

Abstract

In recent years, there were many cases of emergency in China, and a series of actions taken by the government were only half-by-half desert. Emergency situation is the new issue, but how to insist the rule of law in the emergency is newer. Well, this paper tries to solve the problem in the point of procedure. It's important to prescribe the base line of the procedure of emergency action to incarnate the doctrine of rule of law. Not only aims at the embarrassment of lack of procedure in the Administrative Law in China, but also forbid the abuse of administrative emergency power, to protect the legal right of the citizens.

The first part is regarding the reasons of why constitutes the emergency procedure in the Administrative Procedure Law. The emergency procedure is the request of spirit of democracy, and the rule by law as well. For example of the United States, Germany and the develop current of the international, we can find that the history of restriction of procedure in the emergency power comes through a long time. In addition there must be one part about the emergency action procedure, to perfect the Emergency Law system in China. The second part analyzes lacuna of that system in China, finds that there is the lack of the emergency procedure, including the Constitution and the separate edition, we can draw a conclusion that constitute the emergency procedure in the Administrative Procedure Law is practical. The third part bases on the three groups of conflict legal value, to solve the tropism of the Procedure. The forth part

discusses the basic theory in China, including that the object which can be applied in this procedure; four steps should be taken by the government crisis management; the principles of administrative procedure in emergency, i.e. the principle of administrative emergency, the principle of proportion and the protection of the interests of citizen. However the most important part in this subject is the disclosure of government information, which balance has been changed between the right of public knowledge and the right of privacy. And also talk about the legal responsibility while the administrative officer disobeys the emergency procedure. The fifth part analyses the relationship between the administrative emergency procedure and the Emergency State Act, the Administrative Action Code, as well as administrative remedy system. The sixth part is about the material content of the advice.