

Analysis of the Independence and Interaction of Constitutional Personality Rights and Civil Law Personality Rights

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Abstract

For a long time, what kind of right is the right of personality, whether it is a civil law right, a constitutional right, or other legal rights, has been a much debated issue among scholars in academia; the civil law academia has always argued side by side. However, the constitutional scholars have no dispute over this, thus forming a general theory of the nature of basic rights. Of course, under different legal systems, personality rights have certain differences in terms of formation background, development trajectory, and right attributes. From the perspective of legal practice, constitutional personality rights and civil personality rights interact indirectly, which precisely reflects the objective legal attributes of fundamental rights.

Keywords

Personality Right, Basic Right, Objective Law.

1. Introduction

With the continuous development of the economy and society, citizens' awareness of individual rights and the awareness of the law continue to increase, and the original civil law system dominated by property rights can no longer meet people's needs. With the rapid development of various technologies such as network information, and the emergence of relevant advanced technologies such as fingerprint recognition, face swiping, and image recognition robots, while enriching the lives of the people, it also provides criminals for illegally obtaining the rights of names, portraits, and portraits of others. Privacy rights and other related personality rights provide convenient channels. Due to the certain flaws in the laws related to the citizen's personality rights in our country at this stage, different laws have different interpretations of the personality rights. In related judicial practice, it is difficult to implement it systematically, comprehensively and accurately, and "different judgments in the same case" occur from time to time, which has a certain impact on my country's image of fairness and justice. Therefore, the promulgation of a relatively complete statutory code to protect the relevant rights of the people is not only an urgent need of the people, but also an opportunity to establish a good judicial image in my country, and it is an effective extension of General Secretary Xi's concept of governing the country by law.

2. Positioning of Constitutional Personality Rights and Civil Law Personality Rights

The draft of the general rules of the civil law promulgated by my country in 2016 stipulates the rights of personality in Article 99 and Article 100 of the "Civil Rights" chapter, indicating that my country's legislature has abandoned the legislative idea of separately compiling the part of personality rights. However, with regard to the relationship between constitutional personality rights and civil law personality rights, there is always a call for "realizing the transformation of constitutional basic rights into civil law basic rights" in the legal circle. For this, it is necessary to accurately locate the two. The constitutional personality rights actually broadly include the content of basic rights, including the rights of equality, personal freedom, political rights, and economic and cultural life rights. Compared with the content and scope of the constitution, there are differences in the power structure, power boundaries, rights content, and strength of the civil law. This leads to the need to fully consider the language of the two when exploring the relationship between the civil law personality rights and the constitutional personality rights. Environmental differences and the resulting independence and

inherent differences, on the basis of respecting differences and independence, discuss the interaction and connection between the two. A few days ago, a brand-new "Civil Code" was officially promulgated. For the first time, personality rights were compiled separately. On the basis of summarizing past judicial practice experience, a "Civil Code" with Chinese characteristics, reflecting the characteristics of the times and reflecting the will of the people was formed. ". The promulgation of the "Civil Code" put an end to the "multi-law co-management" of Chinese laws regarding personality rights. The "Civil Code" promulgated this time, although derived from the normative system of the Constitution, is to a certain extent a supplement and interpretation of the Constitution's personality rights. However, the constitution of our country's laws is also the most basic legal text. Although it does not literally stipulate general personality rights, it also makes corresponding requirements for the protection of general personality rights indirectly. Constitutional personality rights and civil law personality rights each have their own independent aspects, but at the same time there is a certain connection and interaction between the two.

3. The relative independence of the Constitution and civil law personality rights

Constitutional personality rights and civil law personality rights belong to different legal systems, so their formation and development paths are quite different. In the Constitution, the right of personality is a basic right, and the process of its formation and development is relatively smooth. In the world, Germany's legal exploration of personality rights is at the forefront of the world. The concept of personality rights was established in the 1946 "German Basic Law". Right to make a detailed statement. After the successful experience of Germany, other countries in the world have learned from the German model, and have also absorbed the theory of personality rights in the constitution to varying degrees. Compared with the smoothness of the constitutional personality rights, the establishment of the civil law personality rights has been greatly controversial mainly due to the following reasons:

3.1 Different formation and development paths

Personality rights in the Constitution, also known as "fundamental rights" or "human rights", are developed from natural rights and are both universal and applicable. The main body of the constitutional personality right is a universal and abstract person. After a series of movements such as the Renaissance Movement, the Reformation Movement, and the Enlightenment Movement, a solid theoretical foundation has been laid. Later, under the impetus of the Western bourgeois revolution and the legalization and modernization of modern society, it was incorporated into the constitution or other laws of the same level by different countries and improved. Nowadays, the awakening of citizens' individual rights awareness has become a global development trend, and people of all countries are calling for the protection of human rights, which has become a symbol of the national constitutional and democratic process.

Civil law personality rights refer to specific content, generally referring to the rights of life, name, portrait, reputation, etc. In the judicial discussion before the publication of the Civil Code, the majority of experts and scholars had many exchanges on whether to include the right of personality in the Civil Code, whether to include it in the Civil Code, and whether to make it independent. During the exchanges, most scholars believed that the civil law should not include the right of personality in the civil code. If the right of personality is included in the civil code, it will reduce the effectiveness of the right of personality, make "person" itself an object of law, and shake "person". It is always the solemn status of the legal subject. In the process of incorporating personality rights into civil law and other jurisdictions in countries around the world, a comparison with the inclusion of personality rights in the constitutional system can be summarized as a trend, that is, there are many obstacles to the judicial process of personality rights. The newly promulgated "Civil Code" to independently codify the right of personality is not only a major innovation in the legislative process of our country's judicial exploration, but also reflects the spiritual nature and humanistic care of our country's various

laws, regulations, and policies. Pay attention to, to a certain extent, reflects the value concept of people-oriented.

3.2 Difference in scope of effectiveness

The theoretical basis of constitutional rights and civil law rights is completely different. As a subjective right, the constitutional right of personality aims at limiting the dominant power of the country, and its rights are at the level of national citizens. However, the personality right in the civil law refers to my individual who has an equal subject. The main purpose is to protect the personality right from personal infringement, and the level of rights is private. Due to the different subject of obligations, the constitution cannot be directly used to regulate private relations and disputes, and individuals cannot directly use constitutional rights to make claims to the public power of the state and other individuals, otherwise it will cause confusion in the construction of the country's rule of law and cause serious problems. Destruction. However, with the development of society, many groups or individuals have a certain advantage because they have assumed some public functions or occupied exclusive undertakings. In this way, the basic rights of those disadvantaged groups or individuals who are in a disadvantaged position have formed. Threats or substantive infringements, and due to the limitations of private law, it is impossible to provide comprehensive protection to these people or groups. In this case, German "third-person direct effects theory" and "third-person indirect effects theory" began to appear. The constitution generally stipulates that the role of rights is to limit the public power of the country and avoid excessive interference of public power in the private rights of citizens. Therefore, the constitutional rights cannot be directly used in a specific judicial field, nor can the relationships and disputes between individuals be directly adjusted. If the constitutional rights are directly applicable to a specific judicial field, then the owner of the rights can use the constitutional rights to directly make civil claims, thereby claiming public rights from the private side, causing the impact of the constitutional rights legal system and the civil rights legal system. Due to unclear chaos, unclear boundaries, unordered systems, etc., the attributes and framework of constitutional rights and civil law rights have been completely destroyed. Therefore, the scope of validity of constitutional rights and civil law rights is extremely different, and the application of constitutional private law is very undesirable. The reason why the Constitution and the Civil Law stipulate general personality rights is because the functions of the two rights are different. The purpose of constitutional personality rights is to resist the state's infringement of personal rights, and the purpose of citizenship is to resist other individuals' infringements of personality rights.

4. The Connection and Supplement of the Constitution and the Right of Personality in Civil Law

Personality rights are one of the basic rights, and the constitutional personality rights have both subjective rights and objective laws. Therefore, the relationship between the constitution and civil law personality rights is very close, which is mainly reflected in the following points:

4.1 The right of personality in civil law is a supplement to the constitution

In our country, the personality rights constitution, civil law and other related laws all have a certain basis, but whether it is the constitution, civil law or other related laws, there are certain defects in the relevant interpretation of personality rights. The Constitution is the foundation of our country's laws, and there are corresponding regulations and expressions for the relevant rights of citizens. Because the constitution's formulation is too broad to give a detailed explanation of a certain basic right, the detailed description of personality rights needs to be explained by more professional laws, such as the recently promulgated "Civil Code". The previous civil law was subject to the constitutional framework, but it did not fully interpret the right of personality. Therefore, my country's newly promulgated "Civil Code" codifies personality rights separately, which is not only a supplement and interpretation of the constitution, but also fills in the details of the constitution that is not detailed, so that the value of constitutional personality rights is reflected in the specific operation of the civil law. Among.

4.2 Use the objective method as a bridge between the two

Personality rights are a kind of basic rights. Basic rights themselves have objective value attributes. This objective value attribute is recognized by the constitution as the objective value of order. It can be used as an objective method and way to restrict power. The exercise of public power must be subject to objective values. The restraint of value order takes the basic rights of objective law as a bridge and link between the constitutional system and the civil law system to realize the connection and interaction between the two. On the one hand, the personality rights in the civil law are the product of the constitutional personality rights converging with the civil law; on the other hand, because the general personality rights in the constitution are binding on the legislature. The codification of personality rights stipulated in the newly promulgated "Civil Code" is the result of civil legislators' implementation of the state's obligation to protect basic rights.

5. Conclusions

With the advent of the information age, citizens' individual rights awareness and legal awareness have gradually strengthened, and the original civil law system dominated by property rights can no longer meet people's needs. The specific provisions of the constitutional personality rights in the civil law are complementary to each other, and both aim to protect the basic rights of citizens. Civil law personality rights and constitutional personality rights belong to different legal rights systems, have undergone different development processes, and are applicable to different scopes of effectiveness. In order to ensure the effective protection of citizens' rights and prevent the violation of state power, the independence between the two should be respected at all times in the process of law formulation and improvement, and on this basis, the bridge and link of objective law should be used to realize the two. The indirect interaction between them effectively protects the rights of citizens.

References

- [1] Zhang Shanbin: Independence and Interaction Between Civil Law Personality Rights and Constitutional Personality Rights. *Legal Review*, 34(2016) No.6, p.50-60.
- [2] Jiang Xueyue: The Origin of Personality and the Right of Personality——Also on the Interactive Relationship Between the Constitution and the Civil Law. *Law Journal*, (2007) No 5, p.17-20.
- [3] Jiang Xindong: Constitutional Personality Rights and Civil Law Personality Rights. *Xiamen University Law Review*, (2014) No.2, p.107-115.
- [4] Huang Zhong: The Identification of the System Effect of the Independent Compilation of the Personality Rights Law. *Modern Law Science*, (2013) No.1, p. 44-57.
- [5] Wang Zhu: The Constitutional Interpretation of the Legislative Procedure of the "Tort Liability Law"-Also on the Constitutional Awareness in the Drafting of the "Civil Code". *Law Science*, (2010) No.5, p.28-35.