

The Boundary of the Reduction of Citizens' Right to Education in Major Public Emergencies

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Abstract

The boundary of the reduction of citizens' right to education in major public emergencies is an important practical issue that adheres to the rule of law principle and the bottom line of social justice. Understanding the constitutional connotation of the right to education and judging whether the major public emergencies represented by the COVID-19 pandemic can provide a legitimate basis for its reduction is an important premise for the study of this issue. According to the relevant provisions of China's Constitution and laws and the academic research on the connotation of the right to education, the right to education is the basic right of citizens, with the dual attributes of right and duty, freedom and social rights, equality and process. According to the theory of "minimum human rights" and "non-derogable rights", major public emergencies can provide a certain justification for the reduction of the right to education, but this kind of reduction has a boundary. In constructing the boundary of the reduction of the right to education, the bottom line should be that the substance of the right to education should not be violated, the coordination and unity of the individual interests of educated citizens and the social public interests to curb the spread of the epidemic should be the key, and the principle of proportionality should be the guideline.

Keywords: major public emergencies, the right to education, restriction of fundamental rights, the limits of fundamental rights

1. Introduction

As soon as the COVID-19 pandemic outbreak broke out, provinces and cities have successively initiated level 1 public health emergency response and entered a state of emergency. In a state of emergency, government power under normal conditions is insufficient to contain the spread of the epidemic and safeguard public interests. Public power needs to be expanded to a certain extent in accordance with the law,

which is accompanied by the corresponding reduction of citizens' private rights. Article 42 of the Law on the Prevention and Treatment of Infectious Diseases stipulates that in the event of an outbreak or epidemic of an infectious disease, the local people's government at or above the county level may, after reporting to the people's government at the next higher level, restrict or stop the activities of crowds and suspend classes. "Crowd-focused activities" include offline educational activities such as examinations and

teaching, which indicates that citizens' right to education has been reduced to a certain extent. In epidemic prevention practice, online classes for students at home and the postponement or cancellation of various exams have become the norm of social life, but there are also many problems. The right to examination is an important part of the right to education, and the postponement or cancellation of various examinations will have an impact on students' graduation, further study or employment. If local governments do not take timely relief measures and ask students to bear the consequences only on the grounds of abstract needs for epidemic prevention, it is tantamount to violating citizens' right to education. This paper attempts to start from the constitutional connotation of citizens' right to education, analyze whether the COVID-19 epidemic can provide a legitimate basis for the reduction of citizens' right to education, and study the boundary of the reduction of citizens' right to education in the prevention and control of the epidemic.

2. China's Legislation on the Right to Education

The citizen's right to education is a basic right stipulated by the Constitution and guaranteed by the Constitution and laws. Some scholars point out that the right to education can be traced back to the Constitution of France in 1793, which stipulates in article 22 of the preamble that "Education is necessary for everyone. Society shall do all it can to support the development of public reason and to make education available to all citizens." (Gu Xiangwei, 2010) The right to education was universally incorporated into the Constitution after the end of World War II. At that time, the international community, after the baptism of the two world wars, had more reflection and attention on basic human rights and human dignity. Human rights theories developed vigorously, and many new basic rights of citizens, including the right to education, came into being. Many countries have also incorporated education as a basic right of citizens into the Constitution to provide for and protect it. At present, the right to education is stipulated in more than half of the world's constitutions. (WEN Hui, 2001) For example, Article 5 of the German Basic Law provides that "everyone has the right to receive knowledge from generally public sources without

hindrance", article 26 of the Japanese Constitution provides that "every national has the right to education in accordance with the provisions of law and according to his ability", and article 43 of the Constitution of the Russian Federation provides that "everyone has the right to education". Since the constitution of the People's Republic of China, the right to education has been written into the Constitution and protected. Article 94 of the May 4th Constitution stipulates that "Citizens of the People's Republic of China have the right to education. The State shall establish and gradually expand schools and other institutions of culture and education to ensure that citizens enjoy this right." Article 27 of the 1975 Constitution and Article 51 of the 1978 Constitution both state that "citizens have the right to education". Article 46 of the 1982 Constitution states that "Citizens of the People's Republic of China have both the right and the duty to receive education. The state cultivates the all-round development of young people, adolescents and children in moral, intellectual and physical aspects." When the Constitution was amended in 2004, "The State respects and protects human rights" was included in Article 33, paragraph 3, of the Constitution, providing further solid constitutional protection for citizens' basic rights, including the right to education. By combing through the relevant provisions of the Constitution on the right to education, it can be seen that the Constitution only makes general provisions on the right to education of citizens, emphasizing that citizens have this basic right, but it does not specify the specific content of the right, and its connotation is relatively vague. In order to fully guarantee the implementation of citizens' right to education, our country carries out education legislation on the basis of Article 46 of the Constitution to concretize the connotation of the right to education, which is mainly reflected in the following laws:

First of all, the Education Law is the basic law of education legislation in our country. Article 9 of the Education Law reaffirms Article 46 of the Constitution and further stipulates that "citizens, regardless of ethnicity, race, sex, occupation, property status, religious belief, etc., shall enjoy equal opportunities to receive education according to law", and article 37 stipulates that "educates shall enjoy equal rights in terms of enrollment, further education, employment and

other aspects according to law". Article 43 specifically stipulates that educatees have the right to participate in educational and teaching activities, use educational and teaching resources, obtain various awards and subsidies according to state regulations, obtain a fair evaluation of academic performance and conduct and obtain academic certificates and degree certificates according to regulations, and lodge complaints or lawsuits against schools or teachers for unreasonable punishments or violations of their legitimate rights and interests.

Secondly, some scholars have pointed out that "Article 46 of the Constitution only applies to the right to education at the stage of compulsory education" (Yuan Wenfeng, 2015). In addition, the Constitution of the People's Republic of China (Practical Law) published by China Legal Publishing House only takes the Compulsory Education Law as a reference in the understanding and application of Article 46. Therefore, The Compulsory Education Law is the main single act of China's educational legislation that concretizes the right to education stipulated in the Constitution. Article 1 of the Compulsory Education Law directly states that the legislative purpose of the Law is to protect the right of school-age children and adolescents to receive compulsory education, affirming the right to education in article 46 of the Constitution, Article 2 stipulates that school-age children and adolescents receiving compulsory education have the right not to pay tuition and miscellaneous fees, and Article 4 stipulates that "all school-age children and adolescents with Chinese nationality, regardless of sex, ethnicity, race, family property status, religious belief, etc., enjoy the equal right to receive compulsory education in accordance with the law, and fulfill the obligation to receive compulsory education", article 12 stipulates that school-age children and adolescents have the right to be exempted from examinations.

Finally, although the stages of education applied by the Vocational Education Law and the Higher Education Law do not fall within the scope of application of Article 46 of the Constitution, the two laws clearly state in Article 1 that "This Law is formulated according to the Constitution", and the expressions of articles 5 of the Vocational Education Law and 9 of the Higher Education Law are similar to those of Article 46 of the Constitution. It emphasizes that citizens have the right to education at this stage of

education, which reflects the connotation and spirit of the Constitution to a certain extent. Article 5 of the Vocational Education Law stipulates that "citizens have the right to receive vocational education according to law", Article 10 stipulates that women enjoy equal rights to receive vocational education, and Article 53 stipulates that "students in vocational schools enjoy equal opportunities with students in ordinary schools at the same level in terms of further education, employment and career development". Article 9 of the Higher Education Law stipulates that "citizens have the right to receive higher education in accordance with the law."

3. The Constitutional Connotation of the Right to Education in China

By sorting out the provisions related to citizens' right to education in the above several laws, it can be seen that although China has embodied the right to education stipulated in the Constitution through education legislation and guaranteed its implementation, the scattered provisions have not made clear what citizens' right to education is. The academic community has conducted research on the connotation of the right to education based on the Constitution and relevant laws. Professor Lao Kaisheng believes that the right to education refers to the right of citizens who are of appropriate age and have the ability to receive education to obtain cultural education opportunities and material help from the state and society, so as to enter various schools or other educational facilities to learn scientific and cultural knowledge. (Lao Kaisheng, 2012) Associate Professor Wu Peng believes that the right to education refers to the right of citizens to request the state to provide suitable educational places through public educational systems and measures. (Wu Peng, 2008) On this basis, some scholars have concluded that the right to education includes three contents: the right to educational opportunity, the right to educational conditions and the right to fair evaluation. (Yuan Wenfeng, 2015) In combination with the relevant provisions concerning citizens' right to education in the Constitution and laws and the academic research on the connotation of the right to education, it can be seen that the right to education has the following attributes:

3.1 The Dual Attributes of Right and Obligation

Article 46 of the Constitution clearly states that

education is both a right and a duty of citizens. Some scholars point out from the perspective of the subject that the subject of the right and the subject of the obligation to receive education are both citizens, and the right means that the subject can give up the exercise, while the obligation means that the subject must perform it. Then, how should the citizen treat the right and the obligation to receive education? This is a fallacy in logic. (WEN Hui, 2001) The author believes that the dual nature of the right and duty of the right to education does not only mean that the single subject of the citizen has the right and duty to receive education at the same time, but that the dual subject of the citizen and the state have the right and duty to receive education to each other. Kelsen pointed out that the legal right inevitably points to the legal duty of another person. (Hans Kelsen, 1996) (P84) Specifically, citizens have the right to education, and the realization of this right requires the state to fulfill its obligation to guarantee citizens' right to education; The state has the right to require citizens to receive education, and the realization of this right also requires citizens to fulfill the obligation of receiving education. As far as the former is concerned, Article 46 (2) of the Constitution stipulates that "the state cultivates... develops in an all-round way"; Articles 38 to 42 of the Education Law stipulate that the state shall be the mainstay of multiple entities to guarantee citizens' right to education; and Article 2 of the Compulsory Education Law stipulates that "compulsory education is a unified implementation of the state... and a public welfare undertaking that the state must guarantee. The State establishes a mechanism for guaranteeing funds for compulsory education to ensure the implementation of the compulsory education system." Articles 5 to 8 stipulate that the state and the government guarantee citizens' right to education, and in several separate laws related to education, the educational system, the guarantee of educational conditions and the legal responsibility stipulate that the diversified subjects dominated by the state guarantee citizens' right to education in terms of system, organization and procedure. The above articles prove that the state fulfils the corresponding obligations to ensure the realization of citizens' right to education; With regard to the latter, it should be noted that the state obliges citizens to perform the obligation to receive education only

at the stage of compulsory education. Article 2 of the Compulsory Education Law stipulates that the parents or guardians of school-age children should send them to school to receive and complete compulsory education. If the school needs to be postponed or suspended due to physical conditions, the parents or other legal guardians shall apply for approval by the local township people's government or the education administrative department of the county people's government. This indicates that citizens' obligation to receive education is performed by parents or guardians when citizens are not able to bear legal responsibilities, but parents or guardians as subject of obligations require the specific condition that citizens cannot bear legal responsibilities, the subject of obligations is still the citizen himself, and parents or guardians are subordinate to the subject of obligations. Article 58 of the Compulsory Education Law stipulates that "If the parents or other legal guardians of school-age children or adolescents fail to send them to school for compulsory education in accordance with the provisions of this Law without justifiable reasons, the local township people's government or the administrative department of education of the county people's government shall criticize and educate them and order them to make corrections within a time limit." This shows that the right of the state to require citizens to perform compulsory education is compulsory. If a citizen or his legal guardian refuses to perform the corresponding duty without a justifiable reason, he or she will be punished by law.

3.2 The Dual Nature of the Right to Liberty and the Right to Society

As a basic right, the right to education is usually divided into two categories, namely the right to freedom and the right to society, which can also be called negative rights and positive rights. (Shen Suping, 2021) The right to freedom (negative right) originates from the theory of "night police state", which means that citizens have the right to freedom from state intervention in the field of personal life. In order to realize and protect the right to freedom of citizens, the state is required to perform the obligation of negative inaction not to infringe the right to freedom. (Hu Jinguang & Ren Duanping, 2002) The aforementioned articles on the right to education in the Constitution and laws repeatedly confirm that citizens have the right to receive a certain stage of education and

emphasize “equality”, which implies that the state shall not infringe upon citizens’ right to freedom of education. At the same time, Article 12 of the Compulsory Education Law stipulates that school-age children and juveniles are exempted from examinations and enrolled in nearby schools, indicating that citizens’ right to education may not be infringed on the grounds of examination or region. Article 14 stipulates that “Employers are prohibited from recruiting school-age children and adolescents who should receive compulsory education”; “Social organizations approved to recruit school-age children and adolescents for professional training in art, art, physical education and other fields shall ensure that the school-age children and adolescents enrolled receive compulsory education”; Article 57 stipulates that schools are prohibited from expelling students in violation of this Law; Article 58 stipulates that guardians are prohibited from sending school-age children and adolescents to receive compulsory education without complying with the provisions of this Law. These articles indicate that the State has stipulated in the form of legislation that no subject shall infringe upon citizens’ freedom and right to education for any reason or perform the obligation of passive inaction. Social rights (positive rights) are derived from the “welfare state” theory, which means that citizens have the right to request the state to provide conditions for the realization of their basic rights. In order to realize and protect the harmonious order of the whole society, the state is required to perform the obligation of positive actions. (Hu Jinguang & Ren Duanping, 2002) Article 19 of the Constitution provides for the development of socialist education, the establishment of all kinds of schools, the popularization of compulsory education, the development of education at all levels and the development of all kinds of educational facilities. This article and the aforementioned discussion of the state performing its duty to realize and protect citizens’ right to education in the dual nature of rights and obligations of the right to education indicate that the state provides various conditions for realizing and protecting citizens’ right to education and fulfills its active duty. It should be made clear that the right to education has the nature of the right to freedom and the right to society, and the two are not separate. As mentioned above, the state protects the citizens’ right to freedom from interference

through legislation, which is essentially realized by fulfilling the active duty to realize the social right.

3.3 Equality

Equality is expressly stipulated in several separate acts of education legislation, including Article 9 of the Education Law, Article 4 of the Compulsory Education Law, Article 9 of the Higher Education Law and article 5 of the Vocational Education Law, which states that citizens have equal access to education. Article 12 of the Compulsory Education Law stipulates that students should be exempted from examinations and attend nearby schools, and Article 10 of the Vocational Education Law stipulates that women enjoy equal rights to receive vocational education, which also guarantees equal opportunities for citizens to receive education. In addition, Article 37 of the Law on Education and Article 53 of the Law on Vocational Education provide for equality in the outcome of citizens’ education. At the same time, the social right attribute of the right to education indicates the equality of this basic right, and the social right is stipulated by the countries that advocate the value of equality and implement the socialist or “welfare state” system to ensure the overall harmony and stability of the country, “some countries such as the United States and France do not recognize the social right attribute of the right to education.”

3.4 Processability

Citizens’ right to education does not only mean that citizens have the right to enter the stage of education, but also includes enrollment, study, higher education or employment, career development and other process rights. Article 43 of the Education Law stipulates the various rights citizens have during their schooling, among which the right to fair evaluation and the right to study and obtain academic and degree certificates are related to the rights of citizens to study or employment after graduation and future career development. Article 37 of the Education Law and Article 53 of the Vocational Education Law stipulate that citizens enjoy equal rights in self-study, employment and career development.

4. The Limits of the Reduction of Citizens’ Right to Education in the Prevention and Control of Epidemic

As mentioned above, citizens’ right to education is a basic right stipulated and guaranteed by the

Constitution and laws. It has the dual attributes of rights and obligations, freedom and social rights, equality and process. The state has the negative obligation not to interfere and the positive obligation to provide conditions for realization, and it has a higher rank among the basic rights of citizens stipulated in the Constitution. Can citizens' right to education be reduced in the midst of the COVID-19 epidemic? In other words, can the COVID-19 pandemic justify the reduction of the right to education? If the right to education needs to be reduced to some extent in the context of COVID-19 prevention and control, how should its boundaries be established? The author will analyze it below.

4.1 The Justification of the Reduction of the Right to Education in Epidemic Prevention and Control

The COVID-19 pandemic has been called "the most serious infectious disease pandemic in the world in a century" and "a major public health emergency with the fastest spreading speed, the widest infection scope, and the most difficult prevention and control since the founding of the People's Republic of China". (Weibo "People's Daily", 2022) Its threat to national and social public security is self-evident, and it is an "emergency"¹, (Meng Tao, 2011) as a result, countries under the epidemic control have entered a "state of emergency". Compared with the normal state, the state of emergency is mainly reflected in the further expansion of public power and the corresponding reduction of private rights. According to the theory of popular sovereignty, which is the cornerstone of modern rule of law, both normal power and extraordinary power come from the transfer and grant of the people. (Liu Xiaobing, 2021) The extraordinary power in the state of emergency is due to the fact that the power transferred and delegated by the people to the government under the normal state is no longer enough to maintain social public security, and the people further transfer and delegate the power to the government. By virtue of this increased power, the government imposes special legal restrictions on citizens, resulting in the corresponding reduction of citizens' rights. Does

the right to education fall within the scope of the diminution?

First of all, according to the theory of limitation of rights, Milne puts forward "minimum human rights" (Britain Milne, 1995) (P10), namely the rights that cannot be restricted by legislation under normal conditions, including the right to life, the right to fair treatment, the right to get help, the right to freedom from arbitrary interference, the right to be honest, the right to be polite, and the right to be cared for by children. Therefore, Chinese academic circles put forward the concepts of "bottom line rights" and "bottom line of human rights". (Shi Wenlong, 2021) Among them, "the right of children to care" means that all children have the right to receive necessary and adequate care from their guardians until they reach adulthood and are able to care for themselves. (Chen Yanguang & Zhang Yaofang, 2015) The specific content of this right includes the right of the child to have his/her learning needs met by the guardian. Article 1 of the Convention on the Rights of the Child, which entered into force in China in 1992, defines a child as any person under the age of eighteen, unless the age of majority is prescribed by the law applicable to him or her, and in accordance with article 2 of the Law on the Protection of Minors, the age of majority of a citizen of the country is eighteen. Therefore, a citizen of the country under the age of eighteen is a child. According to Article 2 of the Compulsory Education Law, China implements a nine-year compulsory education system, and the age of primary school is generally seven years old. Under the nine-year compulsory education system, citizens should generally receive compulsory education until the age of sixteen, and receive secondary education between the ages of sixteen and eighteen. Therefore, "the right of children to be cared for" includes the right of citizens to receive education at the stage of compulsory education and secondary education. It can be seen that citizens' right to education at the stage of compulsory education and secondary education does not fall within the scope of the reduction of rights under normal conditions.

Secondly, international human rights covenants provide for "non-derogable rights", emphasizing that even in a state of emergency, the state may not impose special legal restrictions on these rights or certain contents or aspects of these rights. In terms of whether the

¹ See Meng Tao. (2011). The Formation, Current Situation and Future of China's Extraordinary Law, *Chinese Social Sciences*, (2). Meng Tao believes that "emergency" is an elastic concept that cannot be accurately defined. In a broad sense, it refers to a sudden, urgent, and usually difficult to foresee destructive thing or situation that needs immediate response.

COVID-19 epidemic is a state of emergency, according to Articles 67, 80 and 89 of the Constitution, a state of emergency in the sense of the Constitution needs to be decided and declared by a specific authorized body in accordance with legal procedures, and since the outbreak of the COVID-19 epidemic, relevant authorities in China have not decided and declared a state of emergency on their grounds. Therefore, The COVID-19 epidemic is not a state of emergency under the Constitution, but it is a state of emergency in the broad sense emphasized by international human rights conventions due to its urgency and harm to social and public security. The “non-derogable rights” stipulated in the National Covenant on Civil and Political Rights, which China has signed and recognized, include the right to life, freedom of thought and religion, human dignity, statutory punishment and non-retroactive criminal law, prohibition of discrimination, prohibition of torture, prohibition of slavery, slave trade and forced servitude, and prohibition of imprisonment for inability to pay debts. Thus, in a broad sense, citizens’ right to education is not a “non-derogable right”. In other words, under the COVID-19 epidemic, citizens’ right to education falls within the scope of rights reduction and may be reduced. Therefore, the COVID-19 epidemic can provide a certain justification for the reduction of citizens’ right to education.

4.2 The Boundaries of the Reduction of the Right to Education in the Prevention and Control of the Epidemic

As mentioned above, in the context of the COVID-19 epidemic, social and public safety is facing a particularly serious and urgent threat. In order to safeguard the public interest, the public power of the government can impose special legal restrictions on citizens’ right to education, so that citizens’ right to education is reduced. However, such reduction is limited. The public power of the government should not abuse the power transferred or granted by citizens in the state of emergency to cause excessive reduction of the right to education or even violate the right to education. In this round of the epidemic, a local education and enrollment examination institute issued a notice of college entrance examination delay, and stipulated that students with positive infections, close contacts, sub-close contacts, or health code is “red code”, or in centralized isolation, home

isolation, and in sealed areas are not allowed to participate in the spring college entrance examination, and did not mention follow-up relief measures. Once this provision was issued, the public strongly questioned and boycotted. The education admission examination Institute amended the regulations the next day, saying that it would arrange for the above candidates to reset the test site, in order to “take the exam to the end.” (Weibo “People’s Daily”, 2022) The incident involves citizens’ right to take examinations, which, as an important part of the right to education, is closely related to citizens’ right to obtain fair evaluation and the right to obtain academic certificates and degree certificates according to regulations stipulated in Article 43 of the Education Law. The former is an important prerequisite for the latter. According to Article 79 of the “Education Law”, candidates in the national education examination cheating serious circumstances, by the education administrative department ordered to stop participating in the relevant national education examination for more than one year and less than three years. It can be seen that the citizen examination right is restricted is a kind of administrative punishment, the need to be punished citizens have illegal acts as its specific preconditions, and the event is restricted in the examination right of citizens are due to the force majeure of the epidemic, if the citizen examination right is violated, its right to education has been substantially damaged. Although the incident was solved satisfactorily, it can still be seen that some subjects of public power have a vague understanding of the boundaries of the reduction of citizens’ right to education in the epidemic, so that they made unreasonable provisions infringing citizens’ right to education in the early stage. Taking this incident as an example, it is necessary to pay attention to the following aspects in constructing the reduction boundary of citizens’ right to education in epidemic prevention and control:

First, the bottom line is that the substance of the right to education should not be infringed. Professor Han Dae-won pointed out that the violation of the substance of the fundamental right means that the freedom or rights of citizens are not in name because of such violation. (Han Dayuan, 2005) In other words, restricting the core part of a fundamental right and depriving the citizen of the right and the benefits that the right is supposed to give to the citizen is a

violation of the substance of the fundamental right. As for the citizen's right to education, according to the above analysis, the connotation of the right to education in our academic circles is not consistent, but it is nothing more than the right to education opportunity, the right to education conditions and the right to fair evaluation. Among them, the right to education opportunity is the initial condition for the realization of the right to education. If the citizen has no opportunity to receive education, let alone the right to receive education; The right to education is the core condition for the realization of the right to education. If citizens do not have any teaching materials, stationery, teachers and other hard conditions during the period of education, then citizens do not realize the fullness of human dignity through education, and this right to education is only nominal; The right to fair evaluation is the continuation of the right to education. In our country, to obtain a fair evaluation in the form of an examination and to obtain an academic certificate and degree certificate is the "threshold" for citizens to graduate, go to school or find employment. According to the above analysis, the right to education is of a process nature and safeguards the interests of citizens in enrolling, staying in school, advancing or finding employment, as well as future career development. If citizens lose the opportunity to take examinations, and can not obtain fair evaluation and academic certificate, degree certificate, then citizens also lose the opportunity to accept the next stage of education or the protection of employment and the possibility of future career development. In the context of the relatively utilitarian environment of education in our country, this kind of right to education cannot finally give citizens the benefits they should have, which is equivalent to citizens losing the right to education. As far as the above incidents are concerned, some citizens are restricted in the examination right due to the force majeure of the COVID-19 epidemic, and then lose the right to fair evaluation. The public power subject who made this decision is acting as a "total deprivation" in the name of "partial restriction", which violates the essence of citizens' right to education and breaks the bottom line of the reduction of citizens' right to education.

Second, the key is the coordination and unification of the individual interests of educated citizens and the public interests of the

society to curb the spread of the epidemic. The main reason for the reduction of many civil rights in the prevention and control of COVID-19, including the right to education, is the urgent need to safeguard public interests. Therefore, the individual interests of individual citizens and the public interests of the society as a whole inevitably clash. The emergency legal system applied in response to the epidemic in China aims to solve the crisis and eliminate the impact as soon as possible. The government occupies an absolute dominant position and pays insufficient attention to citizens' private rights, which has led to some local public authorities ignoring citizens' rights in epidemic prevention and control practices and taking crude and rigid epidemic prevention and control measures. There is nothing wrong with safeguarding the public interest, but it should not be a purely utilitarian calculation, simply discarding the personal interests of a few people. (Liu Hongzhen, 2021) Individual interests are a part of public interests, and the coordination and unification of individual interests and public interests is the necessary meaning of safeguarding public interests. In order to realize the coordination and unity of individual interests and public interests in practice, Professor Zhao Hong pointed out that the following three factors should be considered when restricting individual rights in order to safeguard public interests: the rank order of the right in the overall rights system; The influence of the restriction on individual rights; And the urgency of public interest protection as defined by the level of importance of the public interest and the danger to which it is exposed. (Zhao Hong, 2022) The degree of urgency is the principal indicator of the proportion of the public interest that suppresses the individual interest. As for citizens' right to education in epidemic prevention and control, according to the above analysis, firstly, citizens' right to education has a higher rank in the sequence of citizens' basic rights; Secondly, the right to education is a process, which determines the degree of education of citizens and affects their future career development. The adverse impact of restricting citizens' right to education on citizens is irreversible and lasts a citizen's life, and may even have an impact on citizens' personal dignity. In addition, limiting the right to receive education is a kind of administrative punishment in our country, which needs to be

conditioned on citizen's illegal behavior, and the impact on individual citizens and even families is self-evident; The public interests maintained by the subjects of public power in the epidemic involve all aspects of social life, citizens' right to life, health, and national security bear the brunt, and their importance in the abstract sense is "unmatched", but the epidemic also has limitations in the scope of time and space. At different times and in different places, the severity of the epidemic is different, and the danger faced by the public interest is also different. It is necessary to analyze the urgency of public interest protection and the proportion of public interests suppressing individual interests in light of specific situations. In the case of the above incident, according to the adjusted measures of the local education and enrollment examination Institute, the urgency of the protection of public interests threatened by the local epidemic did not reach the level of depriving citizens of their right to education, and the unreasonable provisions before the adjustment were an attempt by the relevant public power subjects to justify simple and crude epidemic prevention measures with very abstract needs for epidemic prevention. To cover up the fact of their "lazy policy" and "lazy policy", not only failed to coordinate and unify personal interests and public interests, but intensified the confrontation between them.

Third, take the principle of proportionality as the criterion. As mentioned above, the principle of proportionality is an important criterion and method in the coordination of individual interests and public interests, and the considerations proposed by Professor Zhao Hong fully apply and reflect the principle of proportionality. The principle of proportionality is an important criterion for judging whether the degree of restriction is appropriate when public power restricts private rights, including three sub-principles of "appropriateness", "necessity" and "balance". "Appropriateness" is used to judge whether the measures taken by public power to restrict private rights can achieve the purpose of restriction; "Necessity" is used to judge the least infringement of private rights among various measures on the basis of "appropriateness", so it is also called "principle of minimum infringement"; "Balance" is used to judge whether the degree of infringement of private rights by the measures selected based on the first two sub-principles exceeds the purpose

to be achieved by the restriction. This sub-principle is reflected in the above analysis by weighing the proportion of public interest suppression of individual interests with the urgency of public interest protection. Based on the above events, in terms of "appropriateness", some candidates who may carry the virus are prohibited from participating in the examination, which blocks the spread of the virus to a certain extent, and can achieve the purpose of containing the spread of the epidemic; In terms of "necessity", according to the adjusted measures, this part of the candidates in the reset test site examination, although the objective conditions are different from other candidates, which will inevitably have a psychological impact, but not all deprived of the right to education, obviously than the prohibition of participation in the examination of this part of the candidates to receive education less infringement. Therefore, the measures that prohibit some candidates who may carry the virus from participating in the examination and have no subsequent relief do not conform to the principle of "necessity", do not meet the prerequisite of considering "balance", and naturally violate the principle of proportionality.

5. Conclusion

Although the right to education has a rich constitutional connotation, because of its dual nature, it is in a higher rank in the sequence of basic rights and can not be eliminated under normal conditions, but it does not belong to the "non-derogable right" stipulated in the international human rights conventions recognized by our country, and there is the possibility of being eliminated under the generalized state of emergency. Due to the particularly significant and urgent threat to national public security, the COVID-19 epidemic is not a state of emergency stipulated in the Constitution of China, but a state of emergency in the broad sense stipulated in international human rights conventions. Therefore, it provides a certain justification for the reduction of Chinese citizens' right to education. However, this does not mean that Chinese citizens' right to education can be infinitely reduced or even completely deprived in the prevention and control of the epidemic. The reduction has a boundary. The reduction of citizens' right to education in epidemic prevention and control is due to its confrontation with the expansion of public power aimed at curbing the spread of the

epidemic. Therefore, relevant public power subjects must consciously coordinate citizens' individual interests and social public interests when restricting citizens' right to education. Although the epidemic is terrible, protecting the life and health of citizens is of course our fundamental position, but relevant public power subjects should also fully consider the significant impact of the right to education on the sustainable development of citizens and society, and should not ignore the dynamic changes of the epidemic in order to reduce their own burden, and use a crude and rigid epidemic prevention model. Regardless of whether there is a way that least infringes on citizens' rights, they should cut the vocal cords of citizens with abstract needs for epidemic prevention, and let citizens pay for the "mistakes" of some public power subjects with their own lives. Education is not only an individual right of citizens, but also an obligation that the state requires citizens to fulfill. It is the bottom line of social justice and the foundation of a country's stable development. At present, the world has entered the "post-epidemic era", and the ups and downs of the epidemic have put forward higher requirements on the ability of public power subjects to rationally use the principle of proportionality to coordinate personal interests and public interests. Therefore, the specific path to protect citizens' right to education in the post-epidemic era needs further study.

References

- A.J.M.Milne. (1995). *Human Rights and Human Diversity: Philosophy of Human Rights*. Xia Yong, Zhang Zhiming. Beijing: Encyclopedia of China Publishing House.
- Chen Yanguang, Zhang Yaofang. (2015). On the Legal Protection of children's right to be cared for in China and its implications for the rule of law in Hubei. *Cultural Development Review*, (2).
- Gu Xiangwei. (2010). Comparison of relevant provisions of the right to Education in different countries. *Modern Education Management*, (5).
- Han Dayuan. (2005). On the restriction and Guarantee of citizens' Basic rights under State of emergency. *Study and Exploration*, (4).
- Hans Kelsen. (1996). *General Theory of law and State*. Shen Zongling. Beijing: Encyclopedia of China Publishing House.
- Hu Jinguang, Ren Duanping. (2002). Constitutional Thoughts on the right to Education. *China Educational Legal System Review*, 1(0).
- Lao Kaisheng. (2012). The Nature and realization of citizens' right to Education. *China Educational Legal System Review*, 10(0).
- Liu Hongzhen. (2021). Limitations and limits of citizens' basic rights in anti-epidemic actions. *Human Rights Research (Journal of Human Rights)*, (1).
- Liu Xiaobing. (2021). Logical Proof of derogation of civil rights under State of emergency. *Law*, (7).
- Meng Tao. (2011). The formation, Present situation and future of extraordinary law in China. *Social Sciences in China*, (2).
- Shen Suping. (2021). Education legislation and Systematization of the right to Education. *Educational Research*, (8).
- Shi Wenlong. (2021). Achievements, Problems, Countermeasures: Analysis of the current situation of the system of restricting the basic rights of Chinese citizens. *Human Rights Research (Journal of Human Rights)*, (1).
- Weibo "People's Daily". (2022). Tianjin Spring College Entrance Examination red code candidates can take the test at the reset test center. https://weibo.com/ttarticle/x/m/show#/id=2309404770748140225251&_wb_client_=1,2022-05-19/2022-05-19.
- WEN Hui. (2001). Study on the Right to Education into the Constitution. *Jurists*, (2).
- Wu Peng. (2008). Citizen's Right and Duty to Receive Education. *Journal of the National Academy of Procurators*, 16(2).
- Yuan Wenfeng. (2015). Analysis of the Application stage of Education in Article 46 of the Constitution. *Journal of East China University of Political Science and Law*, (2).
- Yuan Wenfeng. (2015). The Constitutional Provisions of the right to education: the invocation, connotation and remedy path. *Politics and Law*, (4).
- Zhao Hong. (2022). How to protect students' examination right under the epidemic?. https://mp.weixin.qq.com/s/G1gacnoeH_RLu33f2HZvAQ,2022-05-20/2022-08-13.
- Zheng Xianjun. (2003). On the Constitutional

attributes of citizens' right to Education.
China Educational Legal System Review, 2(0).