

Criminal law regulation of criminal acts involving COVID-19 epidemic*

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On the eve of the 2020 Spring Festival, the new coronavirus pneumonia broke out, normal social order was affected, and crimes involving the epidemic increased. On February 6, 2020, the Supreme People’s Court, the Supreme People’s Procuratorate, the Ministry of Public Security, and the Ministry of Justice jointly issued “Opinions on Punishment of Crimes Obstructing the Prevention and Control of the Novel Coronavirus Infection Pneumonia Epidemic According to Law”, which clearly stipulates nine types of crimes that hinder the prevention and control of the epidemic. In order to clarify and solve some outstanding problems of inconsistent understanding of the application of laws in the practice of epidemic prevention and control, the Supreme People’s Procuratorate selected cases that accounted for a large portion of cases, reflected many problems, and urgently required practical practices; they then issued ten batches of “Typical Cases of Crimes Obstructing the Prevention and Control of the New Coronary Pneumonia Epidemic by Procuratorial Organs across the Country”. This article is mainly based on the “Prosecutors across the country handle typical cases of crimes obstructing the prevention and control of the new crown pneumonia epidemic in accordance with the law”, analyzing economic and property crimes, crimes that disrupt the order of social management, and crimes that endanger public safety.

Keywords: COVID-19 pandemic, crimes involving epidemic situation, judicial cognizance, criminal policy, infectious diseases, judicial practice, disputed issue, coping path.

1. Introduction

In the face of the sudden outbreak of COVID-19, criminal acts related to the epidemic also proliferated, and the legal regulation of illegal and criminal acts during the outbreak of COVID-19 in China also changed. At the initial stage, because COVID-19 is an infectious disease that has never appeared in the world, illegal and criminal acts in the period of prevention and control in China are mainly regulated by “The Interpretation of Several Issues Concerning the Specific Application of Laws in Handling Criminal Cases Obstructing the Prevention”¹ and “Control of Emergent Infectious Diseases and Emer-

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¹ 两高《关于办理妨害预防、控制突发传染病疫情等灾害的刑事案件具体应用法律若干问题的解释》(法释[2003]8号). Accessed March 12, 2021. https://www.sohu.com/a/369065729_120051578.

agency Regulations for Public Health Emergencies”² issued in 2003 and based on SARS. With the development of the epidemic situation, on January 20, 2020, the National Health and Wellness Committee issued “The Announcement of the National Health and Wellness Committee of the People’s Republic of China No. 1 of 2020”³, which included pneumonia infected by novel coronavirus as a Class B infectious disease stipulated in “The Law of the People’s Republic of China on the Prevention and Control of Infectious Diseases”⁴, and took preventive and control measures for Class A infectious diseases. At the same time, pneumonia triggered by a novel coronavirus should be included in the quarantine infectious disease management as stipulated in “Frontier Health and Quarantine Law of the People’s Republic of China”⁵. Combined with “The provisions of the Supreme People’s Procuratorate and the Ministry of Public Security’s Provisions (I)”⁶ on the Prosecution Standards of Criminal Cases under the Jurisdiction of Public Security Organs in June 2008, the illegal and criminal acts during their prevention and control can be controlled according to the provisions of Art. 49, 50, and 51. On February 6, 2020, the Supreme People’s Court, the Supreme People’s Procuratorate, the Ministry of Public Security, and the Ministry of Justice jointly issued the “Opinions on Punishing Laws and Crimes Affecting the Prevention and Control of Pneumonia in novel coronavirus”⁷ (Opinions). On the basis of the above laws and regulations, illegal and criminal acts during the epidemic control period have been comprehensively stipulated, and the legal organizational structure of China during the prevention and control of COVID-19 epidemic have been further tightened.

2. Basic research

2.1. Current status of criminal acts involving epidemic situation

During the epidemic period, there have been many kinds of criminal acts involving the epidemic, and Opinions clearly stipulate nine kinds of crimes that hinder the prevention and control of the epidemic. To better aid its prevention and control, procuratorial organs conscientiously put down the important guiding spirit of General secretary Xi Jinping on prevention and control and decision-making arrangements of the CPC Central Committee, on adhering to the thought and method of rule of law, and on cracking down on the crime of prevention and control of the epidemic situation in strict accordance with the law. The Supreme People’s Procuratorate selected a sample with a large proportion of cases, many problems, and urgent practical needs, and then issued ten batches of “Typi-

² 《突发公共卫生事件应急条例》. 2003. Accessed March 12, 2021. http://www.gov.cn/gongbao/content/2003/content_62137.htm.

³ 《中华人民共和国国家卫生健康委员会公告2020年第1号》. 2020. Accessed March 12, 2021. <http://www.nhc.gov.cn/jkj/s7916/202001/44a3b8245e8049d2837a4f27529cd386.shtml>.

⁴ 《中华人民共和国传染病防治法》. 2013. Accessed March 12, 2021. <https://www.chinalaw.org.cn/portal/article/index/id/27585.html>.

⁵ 《中华人民共和国国境卫生检疫法》. 2018. Accessed March 12, 2021. http://www.chaoyang.jcy.gov.cn/art/2018/6/28/art_3078_12977.html.

⁶ 《关于公安机关管辖的刑事案件立案追诉标准的规定（一）》. 2008. Accessed March 12, 2021. <https://www.scxsls.com/knowledge/detail?id=15458>

⁷ 《关于依法惩治妨害新型冠状病毒感染肺炎疫情防控违法犯罪的意见》. 2020. Accessed March 12, 2021. <http://www.court.gov.cn/fabu-xiangqing-219321.html>.

cal Cases of National Procuratorial Organs Handling Crimes against the Prevention and Control of COVID-19 Epidemic Situation According to Law”⁸ (Typical Cases). These cases came mainly from local filings, special solicitations, and advocacy by members of the leading group of the highest prosecution for epidemic prevention and control, using cases found in daily work. They are typical in type and application of law, which clarifies and solves some outstanding problems of inconsistent understanding of applicable law in practice.

There are 55 cases in these ten batches of Typical Cases, involving many related crimes (Chart). Specifically, the first batch of Typical Cases was released on February 11, 2020, including ten cases covering a wide range that played a good first demonstration role during the epidemic. The crimes involved included: crimes of impairing the prevention and cure of epidemic diseases (Art. 330 of the Criminal Law of the People’s Republic of China, 1997⁹ (hereinafter CL)), crimes of interference with public function (Art. 277 CL), crimes of picking quarrels and provoking troubles (Art. 293 of the CL), crimes of fraud (Art. 266 of the CL), crimes of producing and selling fake and inferior products (Art. 140 of the CL), crimes of illegal business operation (Art. 225 of the CL), crimes of illegally hunting and killing precious and endangered wildlife (Art. 341 of the CL), and other crimes involving epidemics. The second batch of “Typical Cases” was released on February 19, 2020, including six cases involving such crimes as: impairing the prevention and cure of epidemic diseases, interference with public function, fraud, fabricating or deliberately spreading false information (Art. 291, paragraph 2 of the CL), illegally hunting and killing precious and endangered wildlife (Art. 341 of the CL), and picking quarrels and provoking troubles. The third batch of “Typical Cases” was published on February 26, 2020, including five cases focusing on the definition of the crime of impairing the prevention and cure of epidemic diseases and the crime of employing dangerous means to endanger public security. The crimes involved include: impairing the prevention and cure of epidemic diseases, interference with public function, and illegally acquiring and selling precious wild animals (Art. 341 of the CL). The fourth batch of “Typical Cases” was published on March 4, 2020, including six cases focusing on criminal cases that undermined the market order of epidemic prevention and control, and focusing on solving some difficult and complicated problems in legal policies for such cases as counterfeiting, selling fakes, and driving up prices. The crimes involved included: producing and selling fake and inferior products (Art. 145 of the CL), selling commodities bearing counterfeits registered trademarks (Art. 214 of the CL), and illegal business operations.

The fifth batch of “Typical Cases” was released on March 12, 2020, including five cases focusing on identifying fraud during the epidemic; fraud was the main crime. The sixth batch of typical cases was released on March 20, 2020, including five cases focusing on strictly prosecuting the criminal acts that hinder the resumption of work and production according to law, and creating a good legal environment to promote enterprises to operate in compliance with laws and regulations. Crimes involved included: fraud and other crimes involving epidemics. The seventh batch of “Typical Cases” was released

⁸ 《全国检察机关依法办理妨害新冠肺炎疫情防控犯罪典型案例》。2020。Accessed March 12, 2021. <https://www.spp.gov.cn>.

⁹ Hereinafter all Chinese legal acts and court decisions are given in accordance with “北大法宝”. Accessed March 12, 2021. <https://www.pkulaw.com/chl/39c1b78830b970eabdfb.html?keyword=%E5%88%91%E6%B3%95>.

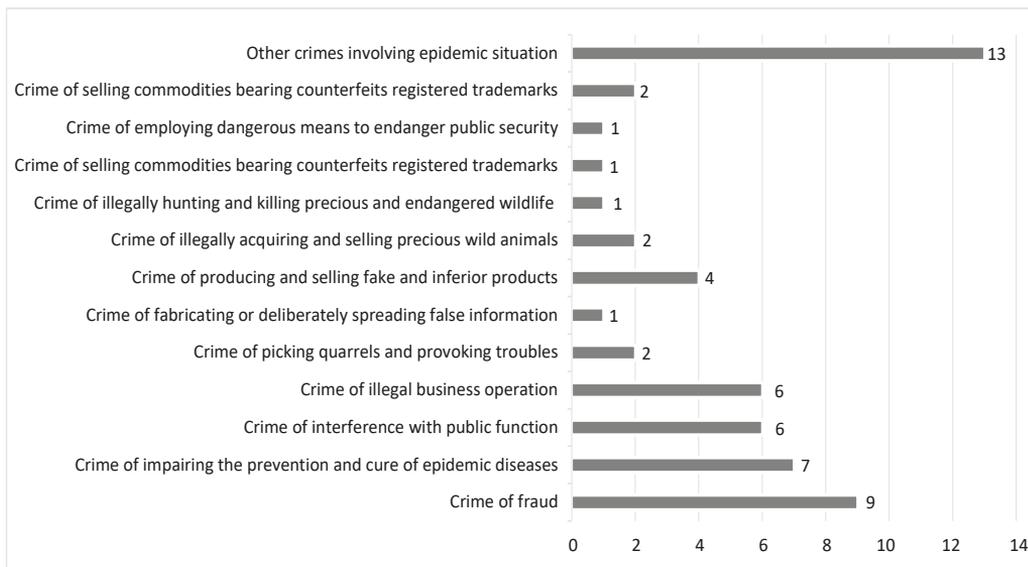


Chart. Number of cases related to epidemic crime (《全国检察机关依法办理妨害新冠肺炎疫情防控犯罪典型案例》). Accessed March 15, 2021. <http://www.court.gov.cn/fabu-xiangqing-219321.html>

on March 26, 2020, including four cases focusing on identifying illegal business crimes, such as raising prices and profiteering during the epidemic prevention and control period. Crimes involved were mainly illegal business operations. The eighth batch of Typical Cases was published on April 3, 2020, including three cases focusing on prosecuting criminal cases involving importing epidemic prevention and control. Crimes involved included impairing the prevention and cure of epidemic diseases and other crimes involving epidemics. The ninth batch of “Typical Cases” was released on April 9, including six cases focusing on severely punishing serious violent crimes according to law. Crimes involved included: picking quarrels and provoking troubles, willful and malicious injury (Art. 234 of the CL), and other crimes involving epidemics. The tenth batch of Typical Cases was published on April 17, 2020, including five cases focusing on criminal cases in which suspects or defendants pleaded guilty and repented, conscientiously implementing the criminal policy of tempering justice with mercy, giving full play to the institutional advantages of pleading guilty and accepting punishment leniently, promoting the restoration of normal order of production and life, and realizing the unification of political, legal and social effects of handling cases. The crimes involved included interference with public functions and other crimes involving the epidemic situation.

Among these ten typical cases, there are 21 cases of economic and property crime, 15 cases of crime against social management order, and six cases of crime against public safety. Based on Typical cases, this paper focuses on the analysis of these three most representative crimes.

2.2. Controversial issues related to COVID-19 epidemic crimes

2.2.1. Economic and property crimes

This kind of crime mainly involves: fraud, producing and selling fake and inferior products, illegal business operations, selling commodities bearing counterfeits of registered trademarks, and selling commodities bearing counterfeits of registered trademarks. This kind of criminal behavior is mainly manifested as follows: First, taking advantage of the epidemic situation, using charitable donations, selling masks and other epidemic protection articles as means, and defrauding money by various means, mainly through telecommunication networks during the epidemic. Second, the production and sale of fake and inferior epidemic prevention articles. Third, driving up prices, selling epidemic prevention articles or living goods at high prices, seriously and disrupting market order and affecting people's lives. Here, the author mainly expounds the controversial crimes of fraud, producing and selling fake and inferior products, producing and selling sub-standard medical equipment, and illegal business operation in judicial practice during the epidemic prevention and control period, and other related crimes are not repeated here.

2.2.1.1. The act of fraud

During the period of epidemic prevention and control, selling disposable masks for fraud is the most common behavior. For example, in the fraud case of Wu Moumou in Yangchun City, Guangdong Province¹⁰, Wu Moumou took advantage of customers' large demand for masks for the purpose of illegal possession, and fabricated the fact that he sold masks to defraud customers of large amounts of property. According to the "Opinions", during the epidemic prevention and control period, those who cheat public and private property in the name of developing, producing, or selling articles for epidemic prevention and control, or fabricate facts to cheat the public to donate a large amount of money and materials, shall be convicted and punished for fraud in accordance with the provisions of Art. 266 of the CL¹¹. During the situation of epidemic prevention and control measures, the relatively closed environment makes people in a relatively closed state most of the time, so most perpetrators commit fraud through the Internet. For fraud committed via a telecommunication network, the perpetrator will make false propaganda through the network, thus committing fraud. In 2016, the opinions of the Supreme People's Court, the Supreme People's Procuratorate, and the Ministry of Public Security on Several Issues Concerning the Application of Laws in Handling Criminal Cases, such as Telecommunication Network Fraud specifically¹², stipulated: "If the telecommunication network fraud

¹⁰ 《全国检察机关依法办理妨害新冠肺炎疫情防控犯罪典型案例(第五批)》。2020. Accessed March 15, 2021. https://www.spp.gov.cn/xwfbh/wsfbt/202003/t20200312_456264.shtml#1.

¹¹ Article 266: Whoever swindles public or private money or property, if the amount is relatively large, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also, or shall only, be fined; if the amount is large, or if there are other serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined; if the amount is especially large, or if there are other especially serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment and shall also be fined or be sentenced to confiscation of property, except as otherwise specifically provided in this Law.

¹² 《关于办理电信网络诈骗等刑事案件适用法律若干问题的意见》。2016. Accessed March 12, 2021. https://www.spp.gov.cn/zdgz/201612/t20161221_176278.shtml.

crime is implemented and the corresponding amount standard is reached, one of the following circumstances exists, as appropriate. Severely punished: 6. Fraudulent property of disabled people, the elderly, minors, students in school, people who have lost their ability to work, or fraudulent property of seriously ill patients and their relatives. 7. Fraudulent use of disaster relief, emergency rescue, flood control, special care, poverty alleviation, immigration, relief, and medical treatment”. Under the epidemic prevention and control, we should grasp the difference between the crime of fraud and the crime of false advertising in judicial determination.

2.2.1.2. The act of making and selling fake goods

During the period of epidemic prevention and control, this crime is mainly to make inferior masks, fake masks, and fake protective equipment to make large profits. For example, in the case of Fang Moumou selling fake and inferior products in Xianju County, Zhejiang Province¹³, Fang Moumou pretended to have a qualified product with a sales amount of more than 50 000 yuan. During the epidemic prevention and control period, if the production and sale of fake and inferior prevention and protection articles and materials met the provisions of Art. 140 of the CL¹⁴, he was convicted and punished for the crime of producing and selling fake and inferior products. In judicial practice, there are disputes about the cognizance of this crime, which mainly focusses on: First, the qualitative problem of “three noes” masks; second, fake and inferior products have not been sold or the sales amount is less than 50 000 yuan.

Ji Moumou, Yangzhou City, Jiangsu Province, was suspected of selling substandard medical equipment¹⁵. He subjectively knew that the masks had expired and did not meet national and industrial standards for protecting human health, and he sold them for large profits. According to the “Opinions”: During the epidemic period, those who produce medical equipment such as medical masks, goggles, and protective clothing that do not meet the national and industrial standards for protecting human health, or sell medical equipment that is known to be substandard, which is enough to seriously endanger human health, shall be convicted and punished according to Art. 145 of

¹³ 《全国检察机关依法办理妨害新冠肺炎疫情防控犯罪典型案例（第四批）》。2020。Accessed March 23, 2021. https://www.spp.gov.cn/xwfbh/wsfbt/202003/t20200304_455675.shtml#1.

¹⁴ Article 140: Any producer or seller who mixes impurities into or adulterates the products, or passes a fake product off as a genuine one, a defective product as a high-quality one, or a substandard product as a standard one, if the amount of earnings from sales is more than 50 000 yuan but less than 200 000 yuan, shall be sentenced to fixed-term imprisonment of not more than two years or criminal detention and shall also, or shall only, be fined not less than half but not more than two times the amount of earnings from sales; if the amount of earnings from sales is more than 200 000 yuan but less than 500 000 yuan, he shall be sentenced to fixed-term imprisonment of not less than two years but not more than seven years and shall also be fined not less than half but not more than two times the amount of earnings from sales; if the amount of earnings from sales is more than 500 000 yuan but less than 2 000 000 yuan, he shall be sentenced to fixed-term imprisonment of not less than seven years and shall also be fined not less than half but not more than two times the amount of earnings from sales; if the amount of earnings from sales more than 2 000 000 yuan, he shall be sentenced to fixed-term imprisonment of 15 years or life imprisonment, and shall also be fined not less than half but not more than two times the amount of earnings from sales or be sentenced to confiscation of property.

¹⁵ 《全国检察机关依法办理妨害新冠肺炎疫情防控犯罪典型案例（第四批）》。2020。Accessed March 23, 2021. https://www.spp.gov.cn/xwfbh/wsfbt/202003/t20200304_455675.shtml#1.

the CL¹⁶. The controversial focus of this crime in judicial practice lies, first, in whether the disposable medical mask is medical equipment, and second, how to identify “enough to seriously endanger human health”.

2.2.1.3. The behavior of driving up prices and selling epidemic prevention articles or articles for daily use at high prices

For the illegal business case of Cao Moumou in Shandong Province¹⁷, Cao was driving up prices and making huge profits during the epidemic. According to Art. 225 of the CL and the “Opinions”: During the epidemic prevention and control period, in violation of the relevant state regulations on market operation and price management, hoarding and raising the price of masks, goggles, protective clothing, disinfectants, and other protective equipment, medicines, or other items related to people’s livelihood, profiteering, illegal income is large or there are other serious circumstances, seriously disrupting market order, in accordance with Art. 225 of the CL. We should pay heed to the following problems in the judicial practice: the identification of “price gouging”; the cognizance of “a large amount of illegal income” in the crime of driving up prices; and the identification of “other serious circumstances”.

2.2.2. Criminal acts that hinder the order of social management

This kind of crime mainly involves: interference with public functions, picking quarrels and provoking troubles, fabricating or deliberately spreading false information, illegally hunting and killing precious and endangered wildlife, and illegally acquiring and selling precious wild animals. The main manifestations of this kind of crime during the epidemic are as follows: First, refusing to accept prevention and control measures, so using violence or threatening to implement epidemic prevention and control staff, destroying epidemic prevention and control equipment, or using violence to beat epidemic prevention medical personnel. Secondly, fabricating false information related to epidemic situation or terror information related to it, spreading rumors and spreading rumors, and disturbing social order. The author mainly expounds the controversial crime of fabricating, deliberately spreading false information, picking quarrels and provoking trouble, and obstructing official duties in judicial determination. Other related crimes are not repeated here.

¹⁶ Article 140: Whoever produces medical apparatus and instruments or medical hygiene materials that are not up to the national or trade standards for safe guarding human health or sells such things while clearly knowing the fact, thereby causing serious harm to human health, shall be sentenced to fixed-term imprisonment of not more than five years and shall also be fined not less than half, but not more than two times, the amount of earnings from sales; if the consequences are especially serious, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years and shall also be fined not less than half but not more than two times the amount of earnings from sales; if the circumstances are especially flagrant, he shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment, and shall also be fined not less than half but not more than two times the amount of earnings from sales or be sentenced to confiscation of property.

¹⁷ 《全国检察机关依法办理妨害新冠肺炎疫情防控犯罪典型案例（第七批）》。2020. Accessed April 5, 2020. https://www.spp.gov.cn/spp/xwfbh/wsfbt/202003/t20200326_457369.shtml#1.

2.2.2.1. The act of fabricating false information, creating rumors, and spreading rumors.

Zhao Moumou in Anshan City, Liaoning Province was suspected of fabricating and deliberately spreading false information¹⁸. Zhao Moumou fabricated false epidemic information subjectively and objectively to satisfy vanity, which caused people to panic and seriously disrupted the social order. According to the “Opinions”: During the period of epidemic prevention and control, if false epidemic information is fabricated and spread on information network or other media, or if it is knowingly spread on information network or other media that seriously disturbs social order, the crime of fabricating or deliberately spreading false information shall be convicted and punished, according to the second paragraph of Art. 291-1 of the CL¹⁹. Therefore, Zhao Moumou constitutes the crime of fabricating and deliberately spreading false information. Here we need to reflect on whether Zhao Moumou’s behavior also constitutes the crime of picking quarrels and provoking trouble. How should we seize the relationship between these two charges in judicial practice?

2.2.2.2. Acts that obstruct official duties

In the case of Wang Moumou’s obstruction of official duties in Renshou County, Sichuan Province²⁰, the defendant Wang objectively refused to move his car and did not cooperate with epidemic prevention work, and then took advantage of Liao Moumou’s unprepared fist to hit his face, causing his facial soft tissue contusion. Liao Moumou and others came forward to stop Wang Moumou and hold him down. Wang still scratched Liao Moumou’s face with his hands and scratched several blood marks on his face. Wang Moumou is subjectively intentional. According to the “Opinions”, those who obstruct the staff of state organs from carrying out the measures of epidemic prevention, quarantine, compulsory isolation, isolation, and treatment in accordance with the law by means of violence or threat shall be convicted and punished for the crime of obstructing official duties in accordance with the provisions of the first and third paragraphs of Art. 277 of the CL²¹. Those who violently attack people’s policemen who are performing their duties

¹⁸ 《全国检察机关依法办理妨害新冠肺炎疫情防控犯罪典型案例（第二批）》。2020。Accessed March 25, 2021. https://www.spp.gov.cn/spp/xwfbh/wsfbh/202002/t20200219_454775.shtml.

¹⁹ Paragraph 2 of Article 291-1: Whoever fabricates false dangerous situations, epidemics, disasters and warnings and spreads them on information networks or other media, or knowingly spreads them on information networks or other media, thus seriously disturbing social order, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance; Those who cause serious consequences shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years.

²⁰ 《全国检察机关依法办理妨害新冠肺炎疫情防控犯罪典型案例（第二批）》。2020。Accessed March 25, 2021. https://www.spp.gov.cn/spp/xwfbh/wsfbh/202002/t20200219_454775.shtml.

²¹ Article 277, paragraphs 1 and 3:

Whoever by means of violence or threat, obstructs a functionary of a State organ from carrying out his functions according to a law shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, or public surveillance or be fined.

Persons who prevent members of the National People’s Congress or local people’s assemblies at various levels from performing their functions in accordance with the law through violence or threats are punished in accordance with the provisions of the previous paragraph. Intentional obstruction of State security bodies or public security bodies in the performance of State security tasks in accordance with the law and non-use

according to law shall be convicted of the crime of obstructing official duties and shall be given a heavier punishment. To identify this crime in judicial practice, it is necessary to accurately grasp the definition of the object of the crime of obstructing public service in the Opinions, that is, the scope of public servants.

2.2.3. Criminal acts endangering public safety

The crime involved in such acts is mainly employing dangerous means to endanger public security (Art. 114 and 115 of the CL) and impairing the prevention and cure of epidemic diseases. This kind of criminal behavior is mainly manifested as follows: First, COVID-19 patients and pathogen carriers who have been diagnosed refuse isolation treatment or leave isolation treatment without authorization before the expiration of the isolation period, and enter public places or public transport. Suspected patients in COVID-19 refuse isolation treatment or leave isolation treatment without authorization before the expiration of the isolation period, and enter public places or public transport, resulting in the behavior spread in novel coronavirus. Second, refusing to implement. Prevention and control measures of health and epidemic prevention institutions, causing the spread of COVID-19 or the dangerous behavior of spreading.

In the case of Sun Moumou suspected of interfering with the prevention and treatment of infectious diseases in Nanchong City, Sichuan Province²², the doctor suspected that Sun Moumou was suspected of being “infected with a novel coronavirus” and asked him to be treated in isolation. Sun Moumou did not listen to dissuasion and quietly fled the hospital, and returned to Ji-an Town by bus, where many people came into contact. On January 23, 2020, the staff forced Sun Moumou to be isolated for treatment. After being diagnosed and treated in isolation, he still concealed the real itinerary and activity track, which led to the disease control department for failing to carry out prevention and control work in time, and a large number of contact personnel have not been recovered. On February 5, 2020, Jialing Branch of Nanchong Public Security Bureau filed a case investigation on Sun Moumou’s suspicion of “Obstructing the prevention and treatment of infectious diseases”. The author thinks this conclusion is questionable. In this case, should Sun Moumou be convicted and sanctioned by the crime of endangering public safety by dangerous methods? How should these two charges be explicitly identified? How to understand the distinction between two charges?

2.3. Judicial response to criminal acts involving COVID-19 epidemic

2.3.1. Economic and property crimes

2.3.1.1. The difference between the crime of fraud and the crime of false advertising

In the period of epidemic prevention and control, in violation of laws and regulations, many people deceive others by using advertisements to exaggerate or falsely pub-

of methods of violence or threats that have entailed serious consequences are punishable in accordance with the provisions of paragraph 1.

²² 《全国检察机关依法办理妨害新冠肺炎疫情防控犯罪典型案例(第一批)》. 2020. Accessed January 13, 2021. https://www.spp.gov.cn/xwfbh/wsfbt/202002/t20200211_454256.shtml#2.

licize products they sell, and the amount of illegal income is large or there are other serious circumstances. They are convicted and punished for crimes of false advertisement (Art. 222 of the CL). In the context of epidemic prevention and control, the author thinks that the distinction between false advertising crime and fraud crime should be grasped from aspects of the crime subject and crime subjective: The first and the second crime have different subjects. The subject of the crime of false advertising is a unique subject, which can only be made by advertisers, advertising operators, and advertisement publishers. The subject of fraud is the universal subject, and the unit does not constitute this crime. Second, the subjective aspects are different. The crime of fraud is committed for the purpose of illegal possession of public and private property, which is subjectively manifested as direct intention; the subjective aspect of the crime of false advertising can be expressed as direct intention or indirect intention according to different subjects (Li Li 2012, 18).

2.3.1.2. The act of making and selling fake goods

2.3.1.2.1. Qualitative analysis of “three noes” Masks

On March 4, 2020, the “Legal Essentials” of the fourth batch of “Typical Cases” responded to the qualitative question of “Three noes” masks: “‘Three noes’ masks refer to masks without production enterprises, production licenses, registration numbers, production dates and batch numbers, which can generally be identified as fake and inferior products in combination with quality inspection. If the actor claims to be a ‘medical mask’ and makes people mistakenly believe that it is a ‘medical mask’ for sale through imitation certification materials, packaging, logos, etc., or if the purchaser explicitly purchases a ‘medical mask’ and the actor defaults, it is appropriate to identify fake and inferior medical equipment”²³.

2.3.1.2.2. Fake and inferior products have not been sold or the sales amount is less than 50 000 yuan

After being identified as “three noes” masks, it involves the sale of fake and inferior masks, which can be punished according to Art. 149 of the CL²⁴. The status of sales amount in this crime has been controversial in academic circles, and there are mainly the following different views: objective punishment conditions, accomplished standards, constitutive elements and so on. Scholars who support taking the sales amount as an objective penalty condition believe that the sales amount has nothing to do with the crime constitution, but the right to launch the penalty, and the right to launch the penalty can only be started with the sales amount (Wang Zhixiang 2007, 44). Scholars who support taking the sales amount as the accomplished standard of this crime believe that the sales amount is one of the constitutive requirements of the crime and the standard for the completion of the crime; Scholars who support taking the sales amount as a constitutive element of

²³ 《全国检察机关依法办理妨害新冠肺炎疫情防控犯罪典型案例（第四批）》。2020。Accessed March 23, 2021. https://www.spp.gov.cn/xwfbh/wsfbt/202003/t20200304_455675.shtml#1.

²⁴ Article 149: Whoever produces or sells products listed in Articles 141 through 148 of this Section, if the case does not constitute the crime as mentioned in these Articles respectively but more than 50 000 yuan is earned from sales, shall be convicted and punished in accordance with the provisions of Art. 140 of this Section.

crime think that the sales amount is a constitutive element of crime. When the conditions of sales amount are met, it does not represent the completion of crime, but the establishment of crime. Sales amount is the establishment condition of crime of producing and selling fake and inferior products (Shan Min, Li Yingying 2009, 55). Among the controversial viewpoints mentioned above, the author thinks that it is more in favor of taking the sales amount as an essential element, that is, taking the sales amount as the establishment condition of the crime of producing and selling fake and inferior products. Therefore, if the fake and inferior products are not sold or the sales amount is less than 50 000 yuan, it does not constitute the crime of producing and selling fake and inferior products.

The “Legal Essentials” of the fourth batch of “Typical Cases” issued by the Supreme People’s Procuratorate points out that if fake and inferior products have not been sold or the sales amount is less than 50 000 yuan, according to the Provisions of the Supreme People’s Procuratorate and the Ministry of Public Security on “The Prosecution Standards for Criminal Cases under the Jurisdiction of Public Security Organs (I)”²⁵ and the Supreme People’s Court and the Supreme People’s Procuratorate’s “Interpretation of Several Issues Concerning the Specific Application of Laws in Handling Criminal Cases of Producing and Selling Fake and Inferior Commodities”²⁶: If the sum of the sold amount multiplied by three times and the total value of the fake and shoddy products not sold is more than 150 000 yuan, a case shall be filed for prosecution. Those who sell at a high price or make exorbitant profits, have a large amount of illegal income, or have other serious circumstances that seriously disrupt the market order may also be punished for the crime of illegal business operation²⁷.

2.3.1.2.3. Disposable medical mask medical equipment

During the epidemic period, if the crime of producing and selling substandard disposable masks is to be incriminated, we must first decide whether disposable masks are medical devices. Article 145 of the CL²⁸ stipulates that criminal objects of this crime are medical devices and medical materials. As for medical devices, according to Art. 6 of “The Regulations on the Supervision and Administration of Medical Devices”²⁹, Art. 8 and 9 of

²⁵ 《关于公安机关管辖的刑事案件立案追诉标准的规定（一）》。2008 Accessed March 12, 2021. <https://www.scxsls.com/knowledge/detail?id=15458>.

²⁶ 《关于办理生产、销售伪劣商品刑事案件具体应用法律若干问题的解释》。2001. Accessed March 12, 2021. <https://law.lawtime.cn/d663492668586.html>.

²⁷ 《全国检察机关依法办理妨害新冠肺炎疫情防控犯罪典型案例（第四批）》。2020. Accessed March 23, 2021. https://www.spp.gov.cn/xwfbh/wsfbt/202003/t20200304_455675.shtml#1.

²⁸ Article 145: Whoever produces medical apparatus and instruments or medical hygiene materials that are not up to the national or trade standards for safe guarding human health or sells such things while clearly knowing the fact, thereby causing serious harm to human health, shall be sentenced to fixed-term imprisonment of not more than five years and shall also be fined not less than half but not more than two times the amount of earnings from sales; if the consequences are especially serious, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years and shall also be fined not less than half but not more than two times the amount of earnings from sales; if the circumstances are especially flagrant, he shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment, and shall also be fined not less than half but not more than two times the amount of earnings from sales or be sentenced to confiscation of property.

²⁹ 《医疗器械监督管理条例》。2021. Accessed March 25, 2021. <https://www.nmpa.gov.cn/xxgk/fgwj/flxzhfg/20210319202057136.html>.

“The Rules for the Classification of Medical Devices”³⁰ and the “Notice on Regulating the Work Related to the Classification of Medical Devices”³¹ issued by China Food and Drug Administration, medical devices in China are divided into three categories, according to the degree of risk from low to high. The Chinese Food and Drug Administration Medical Device Standards Management Center (“Standard Management Center”) is responsible for establishing and maintaining “The Catalogue of Medical Devices Classification”³². However, “Classification Catalogue of Medical Devices” is not the only reference for the scope of criminal objects of this crime, and it needs to be constantly updated by the Standards Control Center with the development and changes of the time. In November, 2019, “Summary of the results of the classification and definition of the second batch of medical device products in 2019”³³ published by China Food & Drug Network, it was clearly stated that disposable medical masks should be managed as class II medical devices. At the same time, in practice, China’s medical device supervision and management department has always managed the primary medical masks according to medical devices. In 2014, the former China Food and Drug Administration issued the Guiding Principles for Technical Examination of Medical Mask Product Registration³⁴, which also clarified that medical protective masks, medical surgical masks and ordinary medical masks (disposable medical masks) are managed according to Class II medical devices. This guiding principle is valid so far, and it is used to guide the provincial medical device regulatory agencies to standardize the technical review of medical mask products (Ma Xun et al. 2020). Therefore, it can be concluded that disposable masks belong to medical devices.

2.3.1.2.4. Identification of “enough to seriously endanger human health”

Article 145 of the CL requires the degree of “serious harm to human health”, which indicates that the crime is a dangerous crime. On March 24, 2020, the director of the Research Office of the Supreme People’s Court and the Supreme People’s Procuratorate once again answered the reporter’s question on criminal justice in epidemic prevention and control. It was obvious that the identification of “enough to seriously endanger human health” should be comprehensively judged, and should not only look at one point. Not as good as the rest. Otherwise the scope of application of this crime will be improperly expanded. Only when fake medical masks are sold to medical institutions and used by medical personnel can they be considered as “enough to seriously endanger human health”; if it is sold to non-epidemic-prone areas for people’s daily use, it should not be identified as the above situation. If it meets the constitutive requirements of other charges, it shall be determined by extra charges³⁵.

³⁰ 《医疗器械分类规则》. 2015. Accessed March 25, 2021. <https://www.nmpa.gov.cn/directory/web/nmpa/xxgk/fgwj/bmgzh/20150714120001554.html>.

³¹ 《关于规范医疗器械产品分类有关工作的通知》. 2017. Accessed March 25, 2021. <https://www.nmpa.gov.cn/directory/web/nmpa/xxgk/fgwj/gzwj/gzwjylqx/20170926173301389.html>.

³² 《医疗器械分类目录》. 2017. Accessed March 25, 2021. <https://www.nmpa.gov.cn/wwwroot/gyx02302/sm.htm>.

³³ 《2019年第二批医疗器械产品分类界定结果汇总》. 2019. Accessed March 25, 2021. <http://www.cnpharm.com/c/2019-11-25/690144.shtml>.

³⁴ 《医用口罩产品注册技术审查指导原则》. 2014. Accessed March 25, 2021. <https://www.nmpa.gov.cn/directory/web/nmpa/ylqx/ylqxggg/ylqxqgg/20140520120001426.html>.

³⁵ 《依法惩治妨害疫情防控犯罪 切实保障人民群众生命健康安全——最高人民法院研究室主任姜启波、最高人民检察院法律政策研究室主任高景峰联合答记者问（二）》. 2020. Accessed January 24, 2021. <http://news.cri.cn/20200324/a779318e-4f16-d312-8f49-ecca5dab3c60.html>.

2.3.1.3. The behavior of driving up prices and selling epidemic prevention articles or articles for daily use at high prices

2.3.1.3.1. The identification of “driving up prices”

According to the “Opinions”, price gouging refers to behavior of hoarding, driving up the price of protective articles such as masks, goggles, protective clothing, disinfectant, medicines, or other items related to people’s livelihood, which are urgently needed for epidemic prevention and control, and making huge profits during the epidemic prevention and control period. During the epidemic period, the behavior of “driving up prices” is mainly to raise prices, that is, if business operators take advantage of the shortage of protective articles or daily necessities needed for epidemic prevention and control, and after deducting production and operation costs and normal profits, they will greatly increase the prices of products for external sales, which should be regarded as “driving up prices and profiteering”. The cognizance of the behavior of driving up prices should be combined with the subjective viciousness of the actor, harmful results, actual operating conditions and other factors.

2.3.1.3.2. Identification of “relatively large amount of illegal income” in the crime of illegal business operation

In the Opinions, a “relatively large amount of illegal income” is one of the most incriminating conditions. During the epidemic prevention and control period, the identification of this standard becomes the key to incriminate. According to “the Research Opinions of the Research Office of the Supreme People’s Court on the Identification of ‘Illegal Income’ in the Crime of Illegal Business Operation”³⁶ in 2013, “illegal income” in the crime of illegal business operation should refer to the profit amount, that is, the total income (illegal business amount) obtained by the actor from illegally producing and selling goods or providing services, and the remaining amount after deducting the reasonable expenses directly used for business activities. There is no clear regulation of the amount of illegal income caused by price gouging during the epidemic. The crime of illegal business operation caused by price gouging is different from unlawful income caused by general illegal business operations. The price after gouging includes three parts: purchase price (cost), legal profit, and illegal profit beyond legal profit. If the method of calculating illegal income caused by general illegal business operations is unreasonable (Gao Na, Feng Rui 2020), according to the general public’s cognition, it should not be regarded as the profit amount, but should be the sales amount after deducting the cost and the legal profit obtained according to reasonable market price. The author thinks that identifying a large amount of illegal income can be determined according to “filing standards of illegal business crimes stipulated in Provisions on Prosecution Standards of Criminal Cases under the Jurisdiction of Public Security Organs (II)”³⁷ by the Supreme People’s Procuratorate and the Ministry of Public Security, that is, “the amount of illegal business operations by

³⁶ 《最高人民法院研究室关于非法经营罪中“违法所得”认定问题的研究意见》。2013. Accessed February 4, 2021. <http://ytzy.sdcourt.gov.cn/ytzy/spyw83/dxalws25/6207671/index.html>.

³⁷ 《关于公安机关管辖的刑事案件立案追诉标准的规定（二）》。2012. Accessed March 15, 2021. <https://baike.so.com/doc/8734631-9057580.html>.

individuals is more than 50 000 yuan, or the illegal income is more than 10 000 yuan”, and “the amount of illegal business operations by units is more than 500 000 yuan, or the amount of illegal income is more than 100 000 yuan”. In practice, local judicial organs can also grasp this standard according to local economic development level.

2.3.1.3.3. Identification of “other serious circumstances”

The author thinks that “other serious circumstances” in the behavior of driving up prices should be interpreted in the same way, which refers to behavior with the same nature as hoarding and driving up the prices of protective articles such as masks, goggles, protective clothing, disinfectant, medicines, or other items related to people’s livelihood.

2.3.2. *Criminal acts that hinder the order of social management*

2.3.2.1. Behavior of deliberately spreading fabricated and false information and trouble-seeking behavior

2.3.2.1.1. “Internet rumor-type” crime of seeking trouble

During the epidemic, the perpetrator fabricated false information related to the epidemic and spread it via the Internet, causing panic among citizens and disrupting social order, which is a “network rumor-type” crime of picking quarrels and provoking trouble. “Internet rumor-type” crime of provoking trouble is not a new crime, but a general expression based on the particularity of crime implementation space and behavior mode. It mainly refers to the behavior of fabricating and spreading false information in the information network, causing serious disorder of public order, which has a particular form of the traditional “instigating trouble-type” crime of provoking trouble (Zhang Peng 2020, 4). The behavior means of the online rumor-based crime of picking quarrels and provoking trouble is to fabricate false information about walking, and the behavior place is cyberspace. On September 6, 2013, the Supreme People’s Court and the Supreme People’s Procuratorate issued “The Interpretation on Several Issues Concerning the Application of Laws in Handling Criminal Cases such as defamation by using Information Network”³⁸, which also stipulated in Art. 5 that “Whoever fabricates false information or knowingly fabricates false information and spreads it on the information network, or organizes or instructs personnel to spread it on the information network, causing disturbances and causing serious public disorder, shall be convicted and punished for the crime of picking quarrels and provoking trouble”. There is a competing relationship between the crime of fabricating and deliberately spreading false information and the crime of picking quarrels and provoking trouble. If the actor has the intention and behavior of provoking trouble and disturbing social order, which is not limited to spreading false information but using information network to stir up trouble, it can be regarded as the crime of picking quarrels and provoking troubles according to the principle of subjective and objective consistency.

³⁸ 《关于办理利用信息网络实施诽谤等刑事案件适用法律若干问题的解释》。2013。Accessed March 15, 2021. <http://www.court.gov.cn/shenpan-xiangqing-5913.html>.

2.3.2.1.2. The difference between the “Internet rumor-based” crime of picking quarrels and provoking troubles and the crime of fabricating or deliberately spreading false information

It is of great significance for the correct application of the two crimes to clarify the main differences between the “network rumor-type” crime of picking quarrels and provoking trouble, and the crime of fabricating or deliberately spreading false information. First, the scope of false information is different, which is the main difference between the two crimes. The crime of fabricating and deliberately spreading false information only regulates false danger, epidemic situation, disaster situations, and alarm situations, and some scholars think that false information in this crime should be restricted and interpreted, and false information should be fundamentally false. If information disseminated by the perpetrator is basically true on the whole, only some cases are untrue, it cannot be considered that the perpetrator fabricated and disseminated “false information” (Huang Huasheng, Li Wenji 2015, 336). “Internet rumor type” crime of picking quarrels and provoking trouble does not limit the content of false information. Second, there are differences in behavior places. The behavior place of “Internet rumor” crime of picking quarrels and provoking trouble is limited to “information networks”, while the behavior place of fabricating and deliberately spreading false information includes “information networks” and “other media”, and the latter is obviously larger than the former in scope of application. Finally, the criminal result is different. “Internet rumor-type” crimes of picking quarrels and provoking trouble results in “serious disorder of public order”, while the crime of fabricating and deliberately spreading falsehood results in “serious disruption of the social order”. The object of the crime of picking quarrels and provoking trouble is shared public order, and whether public order includes network order has always been controversial. Cyberspace order refers to the normal and orderly use of the network for social activities, which are the reappearance of the real public order in cyberspace (Zhang Peng 2020, 23). As Professor Qu Xinjiu said, modern society has entered the information society, so it is acceptable to explain the concept of “public place” in line with the changes in the information society (Qu Xinjiu 2013). With the rapid development of the Internet, people’s lives are closely related to the Internet, and the gap between cyberspace and the real society is constantly narrowing. Stability of network order is also an indispensable part of the stability of public order (Xu Juan 2013). Therefore, during the prevention and control of a novel coronavirus epidemic, the management of network order should not be underestimated, and the behavior of using an information network to cause chaos of real social order and public panic must be strictly regulated by criminal law. In the above case, Zhao Moumou spread false epidemic information in the WeChat circle of friends, subjectively to satisfy vanity and expand his network influence. The author believes that he has no intention of provoking trouble or disturbing social order subjectively. Therefore, depending upon the principle of consistency between subjective and objective, there is no competition between the crime of fabricating and deliberately spreading false information and the crime of provoking trouble. Zhao Moumou only constitutes the crime of fabricating and deliberately spreading false information.

2.3.2.2. Definition of the object of the crime of interference with public functions

The crime of obstructing public service protects the normal order of public servants in performing their duties, so it is particularly important to identify the scope of municipal servants. In the context of epidemic prevention and control, all parts of the country have adopted closed management, and relevant prevention and control measures such as entry and exit registration and temperature measurement have been taken at all entrances and exits. Many pertinent staff members are involved in these prevention and control measures, and some of these staff members are not public servants. So at this time, how to define the criminal object of the crime of obstructing official duties?

Article 277 of the CL³⁹ stipulates that the object of this crime is the staff of state organs, specifically including staff of state organs, representatives of the National People's Congress and local people's congresses at various levels, staff of the Red Cross, staff of state security organs and public security organs, etc. Article 93 of the CL stipulates that "State functionaries referred to in this Law refer to those who are engaged in official duties in state organs. Personnel engaged in official duties in state-owned companies, enterprises, institutions and people's organizations, and personnel appointed by state organs, state-owned companies, enterprises and institutions to engage in official duties in non-state-owned companies, enterprises, institutions and social organizations, as well as other personnel engaged in official duties in accordance with the law". The presentation of "New Public Service Theory" (Li Xihui 2007, 608) makes the essence of state functionaries clearer, that is, state functionaries are those who have obtained specific qualifications, have specific functions and powers, and are engaged in state management in the name of their duties and have certain responsibilities. During the period of epidemic prevention and control, the essence of public servants is more focused on performing their duties according to law, and the behavior of performing their duties has certain particularity. Acts that interfere with the implementation of measures closely related to epidemic prevention, quarantine, compulsory isolation, isolation treatment, etc, shall be deemed as acts that interfere with public service. The public servants specified in the "Opinions" include civil servants authorized by the state, civil servants entrusted, and those who are involved in epidemic prevention and control without preparation. Therefore, personnel who assist in epidemic prevention and control also belong to the staff of state organs. The staff of village committees, neighborhood committees, or community gates who are also engaged in epidemic prevention and control work according to the authorization or entrusting of

³⁹ Article 277:

Whoever by means of violence or threat, obstructs a functionary of a State organ from carrying out his functions according to a law shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, or public surveillance or be fined.

Whoever, by violence or threat, obstructs a deputy to the National People's Congress or a local people's congress at any level from performing his deputy's functions according to law shall be punished in accordance with the provisions of the preceding paragraph.

Whoever during natural calamities or emergencies obstructs, by means of violence or threat, the workers of the Red Cross Society from performing their functions and duties according to law shall be punished in accordance with the provisions of the first paragraph.

Whoever intentionally obstructs officers of a State security organ or a public security organ from maintaining State security in accordance with law and causes serious consequences, though without resort to violence or threat, shall be punished in accordance with the provisions of the first paragraph.

higher authorities are also staff members of state organs. However, if they are volunteers who spontaneously organize to maintain epidemic prevention and control work, or if they have implemented epidemic prevention and control measures beyond the entrusted scope despite the authorization of higher authorities, they are not staff members of state organs. At this time, the offender's nuisance behavior does not represent the crime of obstructing official duties, but may constitute the crime of picking quarrels and provoking troubles or the crime of willful and malicious injury.

2.3.3. Criminal acts endangering public safety

For the crime endangering public safety, the main crimes involved are employing dangerous means to endanger public security and impairing the prevention and cure of epidemic diseases. The following mainly expounds the judicial determination of the two charges, that is, the difference between the two charges.

2.3.3.1. Judicial determination of the crime of employing dangerous means to endanger public security

On February 27, 2020, Jiang Qibo, director of the Research Office of the Supreme People's Court, and Gao Jingfeng, director of the Legal Policy Research Office of the Supreme People's Procuratorate, jointly answered a reporter's question⁴⁰, clearly stating that in practice, the crime of endangering public safety by dangerous methods should be strictly grasped according to law. Only when the following three situations are met can the crime of employing dangerous means to endanger public security be applied: COVID-19 patients and pathogen carriers who have been diagnosed refuse isolation treatment or leave isolation treatment without authorization before the isolation period expires, and enter public places or public transport, suspected patients in COVID-19 refuse isolation treatment or leave isolation treatment without authorization before the expiration of the isolation period, and enter public places or public transport, resulting in the spread of novel coronavirus, knowing that he has been diagnosed as a COVID-19 patient or a suspected patient, he maliciously spreads the virus to an unspecified majority out of subjective intentions such as revenge against society, with serious consequences and bad circumstances. Under the COVID-19 epidemic, the following points should be grasped in the judicial determination of the crime of employing dangerous means to endanger public security: First, the definition of the subject of crime. Second, identification of confirming patients and suspected patients. Third, the definition of the subjective aspect.

2.3.3.1.1. The definition of the subject of crime

The subject of the crime of employing dangerous means to endanger public security is a general subject or a natural person. The Criminal Law of the People's Republic of China does not make other provision on the criminal subject of this crime. Therefore, the criminal subject of this crime needs to be at least 16 years old and a natural person with criminal re-

⁴⁰ 《依法惩治妨害疫情防控犯罪 切实保障人民群众生命健康安全——最高人民法院研究室主任姜启波、最高人民检察院法律政策研究室主任高景峰联合答记者问（二）》。2020. Accessed January 17, 2021. https://www.spp.gov.cn/xwfbh/wsfbt/202002/t20200227_455391.shtml.

sponsibility, and the unit does not belong to the subject of this crime (Zhang Kai 2020, 9). In the “Opinions”, there are two types of subjects of the crime of employing dangerous means to endanger public security, namely, confirmed patients and suspected patients. For the former, if you want to be guilty, you must have three conditions at the same time: First, it is a confirmed patient. Second, it implemented one of the two behaviors of refusing isolation treatment or leaving isolation treatment without authorization before the expiration of isolation period. Third, it has entered public places or public transport. For the former subject, both dangerous offenders and consequential offenders are punished; For the latter subject, there must be four conditions for conviction: First, “suspected patient”. Second, it implemented one of the two behaviors of refusing isolation treatment or leaving isolation treatment without authorization before the expiration of isolation period. Third, it has entered public places or public transport. Fourthly, the above-mentioned behavior of the actor caused the consequences of the spread in COVID-19. It can also be seen that only the consequential offender is punished for the “suspected patient”.

2.3.3.1.2. Identification of confirming and suspected patients

Article 78 of The Law on the Prevention and Control of Infectious Diseases⁴¹ clearly stipulates: “Infectious disease patients and suspected infectious disease patients refer to those who meet the diagnostic criteria for infectious disease patients and suspected infectious disease patients according to The diagnostic criteria for infectious diseases regulated by the Law of the People’s Republic of China on Prevention and Control of Infectious Diseases⁴² issued by the health administrative department under the State Council”. Although there is no clear stipulation of the Opinions on the criteria for diagnosis, professional judgment should be made according to the diagnostic criteria of COVID-19. No one may arbitrarily identify others as “confirmed patients” or “suspected patients” before being diagnosed by a professional doctor.

2.3.3.1.3. The definition of subjective aspect

It can be seen from the provision of the Opinions that this crime must be subjectively intentional. In the context of the widespread anti-epidemic of the whole people, every citizen can subjectively realize that the COVID-19 virus is extremely contagious. Whether it is a “confirmed patient” or a “suspected patient”, it can be subjectively determined as intentional if he refuses isolation treatment or leaves isolation treatment without authorization before the isolation period expires and enters public places or public transport. In practice, most of the actors are indirectly intentional and have a laissez-faire attitude towards the spread of viruses. However, if the actor doesn’t know whether he is infected with the virus or not, and entering public places causes many people to be infected, the actor can be regarded as negligent because he subjectively has no intention of the occurrence of harmful results or even does not want the occurrence of harmful results. At this time, it does not represent this crime.

⁴¹ 《中华人民共和国传染病防治法》. 2004. Accessed March 25, 2021. <https://baike.so.com/doc/5412518-5650655.html>.

⁴² 《中华人民共和国传染病防治法规定管理的传染病诊断标准》. 1990. Accessed March 25, 2021. http://www.law-lib.com/law/law_view1.asp?id=6827.

2.3.3.2. Judicial determination of the crime of impairing the prevention and cure of epidemic diseases

In the judicial determination of the crime of preventing and treating infectious diseases, there are mainly the following controversies: First, the interpretation of the objective element of the crime of impairing the prevention and cure of epidemic diseases, “Class A infectious diseases”. Second, the intentional crime of obstructing the prevention and treatment of infectious diseases and scope of understanding.

2.3.3.2.1. Interpretation of “Class A infectious diseases”

The scope of “Class A infectious diseases” is determined in accordance with the Law on the Prevention and Control of Infectious Diseases and the applicable provisions of the State Council. According to Art. 3 of the Law on the Prevention and Control of Infectious Diseases, the class of infectious diseases refers to plague and cholera. It does not include the new coronavirus. Therefore, at the beginning of the outbreak, it was difficult to identify part of the behavior of resisting epidemic prevention and control measures as the crime of hindering the prevention and control of infectious diseases. In order to avoid the injustice of dealing with misdemeanors and even guilty acts, the “Opinions” interpret “Category A infectious diseases” as including Category B infectious diseases that require preventive and control measures with reference to category A infectious diseases. This explanation has solved the problem of identifying most behaviors in judicial practice. On March 1, 2021, Amendments to the Criminal Code of the People’s Republic of China No. 11⁴³ was formally implemented. The amendment revised the crime of preventing and treating infectious diseases, and changed “causing the spread of Class A infectious diseases or having serious danger of spreading” in the first paragraph to “causing Class A infectious diseases and infectious diseases that have been determined to take measures to prevent and control Class A infectious diseases according to law or have serious danger of spreading”. It is further clarified that infectious diseases such as COVID-19 and other infectious diseases that have been determined by law to take steps to manage Class A infectious diseases belong to the scope of this crime.

2.3.3.2.2. Subjective intentional crime and its cognitive scope

The subjective aspect of this crime is also controversial. The main viewpoints are negligence and intention. The negligence theory holds that the actors who refuse to implement the epidemic prevention and control measures are “deliberately” implemented under the control of their own will, but the actors generally hold a negative attitude towards the consequences that cause the spread of infectious diseases or have serious risks of infection. If the actor intentionally causes serious injury or death, or causes heavy losses to public and private property, it is beyond the scope of the crime of preventing and treating infectious diseases, and should be recognized as the crime of endangering public safety by dangerous means according to law (Wang Tao 2020, 70). The theory of negligence is also a common theory in the field of criminal law in China, that is, the actor has overconfident

⁴³ 《中华人民共和国传染病防治法规定管理的传染病诊断标准》. 1990. Accessed March 25, 2021. http://www.law-lib.com/law/law_view1.asp?id=6827.

negligence or negligent negligence in causing Class A infectious diseases or spreading danger. Intentional theory holds that the actor who constitutes the crime of obstructing the prevention and control of infectious diseases subjectively shows that his violation of the provisions of the Law on Prevention and Control of Infectious Diseases will cause the spread of Class A infectious diseases or have serious danger of spreading, and hopes or lets such a result happen. Judging from the behavior of the crime, most perpetrators knowingly committed the crime, and the perpetrators also knew the consequences of their actions. For the above two theories, the author also agrees with the negligence theory. Today, when the anti-epidemic prevention and control work are vigorously publicized, the public should be aware of the spread of COVID-19 virus and the serious consequences caused by the spread, and at least be overconfident in the harmful consequences.

After briefly expounding the controversial issues in the judicial cognizance of the crime of employing dangerous means to endanger public security and the crime of impairing the prevention and cure of epidemic diseases, the author thinks that Sun Moumou's behavior in the above case constitutes the crime of endangering public safety by dangerous methods. First of all, Sun Moumou is suspected to be a "suspected patient" after being diagnosed by a professional doctor, which accords with the main elements of the crime of employing dangerous means to endanger public security subjectively. Sun Moumou should be aware of the harmful consequences caused by his refusal to accept the epidemic prevention measures and returning to Ji-an by bus. Although he is not actively pursuing the direct intention of causing many people to be isolated for observation, he is at least in a psychological state of *laissez-faire* for the harmful consequences of his behavior, which is indirect intention, and it endangers the safety of the unspecified majority, which conforms to the constitutive requirements of the crime of endangering public safety by dangerous means.

3. Conclusions

In the prevention and control of epidemic situation in COVID-19, we should always adhere to restraint and prudent attitude and implement the criminal policy of combining leniency with severity while severely cracking down, which is a reasonable path that our country must adhere to when dealing with epidemic-related crimes in the face of sudden public health incidents.

The policy of combining leniency with strictness is the basic criminal policy of our country, which runs through the whole process of criminal legislation, criminal justice, and criminal execution. In dealing with epidemic crime, we should adhere to the principle of combining leniency with strictness, be strict in general, and promote the effect of epidemic prevention and control. We should correctly grasp the relationship between leniency and strictness. In accordance with the law, we should severely punish the criminal acts that seriously hinder epidemic prevention and control, such as resisting epidemic prevention and control measures, obstructing official duties, provoking troubles, violently injuring doctors, making fake and selling fakes, driving up prices, defrauding, destroying wildlife resources, etc. At the same time, we should give lenient treatment to mild crimes, which is conducive to resolving social contradictions, relieving social tension under the epidemic situation, and reducing confrontation and enhancing social stability (He Huan Mary 2020, 22). "Leniency" and "Strictness" are relative. For more serious criminal sus-

pects, the authorities can also be lenient according to law within tolerable limits. For criminal suspects who do not gain leniency, they must insist on being cruel according to law. Combining leniency with severity is neither blindly strict nor infinitely lenient. For different crimes, the severity of the penalty should be adapted to the criminal behavior carried out by the perpetrator, so as to ensure the realization of the deterrent power of penalty. Ten batches of Typical Cases issued by the Supreme People's Procuratorate not only give full play to the guiding role, but also deter potential epidemic crimes, which shows social fairness and justice and better serves the overall situation of epidemic prevention and control and social and economic development. These ten batches of "Typical Cases" fully reflect the specific application of the criminal policy of tempering justice with mercy during the epidemic air defense period, and insist on using strict and lenient means to deal with the epidemic crime.

3.1. Adhere to the principle of "strictness" according to law

The unusual nature of the crime determines the unusual nature of criminal policy (Chen Xingliang 2004, 4). Strike hard is regarded as "an extraordinary means of struggle to solve the problem of extraordinary crime" (Xiao Yang 1996, 48). In Guiding Opinions on Handling Criminal Cases during Epidemic Prevention and Control⁴⁴, the Supreme People's Procuratorate pointed out that criminal acts that endanger epidemic prevention and control and seriously disrupt social order should be strictly grasped according to law.

3.1.1. The principle of legality

In the face of epidemic-related crimes, first of all, ten batches of "Typical Cases" have strictly implemented the principle of a legally prescribed punishment for a given crime, and the implementation of the criminal policy of combining leniency with strictness must be based on the law, so as to realize the legality of leniency and strictness. The timely publication of "Opinions" provides a concrete basis for punishing epidemic prevention and control crimes according to law, so that judicial organs can accurately grasp the boundary between crime and non-crime when dealing with epidemic crimes, strictly distinguish the relationship between this crime and the other crime, prevent one-sided strictness, and expand the targets of attack. For example, before the "Opinions" was issued, violations of epidemic prevention and control measures, such as concealing trips and not wearing masks, caused serious risks to the spread of COVID-19, and most of them were still investigated and punished for crimes of endangering public safety by dangerous methods. Opinions clearly stipulate the subject scope of the crime of employing dangerous means to endanger public security and the crime of impairing the prevention and cure of epidemic diseases, which make the application of these two crimes clearer and clearer.

3.1.2. The principle of adapting crime to punishment

Secondly, these ten batches of "Typical Cases" reflect the basic principle of adapting crime and punishments. Art. 5 of the CL stipulates: "The severity of punishment should

⁴⁴ 《关于疫情防控期间办理刑事案件的指导意见》. 2020. Accessed March 25, 2021. <http://legal.people.com.cn/n1/2020/0203/c42510-31568183.html>.

be adapted to the crime committed by criminals and the criminal responsibilities they bear". This is the normative basis for the principle of adapting crime to punishment to assume the role of judicial guidance. Moreover, the principle of adaptation of crime and punishment is the criminal law system with crime and punishment as the core symbol in China, which is enshrined in the basic principle level (Gao Ming Xuan 2019, 19). On the one hand, we should differentiate epidemic-related crimes differently after comprehensively considering the behavior, subjective attitude, harmful consequences, social harmfulness, social impact, and confession and punishment after the crime. On the other hand, "Opinions" also clarified the circumstances of severe punishment. For example, for the first batch, the second batch, and the third batch of "Typical Cases" of crime that hinder social management order, "severely punish the crime of resisting epidemic prevention and control measures according to law". The legal gist points out that violent attacks on policemen who are performing their duties according to law will be severely punished for crimes of obstructing official duties; as for economic and property crimes, the legal gist of the fourth batch of Typical Cases pointed out that the production and sale of fake and inferior medical equipment are extremely harmful and must be severely punished according to law. The legal gist of the seventh batch of "Typical Cases" points out that those who drive up prices and seek huge profits during the epidemic prevention and control period, which constitutes a crime, shall be given a heavier punishment according to law for the crime of illegal business operation. The legal gist of the fifth batch of "Typical Cases" on the crime of fraud points out that those who swindle property such as disaster relief, medical goods and materials can be severely punished depending on the crime of fraud. Those who use telecommunication networks to defraud the property of the elderly, students in school, or defraud disaster relief, medical materials and other property shall be given heavier punishment as appropriate; for crimes that endanger the resumption of work and production, the criminal acts that hinder the resumption of work and production shall be strictly prosecuted according to law.

3.1.3. Legal procedures

Finally, judicial organs also strictly follow legal procedures when dealing with crimes involving epidemic situation. In the application of coercive measures, if the criminal suspect is a suspected or confirmed patient, in principle, no coercive custodial measures should be taken. First, the original criminal suspect should be treated with medical treatment and then properly handled according to law. For example, Wei Moumou in Laibin City, Guangxi Zhuang Autonomous Region was suspected of obstructing the prevention and treatment of infectious diseases, and Li Moumou in Jinshan District, Shanghai was suspected of obstructing the prevention and treatment of infectious diseases. The suspects were not given compulsory measures for detention. After the periods of recovery or isolation expired, they were punished depending on the law. In terms of procedure, we should strictly protect the basic rights of criminal suspects, strictly abide by the provisions of the Criminal Procedure Law on quick adjudication, summary, ordinary procedures, delivery, notification and other deadlines, minimize the impact of epidemic prevention and control on the efficiency of handling cases, and realize the unity of combating crime and protecting human rights.

3.2. Adhere to the principle of “lenient punishment” according to law

The lenient punishment according to law means that the criminal suspects and defendants who commit minor crimes or have lenient circumstances are treated leniently according to law, so as to minimize social opposites, disintegrate crime and promote social harmony (Wang Wenhua, Yao Shuju 2020, 156). Although criminal behavior during the epidemic prevention and control period always adheres to the overall strictness, it does not exclude leniency according to law, and it can realize the organic unity of legal effect and social effect to the maximum extent.

3.2.1. The system of pleading guilty and accepting punishment with leniency shall be applied according to law

In 2018, with the revision of the Criminal Procedure Law, system of lenient punishment for guilty pleas and punishment was formally established. This system has been widely used in judicial practice since it was established. In epidemic crime in 2020, the system of pleading guilty and lenient punishment was also widely used. Procuratorial organs implement the requirements of prevention and control according to law, and educate and encourage criminal suspects to truthfully confess and repent for minor criminal crime. The applicable rate of the system of pleading guilty and lenient punishment in epidemic cases of procuratorial organs in China is 86,6 %, and the applicable rate of pleading guilty and lenient punishment in epidemic cases of procuratorial organs in some provinces exceeds 90 %⁴⁵. In ten batches of “Typical Cases”, this system was applied in many cases. For example, in the second batch of Typical Cases of Wang’s nuisance of official duties in Renshou County, Sichuan Province, the Renshou County Procuratorate considered that the facts of the case were clear and evidence was true and sufficient. Wang confessed truthfully after arriving at the case and voluntarily pleaded guilty, which met the applicable conditions of the system of pleading guilty and lenient punishment. After the procuratorial organ interrogated, informed the litigation rights, and explained the law, Wang signed the confession and punishment statement and agreed to apply the quick ruling procedure in the presence of the duty lawyer and provided legal assistance. Zhao Moumou in Longyao County, Hebei Province, sought trouble. The judge of the case passed the interpretation of the law. Zhao Moumou pleaded guilty and sincerely repented, voluntarily signed the “Pledge of Confession and Punishment”, and agreed to apply the quick ruling procedure. In the fifth batch of “Typical Cases”, Wu Moumou voluntarily pleaded guilty at Yangchun City, Guangdong Province. Yangchun city Procuratorate decided to apply the System of lenient punishment for guilty plea and punishment to Wu Moumou, and filed a public prosecution with Xiangchun City Court, and suggested that summary procedure should be applied.

3.2.2. The implementation of the judicial concept of less arrest and caution

Less arrest and careful prosecution are also one of the important contents in our criminal policy. “Careful arrest and reduction of arrests” do not mean that criminal sus-

⁴⁵ 《认罪认罚从宽制度：丰富刑事司法与犯罪治理的“中国方案”》。2021. Accessed March 9, 2021. https://www.12309.gov.cn/llzw/jcyksjb/202103/t20210308_511580.shtml.

pects are not arrested. Criminal suspects who should be arrested are arrested. If they are not arrested, this will not be enough to crack down on crime. Of course, “less arrest and caution” doesn’t mean that all criminal suspects should be arrested, and it doesn’t mean that arrest replaces investigation activities, promotes compensation by arrest, or broadens the role of arrest as a coercive measure (Lu Zhiqiang 2017, 7). On the one hand, the implementation of “Careful arrest and reduction of arrests” is an important manifestation of the procuratorial organs actively performing their duties; on the other hand, it can also prevent the occurrence of unjust, false, and wrong cases. To implement the judicial idea of less arrest and caution, first, criminal suspects with minor crime, less social harm, and less subjective malignancy should make a decision not to prosecute according to law, not to arrest them and save judicial resources. For example, in “Typical Cases”, Wang Moumou and Fu Moumou in Huzhou City, Zhejiang Province were suspected of falsely issuing special invoices for value-added tax⁴⁶. The logistics company operated by Wang Moumou was one of the few local logistics enterprises that could resume work after the outbreak of the COVID-19 epidemic, and undertook a number of transportation business of epidemic prevention materials. In order to ensure the smooth logistics of epidemic prevention materials and people’s livelihood products, the court conscientiously implemented the criminal policy of combining leniency with severity, actively applied the system of pleading guilty and accepting punishment with leniency, comprehensively considered the subjective viciousness of Wang Moumou and Fu Moumou, investigated the amount of crime and the objective reality of paying back the taxes involved in the case, and made a decision not to prosecute Wang Moumou and Fu Moumou according to law. After explaining the law and giving targeted education on the rule of law, the criminal suspects were addressed in a timely manner. Second, arrest measures should be used with caution for criminal suspects, the necessity of detention should be examined for criminal suspects who have been arrested, and the compulsory measures should be changed in time for criminal suspects who do not need to be arrested. For those who have taken compulsory measures, the necessity of detention should be examined seriously, and if there is no necessity of detention, the compulsory measures should be changed promptly. In the case of an engineering company in Tianjin and Zhang Moumou suspected of bribery⁴⁷, after Zhang Moumou commissioned a defender to submit a review on the necessity of detention, the procuratorate found that the facts and evidence of Zhang Moumou’s bribery case were clear and fixed, and there was no possibility of destruction, forgery of evidence, collusion, interference with witnesses’ testimony, etc. Moreover, he pleaded guilty and acknowledged punishment, and the change of compulsory measures did not affect the proceedings and did not pose personal danger. At the same time, if Zhang Moumou continues to be detained, it will affect the promotion of municipal key projects undertaken by the company. In order to implement the Opinions of the Central Political and Legal Committee, the Supreme People’s Court, and the Supreme People’s Procuratorate on Legal and Political Organs to Guarantee Resumption of Work and Resumption of Production during Epidemic Prevention and Control according to Law⁴⁸, and to protect the normal development of private

⁴⁶ 《全国检察机关依法办理妨害新冠肺炎疫情防控犯罪典型案例（第六批）》。2020。Accessed March 5, 2021. https://www.spp.gov.cn/spp/xwfbh/wsfbt/202003/t20200320_456968.shtml#1.

⁴⁷ 《全国检察机关依法办理妨害新冠肺炎疫情防控犯罪典型案例（第六批）》。2020。Accessed May 5, 2020. https://www.spp.gov.cn/spp/xwfbh/wsfbt/202003/t20200320_456968.shtml#1.

⁴⁸ 《关于政法机关依法保障疫情防控期间复工复产的意见》。2020。Accessed March 31, 2021. http://www.moj.gov.cn/government_public/content/2020-03/02/tzjw_3243029.html.

enterprises, Zhang Moumou was released on bail pending trial after seeking the opinions of the supervisory organs.

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