

Reflection on Personality Right Based on Civil Law

Rong QIN

Rong Qin, Yunnan University, Law School, Kunming, 650000 Yunnan, China

1270054107@qq.com

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Abstract: With the deepening of the concept of human rights and the emergence of infringement of personality rights, it is imperative to strengthen the protection of personality rights. In order to protect the right of personality and alleviate the complexity of society, the scope and legal boundary of personality should be clearly defined in advance, so that the right of personality can be confirmed. The independent system arrangement not only highlights the special concern for personal dignity in China's Civil Code in form, but also provides a broader normative construction space for the protection of personal rights. This paper discusses several basic theoretical issues of civil law from the aspects of the legal concept of personality right, equality of personality, the unity of private law protection and public law protection, etc. This paper expounds the significance of the independent compilation of personality right in the Civil Code, and probes into the problems that need to be solved in China's Civil Code based on personality right.

1. Introduction

The independence of personality is regarded as the biggest highlight of China's Civil Code. In the Civil Code passed in 2020, the independent compilation of the fourth part "Personality Rights" has attracted people's attention, and it has also opened a new chapter of codification, making great contributions to the protection of personality rights. Although the legislative cases in which the word "personality right" appears directly in the code are not typical and common, there are still some such examples[1].

In the compilation of China's Civil Code, setting personality right as a separate part will directly reflect the respect and protection of human rights in the Civil Code, which is conducive to the core value of the spirit of civil law. Scientific and effective arrangement of personality right in the Civil Code is an innovation in the style design of China's Civil Code, and it will also reflect the wisdom of the development of rule of law in China.

2. The Basic Category of Personality Right Theory

Personality right is the freedom and integrity of the behavior and spiritual activities enjoyed by the right subject. Its basic point lies in the sociality of human beings, and in law, it shows the dynamic security of the right subject itself. Scholars generally believe that personality right has the attributes of fixation, exclusiveness and dominance. The existence of personality right and civil subject is always the same, only because of the acquisition and loss of personality. The right of personality cannot be transferred, abandoned or inherited, and cannot be separated from the person of the civil subject[2-3]. Although the power of individual personality rights (such as portrait rights, etc.) can be transferred, the personality rights as a whole are exclusive to the obligee and cannot be transferred, abandoned or inherited, and cannot be separated from the person of the civil subject.

There is no dispute that nature can be the subject of personality right, but there is a great controversy about whether a legal person and an unincorporated organization have personality right, especially about whether a legal person has personality right. Many scholars have written articles to discuss it, and there are two diametrically opposed views, positive and negative. In essence, the right to name and reputation, which is based on the legal person's subject qualification, can only be property rights: the right to name of a legal person should be intangible property rights, which is

stipulated in international conventions on industrial property protection; The reputation right of a legal person should be the commercial credit right of a legal person, and it should also be placed in the scope of intangible property rights[4].

The essence of civil law is the law of rights, and personality right is an important civil right of the people. The independent compilation of personality right has the logic of code. The right of personality is not applicable to the provisions of legal act, agency and prescription in the general rules; Independent personality can fully respond to people's growing demand for a better life[5]. Under the background of the new era, we should adhere to the people-centered development thought.

3. Equality of Personality, Unity of Private Law Protection and Public Law Protection

3.1 Private Law Protection and Public Law Protection

There are problems of personality protection in both public law and private law. Therefore, this brings a problem, that is, the unity of private law protection and public law protection of personality equality. Public law regulates the relationship between citizens and sovereign, while private law regulates the relationship between citizens. The equality of personality in nature has been demonstrated, so whether the emergence of power will affect the equality of personality needs to be discussed from the basis of the existence of power.

Public law should recognize the essence of power. In essence, there is no reason why power should be higher than right, and the two are essentially equal. Just like the appearance of general personality right, this needs a process, but it is necessary and necessary on the basis of the meaning of personality right[6-7]. In this way, it can promote the construction of a complete personality protection system, so equal personality should be protected by public law and private law.

3.2 Legislative Choice of Personality Right

With the deepening of the concept of human rights and the emergence of infringement of personality rights, it is imperative to strengthen the protection of personality rights. In order to protect the right of personality and alleviate the complexity of society, the scope and legal boundary of personality should be clearly defined in advance, so that the right of personality can be confirmed. This is also the realistic basis of personality rights. To confirm personality in civil law, it is important to provide an empirical form equivalent to the ethical quality of personality for personality communication and personality protection. Recognizing the right of personality as the right to be respected, the scope of the legal interests of personality protected by law and relevant protection measures can be directly stipulated in the legislation of the right of personality.

Chapter 2, Title IV of the Civil Code clearly elaborates and stipulates the right to life, body and health. "Civil Code" improves and modifies the previous "the right to life that is meaningful only when it is violated", and clearly states that it fully reflects the maintenance of the life and health of civil subjects, and further solves the problem that life and health were in a critical state and could not be treated due to various accidents in the past[8].

After the personality of the Civil Code was compiled independently, Article 994, Part IV, clearly put forward the concept of "the personal interests of the deceased", protected it, and recognized the body, name, reputation and honor as the personal interests of the deceased (Figure 1). Further deal with the commercialization of personality rights under the background of market economy, and earnestly safeguard the personality rights of civil subjects.

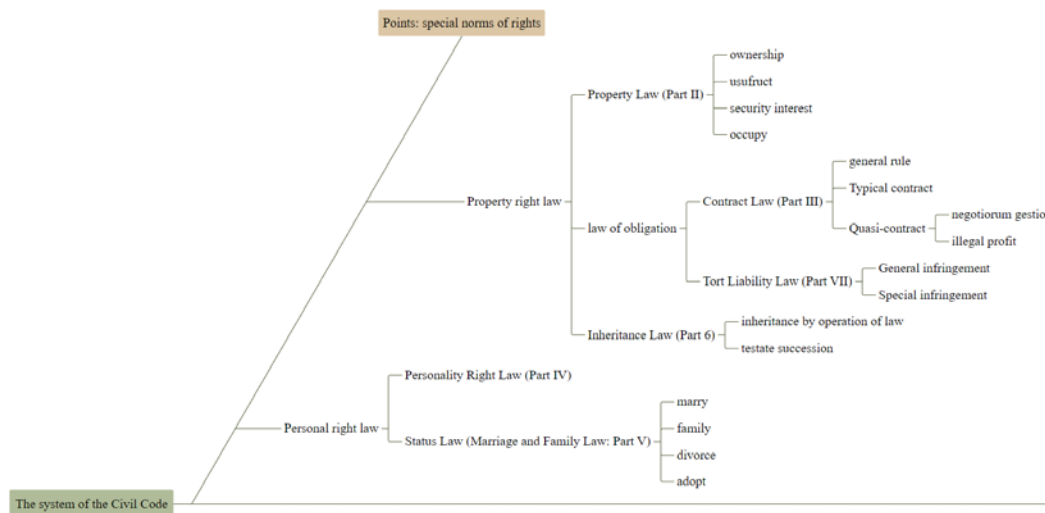


Fig.1 The System of Specific Provisions in the Civil Code

Scholars usually define real right as the right to directly control specific things and enjoy benefits, and the effect of personality right can be divided into positive effect and negative effect. Positive effectiveness refers to dominance, that is to say, personality right is a kind of dominance; Negative effect refers to the right to claim the right of personality when the right of personality is violated. Personal right is a kind of control right. By exercising the right to control the right object, the right subject can enjoy the safety of life and body and the freedom of activities. Moreover, the main purpose of the right to life, body and health is only to resist the unlawful harm of others, so it does not belong to the dominant right, while there are some dominant rights in the right to name and portrait. In fact, it is the proper meaning of absolute right to be able to fight against any third party.

The most important practical significance of establishing the property interests of personality right is to solve the problem of damage relief of the infringed, so it should be clearly defined and feasible in the compilation of the Civil Code. The damage compensation of property interests aims to make up for the economic losses of the infringed, including direct losses and indirect losses [9]. The main functions of the two are inconsistent, so they should not be confused at will. How to calculate the benefits gained by the infringer is another difficult problem. It is difficult for the infringer to give evidence, and the infringer will try his best to conceal his benefits. The essence of personality right system is still the maintenance of spiritual interests, which is consistent with the legislative purpose of personality right in China. Therefore, the unitary model in Germany is more in line with the actual situation in China.

4. Suggestions on Legislative Style Selection and Perfection of Personality Right Law in Civil Code

4.1 Highlight the Value of Safeguarding Human Rights

The personality right system can't avoid its close relationship with the human rights system. As an important part of the civil law system, the personality right is the embodiment of the human rights system in the civil law, realizing the concretization of the human rights system. The scope of the right of personality is limited, but the right of personality is closely related to the interests of personality. The right of personality involves specific personality, which has strong personality and individuality, and pays more attention to the evaluation of the protection of individual rights. In this case, setting the personality right as a separate part in the Civil Code will not only help to improve the personality right system, but also show our country's emphasis on the human rights system, and realize the protection of human rights content more directly through the legal system of civil law.

The Civil Code of traditional civil law countries has not made a clear provision for it, which is hindered by the time limit and conservative concept of its Civil Code. The development of human rights theory has improved the status and value of personality right in the civil law system. China's

“General Principles of Civil Law” made forward-looking provisions on this at the early stage of formulation, and for the first time, it made partial provisions on personal rights, which also made China's “General Principles of Civil Law” recognized by many countries in the world in terms of human rights protection. The importance of personal rights as civil rights became more and more prominent, and the value of private rights in civil law was brought into full play.

4.2 The Independent Compilation of Personality Right is a Summary of China's Civil Legislation Experience

In my opinion, whether the personality right should be compiled independently is just a matter of the structure and arrangement of legal provisions. Therefore, it seems that there is little difference in the application of law. The aim of the compilation of the code is to make legislation scientific and rational. Therefore, the structure of the Civil Code should be arranged from the essence of personality rights, not the importance of rights.

The right of personality has no object independent of itself, and the fundamental purpose of the right of personality stipulated in the civil law is to safeguard people's inner freedom, the development of people's “inner personality” and the protection of people's interests in private life. Therefore, the function of personality right in private law is defensive. After the norm of personality right is stipulated separately, it is bound to stipulate the protection of personality right in tort law, which in a certain sense takes the time out of the significance of personality right compilation.

In order to realize the effective protection of personality, countries constantly absorb the values embodied in basic rights by means of legal interpretation techniques and general clauses in tort law, protect the basic values in the constitutional system by effective means, and establish an open personality protection system. From the legislative experience of Germany, France and other countries, the tort law is quite open, and the object of protection is not limited to rights. Moreover, even if “it belongs to the content of human rights, the tort law should be protected”, by keeping the coordination with the Constitution, the comprehensive protection of people can be realized.

4.3 Dynamic Change of Personality Right and Protection of New Personality Right

In the traditional civil law system, the right of personality has not yet reached the status equivalent to that of property right, which is the center of the right system in the traditional civil law. However, with the development and progress of economy, the spiritual freedom and personal dignity of individuals have gained universal attention and recognition, thus promoting the development of the right of personality. Whether and how to protect it has become the focus of theoretical research and judicial practice.

On the one hand, the work of jurisprudence is to study the existing laws, on the other hand, it is to constitute and perfect the normative system of human society. In the process of formulating the personality right law in our country, including the solution of related problems in the implementation after the promulgation of the personality right law, we must make full use of the method of legal hermeneutics. Make the legal provisions to clarify the legal facts to be dealt with as much as possible, provide guidance and basis for the judicial practice of the protection of personality rights, and provide materials and development space for the theoretical research of the exhibition of personality rights [10]. The formulation and implementation of personality law can never exist without legal interpretation.

As a traditional statutory country in China, cases are handled in strict accordance with the explicit provisions of the law. In order to avoid the occurrence of law-making by judges, there are many restrictions on the discretion of judges. In order to realize the protection of the new personality right that has not been confirmed by legislation, the system of “general terms for the protection of personality right” has been specially established in the personality right law, which provides the freedom of reasonable floating within the prescribed scope for the judgment and execution of cases. The judge's discretion is of great significance to the protection of personality right in China, but it can't be separated from the clear legal provisions of the typed personality right. Trying to achieve a balance between legalization and judge's discretion is the best state of protecting personality rights.

4.4 Adopt Separate Protection Mechanism for Image Right

In China's judicial practice, the comprehensive mode of personality right law, trademark law, copyright law and anti-unfair competition law is usually adopted for the protection of image right. Using these laws in China to comprehensively protect image right is not only confusing, but also may lead to incomplete protection of image right. Images are divided into real images and virtual roles, so the author advocates adopting separate protection mechanisms for image rights: real images are protected by personality rights law; Virtual role is protected by copyright law and commercialization right.

On the subject, based on the dominance of personality elements, all natural persons have the right to control their own personality elements and make use of their economic interests. After the death of the image owner, this right can also be inherited by his close relatives. Negative power means that an image has the right to prohibit others from making commercial use of its image without authorization. For example, the portrait, name, voice of a natural person, the overall image of a person, the body image other than the face, the image of an actor and other personalities can be the personality elements that distinguish the subject from other subjects by the public. This can not only meet the interests of different subjects, but also effectively protect the dual interests of image right.

In the field of literary and artistic creation, we should pay attention to the following three aspects when adopting copyright law to protect virtual characters: First, the conditions for virtual characters to be protected by copyright law. The author believes that China can learn from this standard. Restricted by this condition, in general, the purely descriptive virtual characters contained in literary works are difficult to meet the conditions of being protected by copyright law. Second, the identification of copyright infringement. Judging whether it is infringing or not is the same as the provisions of the Copyright Law, excluding fair use and legally licensed use. Third, the independent protection of copyright law. The protection of virtual characters by copyright law in the field of literature and art means that anti-unfair competition law and trademark law should not be involved.

5. Conclusions

Personality right is the freedom and integrity of the behavior and spiritual activities enjoyed by the right subject. Its basic point lies in the sociality of human beings, and in law, it shows the dynamic security of the right subject itself. The essence of civil law is the law of rights, and personality right is an important civil right of the people. The independent compilation of personality right has the logic of code. The right of personality is not applicable to the provisions of legal act, agency and prescription in the general rules; With the development of society and the discussion of related issues, in practice, our citizens' awareness of personality equality is deepening, and the academic research on personality equality will also expand and deepen. Guided by the socialist core values, we should be able to hope for a society in which everyone is equal in essence.

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