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Protection of Personality Rights in Civil Code of the People's Republic of China
КЭР Граждандык кодексинин инсандын укуктарын коргоосу
Защита прав личности в Гражданском кодексе КНР

Abstract. *Civil Code of the People's Republic of China came into effect on January 1, 2021 in which the structure of "General Provisions--Specific Provisions" is adopted. Book of Personality Rights in Civil Code of P.R.C. is characterized by maintaining the openness of the system of personality rights, meeting the challenges to the protection of personality rights from modern science and technology, constructing the law of personality rights as a separate book and give full play to the function of ex ante relief. Book of Personality Rights of Civil Code of P.R.C. perfects the legal theory of personality rights, constructs the civil legal protection system of personality rights together with Book of General Provisions and Book of Tort Liability of Civil Code of P.R.C. and provides a legislative mode for other countries.*

Аннотация. «Кытай Эл Республикасынын Граждандык кодекси» 2021-жылдан тартып формалдуу түрдө күчүнө кирген. Бул кодексин максаты кишилик кадыр барк укук законун көз карандысыз түрдө «Кишилик кадыр барк укук бөлүгү» кылып кишилик кадыр барк укугун жарандык укук аркалуу коргоону күчөтүүгө багытталган. «Кишилик кадыр барк укук бөлүгү» структурасында жалпы балдык структурасынын мыйзам чыгаруу моделин кабыл алган. «Кишилик кадыр барк укук бөлүгүнүн» негизги мүнөздөмөлөрү: Кишилик кадыр барк укуктарын коргоо системасынын ачыктыгын сактоо, кишилик кадыр барк укуктарын коргоо боюнча заманбап технологиялардын сынактарына туруштук берүү, рельефке чейинки кутулдуруу функциясын өз алдынча түзүп чыгуу жана көрнүктөндүрүү. «Кишилик кадыр барк укук бөлүгү» кишилик кадыр барк укук законунун теориясын өркүндөтүп, «Жалпы мыйзамдар бөлүгү» жана «Кишилик укукту тебелөө боюнча жоопкерчилик бөлүгү» менен бирге кишилик кадыр барк укугун закон боюнча коргоо системасын түзүп башка өлкөлөр үчүн мыйзам чыгаруу моделдерин өрнөк кылып бере алат.

Аннотация. Гражданский кодекс Китайской Народной Республики вступил в силу с 1 января 2021 года. Настоящий гражданский кодекс КНР в сфере прав личности предусматривает сохранение открытости юридической системы, являясь в качестве отдельного тома кодекса с целью включения в себя всестороннее обеспечение функций законодательства и предотвращения вреда от возможного воздействия современных технологий и прочего ущерба. «Кодекс о правах личности» дополнил теоретическую базу в этой области и вместе с «Общим уставом» и «Кодексом о деликтной ответственности» создает систему защиты прав, выступая в качестве источника материалов, к которым могут быть обращены законодательные системы других стран.

Keywords: *Civil Code of P.R.C.; Characteristics; Values and Significance*

Урунттуу сөздөр: *Кытай Эл Республикасынын Граждандык кодексинин инсандык укуктары кодекиси; мүнөздөмөлөрү; баалуулугу жана мааниси*

Ключевые слова: Гражданский кодекс КНР о правах личности; Характеристики; Значение и ценности.

Personality rights are a serious of important rights in modern civil law. It is still controversial which scholar first proposed the concept of personality rights. At the end of the 19th century, German scholars Gareis, Gierke and Kohler discussed the theory of personality rights.[1] On May 25, 1954, the German Supreme Court first directly quoted constitutional provisions to protect the author's rights to publication and integrity of works in the famous civil trial named "Letters to the Editor", and interpreted it as a personality right.[2] The legal system used by Qing Dynasty and the other dynasties in China is known as the "Chinese Legal System", which had a great impact on neighboring countries. One of the characteristics of "Chinese Legal System" is no distinction between civil law and criminal law, which lacks provisions on personality rights and other civil rights. At the beginning of last century, the government of late Qing Dynasty imitated Japan to "revise the laws" by introducing western laws to China, so the consciousness of rights was waken up in China. Since then, Chinese scholars introduced the theory of personality rights from Germany to China and spread it in the academic circles of Chinese civil law, but it was in recent decades that personality rights were highly valued in China. In recent years, the theory of personality rights was being developed by Chinese civil law scholars in their continuous discussion. On May 28, 2020, Civil Code of P.R.C. was promulgated and came into effect on January 1, 2021. The law of personality rights became Book of Personality Rights in Civil Code of P.R.C. (hereinafter referred to as "Book of Personality Rights"), which strengthens the protection of personality rights through China's civil law and the disputes caused will continue along.

I . The main characteristics of Book of Personality Rights

1. Maintaining the openness of the system of personality rights

The skill of enumeration to confirm the basic types of personality rights is adopted in Book of Personality Rights, which can maintain the openness of the system of personality rights. Nine specific personality rights are first listed in General Rules of Book of Personality Rights, and the word "etc" is used, indicating that the other specific personality rights not explicitly listed here will also be protected. That a natural person enjoy other personality rights and other interests based on personal freedom and human dignity is also stipulated in General Rules of Book of Personality Rights, which is understood as general personality rights and also makes the system of personality rights open and inclusive.

2. Meeting the challenge of modern science and technology to the protection of personality rights

With the development of modern media and medical technology, there are high commercial values on personality identification such as portraits, names and other objects of personality rights, the possibility of controlling human tissues and organs of a natural person is expanding and the function to be exercised actively of the personality rights begins to appear. [3] Book of Personality Rights makes a positive repose to the commercial interests attached to names and portraits. That the subject of the personality rights can authorize others to use his name, portraits and other personal interests by contract and the matters of personality rights related to medicine are stipulated. The rapid development of science and technology in modern society also brings great challenges to the protection of personality rights, especially to the protection of the rights to privacy and information. In terms of the protection of rights to privacy, privacy is defined and six specific tortious conducts of the infringement on the rights to privacy are stipulated in Book of Personality Rights.

3. Constructing the law of personality rights as a separate book

In the actual codification of Civil Code of P.R.C., the disputes about whether the law of personality rights is constructed as a separate book were always accompanied by the codification. Scholars who supported that the law of personality rights would be constructed separately in Civil Code of P.R.C. as a book of personality rights hold the view that: it is the need to maintain human dignity and comprehensively protect personality rights; it is the need to perfect the norms of personality rights in the civil code; it is a direct response to the need of trial practice;^[4] it is not conducive to remain the system of personality rights open and will limit the development of the system of personality rights if it is embraced in the system of the civil right subjects; the types of personality rights are rich, in addition to the general personality rights, it may involve at least more than 20 types of specific personality rights with their own characteristics, rules of application of law and legal adjustment modes and new personality rights are still emerging.^[5] Scholars who opposed that the law of personality rights would be constructed separately in Civil Code of P.R.C. as a book of personality rights hold the view that because the life and body of a natural person are the carrier of personality rights, and personality is always consistent with personality rights, so personality rights should be stipulated in the chapter of the natural person in general provisions of civil code;^[6] the basic rules of the civil law of acquisition and extinction of civil rights and the exercising rules in general provisions of the civil code do not apply to personality rights;^[7] the types of personality rights are too limited, and whether “rights to honor” and “rights to credit” belong to personality rights has always been controversial in the theoretical circle; the contents of personality rights are less.^[8] Finally, the Chinese legislature adopted the former view and constructed the the law of personality rights as a new book. However, the legislature did not arrange Book of Personality Rights as the first book after the Book of General Provisions in Civil Code of P.R.C.

4. Giving full play to the function of ex ante protection

The characteristics of personality rights are obvious, which can't be recovered to its original state after being infringed. ^[9] Ex post relief cannot fully and effectively fill the infringement damage. One of the legislative value bases of Book of Personality Rights lies in the prior prevention and protection of personality rights. Therefore, “Claim of Personality Rights” and “Injunction System of Personality Rights” are stipulated in Book of Personality Rights. Although the legislation on the claim of personality rights is different in various civil codes in other countries abroad, but the claim of personality rights is always confirmed. ^[10] There is little controversy in the academic circles of Chinese civil law on the provision of the claim of personality rights. That if the personality rights are infringed, the victim can request the victim to stop the infringement, eliminate the obstruction, the danger and the influence, recover his reputation and make an apology is stipulated in Book of Personality Rights. It can be seen that there are many liability modes in above provision, including “apology” with the Chinese characteristic. That the provisions of limitation of action do not apply to the exercise of the claim of personality rights is stipulated in Book of Personality Rights, which makes the ex-ante relief function of the personality rights more powerful. In addition, the exercise of the claim of personality rights does not need tortfeasors to have fault. ^[11] That when a civil subject has evidences to prove that a tortfeasor is committing or about to commit an illegal tortious conduct against his personality rights which will cause irreparable damage if not be stopped in time, he has the rights to apply to the people's court for measures to order the tortfeasor to stop the relevant tortious conducts is stipulated in Civil Code of P.R.C. This provision is on the Injunction System of Personality Rights. It is a unique system stipulated in Book of Personality Rights and one of the ways with which the claim to personality rights

works. In nature, it belongs to the injunction of substantive law, which is different from the litigation preservation procedure in civil procedure law [12].

II. The Structure and Contents of Book of Personality Rights

1. Structure

German Civil Code is a typical representative among the civil codes of Civil Law System, in which Germany Pandekton's legislative concept and technology were adopted so as to refine the common contents of the law to form the general provisions which makes the contents of the code more concise and the system of the code more rigorous. Chinese civil law scholars are greatly influenced by German civil legal thoughts. Therefore, according to the legislative tradition of Civil Law System, the structure of "General Provisions--Specific Provisions" is adopted in Civil Code of P.R.C. Civil Code of P.R.C. consists of seven books: Book of General Provisions, Book of Real Rights, Book of Contracts, Book of Personality Rights, Book of Marriage and Family, Book of Succession and Book of Tort Liability. Book of Personality Rights is the fourth book of Civil Code of P.R.C., with 6 chapters, 51 articles. The contents of general provisions of Book of Personality Rights are "General Rules", and the contents of the specific provisions are about the specific personality rights. Based on the level of value, specific personality rights are divided into five parts: "Rights to Life, Rights to Corporeal Integrity, and Rights to Health", "Rights to Name and Rights to Entity Name", "Rights to Likeness", "Rights to Reputation and Rights to Honor" and "Rights to Privacy and Protection of Personal Information".

2. Contents

The contents and exercising rules of personality rights are stipulated in Book of Personality Rights. There are simpler and less provisions on the personality rights in traditional civil codes of Civil Law System. The contents of Book of Personality Rights are comparatively richer which contains necessary contents related to personality rights, and even appropriately include the contents of other departmental laws, such as administrative law, which is obviously reflected in the specific provisions. The specific provisions of the relevant contents of personality rights to a legal person such as rights to entity name, rights to entity reputation and rights to entity honor are also stipulated in Book of Personality Rights. But there are no clear provisions on some controversial personality rights, such as rights to sexual freedom, rights to gene, rights to labor, rights to spiritual purity and other personality rights in Book of Personality Rights. In addition, the scopes of general personality rights are also defined.

General Rules of Book of Personality Rights are the common regulations. The types of personality rights in civil law are confirmed in General Rules, which can provide a civil law basis for the protection of personality rights. There are different opinions among Chinese scholars on the attributes of personality rights. Some scholars hold the view that the personality rights has duality in attribute, which are not only basic constitutional rights, but also civil rights protected by private law [13]. In General Rules, the civil legal attributes of personality rights are confirmed. The specificity is emphasized in General Rules that personality rights shall not be abandoned, transferred or inherited. A variety of factors that should be considered in determining the tort liability and the protection of the personality interests of the deceased are also stipulated in General Rules.

Specific Provisions of Book of Personality Rights are rich. In the chapter of "Rights to Life, Rights to Corporeal Integrity, and Rights to Health", many legal issues are stipulated, such as human organ and tissue donation, human organ trading, human clinical trials, duties in medical and scientific research activities related to human genes and human embryos, sexual

harassment, infringement on freedom of movement and illegal search of a natural person's body. In the chapter of "Rights to Name and Rights to Entity Name", the tortious conducts of "interference, misappropriation and counterfeiting" of the infringement on the rights to name, and the decision rules of a natural person's surname in line with Chinese ethical tradition are stipulated. In the chapter of "Rights to Likeness", the rules of fair use of portraits and interpretation rules of portrait authorization contract are stipulated. In the chapter of "Rights to Reputation and Rights to Honor", the tortious conducts of the infringement on rights to reputation and the rights to correction and deletion of the subject are stipulated. In the chapter of "Rights to Privacy and Protection of Personal Information", the tortious conducts of the infringement on privacy rights, the principles, conditions and the liability exemption causes of processing personal information, the rights of personal information subjects, the information security duties of information processors, and the confidentiality duties of state organs, state institutions undertaking administrative functions and their staff are stipulated. Some similar personality rights or interests are also arranged and integrated in Book of Personality Rights, for example, the protection of the interests of credit is under the protection of rights to reputation, and the protection of the interests of personal information is under the protection of rights to privacy.

III The values and significance of Book of Personality Rights to the protection of personality rights

1. Perfection of the legal theory of personality rights

Both general personality rights and specific personality rights are stipulated in Book of personality rights. Chinese civil law scholars have a high degree of acceptance on specific personality rights. But some scholars deny the existence of general personality rights and hold the view that the concept of general personality rights should be abolished [14]. The provisions on general personality rights and the relationship between general personality rights and specific personality rights are clarified in Book of Personality Rights. It can provide a reference for the improvement of the theory of the general personality rights. There are no property attributes on the traditional personality rights in Civil Law System. The property interests attached to the objects of personality rights are confirmed by allowing the civil subject of the personality rights to authorize others to use his name and portrait in Book of Personality Rights [15]. That if a party's personality rights are damaged and serious mental damage is caused due to the breach of a contract, the damaged party have the right to request the other party to bear the liability for breach of the contract, and it does not affect the damaged party's claim for mental damage compensation is stipulated in Book of Personality Rights. The applicable provisions of mental damage compensation for the infringement on personality rights caused by the breach of a contract is confirmed in this provision, which breaks through the theory that the liability for breach of a contract stipulated in China's civil law does not include mental damage compensation before the implementation of Civil Code of P. R. C. In addition, the personality rights of legal persons are also confirmed in Book of Personality Rights.

2. Joint construction of the legal protection system of personality rights

General Principles of Civil Law of the People's Republic of China was promulgated in 1986 and implemented in 1987, which is very grandly called "a Tiny Civil Code". In the section of "Personal Rights" in the chapter of "Civil Rights", the civil rights of a natural person, such as rights to name, rights to reputation, rights to honor, rights to Matrimonial Decision-making were already stipulated. It's of epoch-making significance to set up the provisions for personality rights in China, and it's obvious that China's civil law attaches great importance to the protection of personality rights. At the same time, the liability for the infringement on personality rights in the provision of "Civil Liability for Infringement" are

also stipulated in General Principles of Civil Law of P.R.C. However, due to different understandings of civil law theory, some personality rights, such as rights to privacy were not stipulated. In 2001 and 2003, the Supreme Court of P.R.C. issued two judicial interpretations, which made supplementary provisions on the types of personality rights and compensation for mental damage of personality rights. In 2010, Tort liability law of the People's Republic of China was implemented, providing a strong legal guarantee for the ex post relief of personality rights. After revision, Tort Liability Law of P.R.C. was put into the Civil Code of P.R.C. as Book of Tort Liability. Book of Personality Rights focuses on the ex ante protection for personality rights, while Book of Tort Liability focuses on the ex post relief after the infringement on personality rights. Book of Personality Rights, the relevant provisions of Book of General Provisions and Book of Tort Liability of Civil Code of P.R.C. constitutes the legal protection system of personality rights in China's civil law.

3. Providing a legislative mode for other countries

There are generally five legislative modes for personality rights in civil codes: the first is to set up provisions in tort law of the law of obligations, which is adopted by German Civil Code in 1896 and the Japanese Civil Code in 1898; The second is to set up provisions in the chapter of natural persons in the general provisions of civil law, which is adopted by Dutch Civil Code in 1992, France Civil Code in 1994 and Quebec Civil Code in 1994; The third is to set up provisions in the chapter of natural persons in the general provisions or the law of persons, and at the same time to set up provisions for the tort liability of the infringement on personality rights in tort law of the law of obligations, which is adopted by the Swiss Civil Code, the Portuguese Civil Code, the Hungarian Civil Code and the draft amendment of the German Civil Code in 1959; The fourth is to set up provisions for various personal non property interests (personality rights) in the chapter of the objects of rights in general provisions of civil code, and set up provisions for the tort liability of the infringement on personality rights in tort law of the law of obligations, which is adopted by Civil Code of the Russian Federation and Belarus Civil Code; The fifth is to set up a separate book for personality rights, which is adopted by the 2003 Ukrainian Civil Code.[16] Although both the Civil Code of P.R.C. and the Ukrainian Civil Code set up a separate book for personality rights, their contents are different, so Book of Personality Rights of Civil Code of P.R.C. can also provide some references for the codification and amendment of the civil codes of other countries.

Conclusion

In sum, the Civil Code of P.R.C. enriches the contents of the law of personality rights, perfects the theory of the the law of personality rights in civil law field, and provides a civil law basis for the protection of personality rights in China. In addition, the Civil Code of P.R.C. construct a separate book for personality rights, which shows the unremitting efforts of Chinese civil law scholars and legislators to protect the personality rights in China. Since the Civil Code of P.R.C. has been promulgated and implemented, the main task at this stage is that all sectors of Chinese society should promote the judicial application from the perspective of striving to realize the function of Civil Code of P.R.C., give play to the function of the law to realize the values of the law. Although Book of Personality Rights is full of disputes in the legislative process, there are still many problems in the existing contents, such as too many declaration norms and too many contents of public law. However, we believe that with the joint efforts of Chinese law scholars and legislators, the problems found in the theoretical development of the law of personality rights and the implementation of Book of Personality Rights will be solved smoothly and make due contributions to the development of China.

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(отзыв) Expert comments:

Based on the basic theory of personality rights of civil law and the actual legislative modes of personality rights in Civil Law System, this paper makes a comprehensive analysis on the characteristics, structure and contents of Civil Code of the People's Republic of China, and summarizes the values and significance of constructing the law of personality rights as a separate book in Civil Code of the people's Republic of China. This paper makes a clear analysis of the relevant theories and legislative modes of the personality rights in Civil Law System, and makes an objective and sufficient evaluation of the relevant views, which can reflect the real legislation of the personality rights in China to some extent.

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