to take temperature). In short, the performance of duties should be identified in combination with the object of conduct.



In addition, the behaviour of the object should have the legitimacy. According to the relevant provisions of the criminal law on the crime of obstructing public service, it is clear that civil servants perform their duties "in accordance with the law". Therefore, the official duties in the crime of obstructing public service should be legal. To be specific, the elements of the legality of public servants should have the following elements:

First, the official's duty behaviour should belong to the general and abstract duty authority. Specifically, in epidemic prevention and control, it refers to the detection and dissuasion of body temperature. If the public servants obstruct the access of the personnel with proper reasons and normal body temperature, they have exceeded the general duty authority and are not within the scope of the epidemic prevention and control duty.

Second, the civil servant has the specific authority to perform the duties. When performing the epidemic prevention and control task, the civil servant shall carry out the prevention and control task in accordance with the designated and entrusted matters within the scope of policy and regulatory authority. The most important prevention and control task this time is to take the temperature of the floating personnel and persuade them to return. Of course, during the epidemic period, other behaviours (such as maintaining traffic order) implemented by the civil servant to prevent the price of goods from soaring during the epidemic) is still within the specific scope of authority to perform duties.

Third, when performing the duty act, it has fulfilled the important parts of the effective legal procedures or methods of the duty act and other effective elements. During this epidemic, requirements, basis and reasons for epidemic detection shall be set in various checkpoints and warning signs, and temperature detection and other epidemic detection requirements shall be notified when personnel enter and leave. Of course, if the epidemic quarantine station fails to perform the important part of legal procedures or related methods, it cannot be deemed that the official act is legal.

## **NOVEL CORONAVIRUS PNEUMONIA PREVENTION AND CONTROL OF PUBLIC AFFAIRS RELATED CRIMINAL LAW REGULATION**

The protection of the legal interest of the crime of obstructing official business is the smooth progress of official business. During the epidemic period, the most important thing is to ensure

the smooth progress of the epidemic detection and the public order during the epidemic period. Then, the number of crimes of this crime should also be determined according to the number of official business obstructions. Therefore, during the period of epidemic detection, several civil servants jointly carry out the work of epidemic detection. If several civil servants abuse, assault and other violent and threatening behaviours are committed by the perpetrators, it shall be deemed as the crime of obstructing official duties. If the violence and threat of the crime of obstructing public service constitute the crime of intentional homicide, intentional injury, robbery and other crimes, it belongs to imaginative joinder of offenses. Of course, if the means of violence and threat have not yet constituted the crime of obstructing public service, they can be regulated by non-criminal laws such as administrative regulations.

## CONCLUSION

During the novel coronavirus pneumonia epidemic, novel coronavirus for combating epidemic prevention and control was issued in various places, such as the circular issued by Chongqing on "severely punish the new type of coronavirus infection and prevent and control the illegal epidemic of pneumonia" according to law, and refine 14 specific situations, including refusal, isolation, isolation, prevention and control; harm to the safety of medical personnel; production and sale of fake and inferior products. State functionaries, taking advantage of their positions, intercept, embezzle or misappropriate funds and materials for epidemic prevention and control, etc. These measures during the epidemic have a good effect on winning the "Sniper War". But when it comes to crime, it needs to adhere to the principle of the last resort of criminal law, and cannot easily apply criminal law control.

At present, the crime of obstructing the public service is mainly the behaviour of the perpetrator's "breaking through the barriers". It is true that setting warning signs, measuring body temperature and other measures have played a considerable role in the prevention and control of the epidemic situation, but it is not a good policy to restrict the access of personnel at will. Recently, Zhejiang Province's epidemic prevention and control responsibility order (see Figure 2) shows that "in principle, normal travel of ordinary residents shall not be restricted at will". Therefore, citizens can exercise the right of self-defence when they are still unable to travel for legitimate reasons.