

Research on Privacy Protection in the Era of Civil Code

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Abstract: Based on the demand for privacy protection of The Times, the right to privacy came into being. However, the protection of its rights has not brought universal results for the application of this major issue in various countries. The latest development of privacy system in China is reflected in the definition of the scope and concept of privacy in the Civil Code. Throughout the history of the development of privacy system in China, although lawmakers have made a certain breakthrough in this attempt in the Civil Code, the theory is still subject to questions such as ambiguous connotation and unclear boundary. At the same time, the data era has also given the right to privacy a new content, which makes the traditional existing rules more difficult to deal with the new connotation of the right to privacy. In order to alleviate the increasingly sharp contradiction between the civil code era and the protection of citizens' privacy rights, it is necessary to trace the origin and development of privacy, combine with the judicial status of The Times, comb out the existing theories and rules in detail, and re-interpret the new connotation of privacy protection under the background of the Civil Code in the new era, and finally bring due effect to judicial practice.

1. Introduction

The protection of human rights and respect for individual dignity in modern society, together with the expansion of the market, the development of technology and the Internet, have had an important impact on the development of the right to privacy. The development of The Times is related to human's demand for privacy, and privacy is becoming more and more important to the expression of human value. Protecting the right of "not to be disturbed" and improving the privacy system are always eternal propositions[1]. Things are constantly changing and developing. In the process of the evolution from traditional privacy rights to modern privacy rights, the connotation and extension of privacy rights are constantly changing and rich, and they always show dynamic characteristics of advancing with The Times. At present, China's privacy protection rules are centrally stipulated in the Civil Code of the People's Republic of China (hereinafter referred to as the Civil Code). The Civil Code, which will come into effect on January 1, 2021, has a separate chapter on the right to privacy and personal information protection to make important explanations. As a "major reform", the content of privacy is inevitably faced with many questions. In the past two years, the application of the Code in judicial practice has also shown some clues. When the accumulation of practice is enough to classify the crux of privacy rules, it is of theoretical and practical significance to identify the crisis of privacy protection in our country, so as to grasp the changes in the connotation of privacy and reshape the protection methods.

2. The dilemma of privacy protection in the era of civil code

2.1 The category of right is not clear

The determination of the boundary of rights is the key issue in the operation of rights system. The core of privacy system lies in the category of privacy right. In the Civil Code, the right to privacy is protected in the form of specific personality right, but the uncertainty of its right category conflicts obviously with the requirement of its existence form. This phenomenon will eventually lead to the difficulty of independent application of the right to privacy in judicial practice. To be specific, in addition to the broad sense of "peace of private life", privacy in the Civil Code is further refined into subjectively unwilling to be known and objectively private space, activities and information[2]. So far, the definition standards of the two have not been clearly unified in judicial practice, and there is still a large space for discussion. In terms of subjective and objective elements, the elements of personal privacy "unwilling to be known" and "privacy" stipulated in the Civil Code only stay at the level of rules without further elaboration, which brings greater difficulty to judicial practice and indirectly affects the judgment to play its due value effect.

2.2 The division of personal information is vague

The category of privacy is rarely discussed by scholars, but the distinction between privacy and personal information is no shortage of discussion in the academic circle. The Civil Code has increased the correlation between the two, and the setting of special chapters to protect privacy and personal information conforms to the demand of data protection in the information age. However, the judicial practice at the present stage shows that although the two rules are independent of each other, they overlap to a large extent, which also leads to the problem of unclear boundary of rights and interests. For example, the Beijing Internet Court has made an exemplary judgment on the identification of private information by using the "contextual theory" and "reasonable expectation theory". However, the development speed of the information age determines that the diversity of information types cannot always be kept within the predictable range of citizens. The hasty application of types cannot replace the specific elements and criteria to measure and judge each personal information, which will easily lead to large differences between cases. Such confusion in the past will weaken the rationality of the judgment results and increase the instability of the applicable standards.

2.3 The contradiction between privacy protection and disclosure is increasing day by day

In the information age with drastic changes in science and technology, the content of privacy rights is increasingly rich, and the emergence of new rights provides a broader space for the right to privacy. The mainstream problem of privacy rights in the era of science and technology is the privacy protection of citizens in the era of big data. In the era of big data, people's privacy is like walking in the transparent window on the street, which can be easily grasped and "nowhere to escape". The savage growth of science and technology has also made virtual information become an increasingly important resource. Its accuracy and repeatability improve production efficiency, but also increase the risk of information leakage. In essence, privacy in the information age is more likely to be reflected in the degree of personal information sharing based on personal wishes[3]. However, some data manipulators ultimately desire the great value behind privacy, and thus gradually weaken the personal wishes of the right holders. Such a vicious circle has made citizens' privacy pay a painful price. The reason is that big data itself has both traditional network security risks and risks of emerging technologies, and the inherent defects in its attributes are irreconcilable with the protection of personal information and privacy.

3. Perfect strategies for privacy protection in the era of civil code

3.1 Clarify the attributes and defining standards of rights

Article 1032 of the Civil Code extends the protection of the right to privacy and consolidates the characteristics of rights that the right holder can control independently except for negative rights. Some scholars suggest that the right to peace of private life should be distinguished from the right to privacy, believing that the right holder's undisturbed state has nothing in common with the freedom of personal dignity advocated by the source of privacy right, and the cause of the damage to the interests of peace of private life does not necessarily come from privacy disputes. This repeated legislative arrangement will make the right return to the parasitic state endlessly in a vicious circle. The author believes that in combination with the theory and practice of personality rights in China, compared with concrete interests, abstract privacy interests should stand in the perspective of broad privacy rights and hold a more inclusive attitude. Extraterritorial laws usually adopt the standard of "highly offensive to reasonable people" in identifying abstract privacy interests, and limit the degree of serious offence to determine whether the peace of life should be regarded as being disturbed. However, in the past judicial practice in China, "social norms" are often used as the judgment standard for privacy intrusion, and the object of protection of abstract privacy interests is the social subject. It is legally logical and consistent to use social norms to measure whether social subjects should be protected.

In addition, social norms will automatically coordinate with the new privacy ethics over time to make up for the lag of the law. No matter the extraterritorial standard or the social norm standard, the value derivation tool behind the judgment standard of special privacy interest cannot be separated from the principle of proportionality[4]. In the Civil Code, there are many values-oriented rules based on the principle of proportionality, such as the exemption of "parties' explicit consent" and the rule of fair use of personality right in Article 999 of the Civil Code. Therefore, the judgment of abstract privacy interests should be based on the principle of proportionality in individual cases, in order to minimize the infringement and maximize the legitimate rights and interests within the necessary scope.

3.2 Clarify the limits of personal information protection rules

The applicable boundaries of privacy and personal information protection cannot be separated from the identification of private information. In addition to the "context integrity theory", there are also the judgment standards of "identification, privacy, and privacy", which are conducive to the judicial practice of our country at the present stage. First of all, distinguishability is different from identification, the information that can be identified alone can be regarded as "identified information", that is, the information of the specific natural person who can already be directly identified; Information that combines with other information to identify a specific natural person is "identifiable information", which is information with the possibility of identification. This also coincides with the views of some Chinese scholars: "The more important the information is for the protection of the natural person's personal property rights, personal dignity and personal freedom, the more likely it is private information; The more important it is to maintain normal social communication and freedom of information, the less private information it is." Secondly, the protection of private information is essentially the protection of privacy interests, which are both private and private. The key to identifying privacy lies in the reasonable expectation of not being known to others, and the judgment of privacy after identification and privacy is the consideration of the legitimacy of privacy interests. If private information involves public interests and the legitimate interests of others. It can not belong to the category of privacy completely; On the contrary, the right holder enjoys autonomy and control

over the private information, and is protected by the right to privacy.

Identification is the key to judge whether it belongs to personal information, and privacy and privacy-nature together constitute two aspects of "privacy interests". The former emphasizes the secret of not being known to others, including the subjective intention of not wanting to be known to others, and the need to have undisclosed objective facts; The latter emphasizes the private nature that has nothing to do with the public interest and the interests of others. Judging private information according to this theory is helpful for timely information discrimination, improving judicial efficiency, and better applying the rules of privacy and personal information protection respectively.

3.3 Improve the ability of privacy to cope with risks in the era of big data

The inherent security defects of big data itself need to be intervened at the technical level, and the latest technology should be used to balance the negative impact of big data and ensure information security. To alleviate this problem, we should start from two dimensions. In the sense of breadth, the improvement of the privacy protection legislation system is an urgent task. With reference to the relationship between the Civil Code and the Personal Information Protection Law, it is urgently necessary to strengthen the process of formulating laws related to data privacy security, which is similar to the latter, so that the privacy legal system will gradually move from decentralization to unification and from scattered to orderly, so that specialized laws will gradually become the conduct of the big data industry and become a solid defense line for protecting citizens' data privacy[5]. Vertical mining of the specific provisions of privacy-related legislation, as mentioned above, the vagueness of the elements increases the difficulty of judicial implementation, therefore, it is necessary to make a more detailed and perfect interpretation of the existing rules while the privacy legal system is becoming more and more perfect with the enactment of laws. In particular, it is necessary to check the stages that may harm citizens' privacy in big data operation, clarify the standards and requirements for the security of citizens' privacy information in the process of data collection, transmission, storage and utilization, and emphasize the rights of big data information holders and other process participants in the legislation, and strengthen their obligations. Under the protection level and standards of citizens' privacy rights in the Civil Code, the provisions on the collection authority, protection scope and essential contents of citizens' data privacy are refined, so that the procedural provisions in each stage of data use can be tracked, and the "tool book" of big data citizens' privacy law is built to ensure the rationality of its operation and the rigor of its procedures, so as to reduce the risks of citizens' privacy under big data.

4. Conclusions

No matter in the era of science and technology, or in the era of civil code, the new era will bring us endless resources and challenges. The Civil Code stands at the peak of the rule of law in China with a lofty posture, allowing climbers to repeat the process from exploration to realization, from development to utilization, and privacy as a right that cannot be ignored at the forefront of the rule of law. Inevitably, there are problems such as the theory of the new regulation is still empty, the collision with science and technology, and the lack of running-in in practice. In order to solve this series of problems, the privacy system under the background of the Civil Code must be divided and refined from different dimensions. With the Civil Code as the background and the legal system as the benchmark, all subjects should strengthen their awareness of privacy ethics and cooperate with each other, constantly explore the harmonious way of getting along with citizens' privacy in the new era, and meet the common challenges of mankind in five dimensions.

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