The interpretation and function orientation of the principle of prohibiting abuse of rights

Jialin Dong

School of Yunnan, Yunnan University, Kunming 650504, China

dong_jialin0422@163.com

Abstract. Article 132 of Civil Code of the People's Republic of China establishes the principle of prohibiting abuse of rights, which provides the fundamental basis for the identification and judgment of the abuse of the right. The identification of the abuse of rights needs to be made from two aspects: constituent elements and identification elements. There are four kinds of legal consequences of rights abuse at present in our country, namely, loss of rights, limitation of rights, invalidation of behavior and responsibility of civil liability, but it remains to be seen if there are specific rules. As one of the basic principles of civil code, this principle goes hand in hand with the principle of good faith and the principle of public order and good custom. It also has the functional value of filling legal loopholes, reflecting the consistency of the operation of the code, clarifying the boundary of rights and standardizing the exercise of rights.

Keywords: Prohibition of abuse of rights; Relativity of rights; Basic principles of civil law.

1. Raise of problem

Since the end of the 19th century, due to the intensifying conflict between individual rights and public interests in the capitalist society, the individual priority of rights has gradually changed to the social priority of rights, and the civil law of various countries has established the principle of prohibiting the abuse of rights. This principle has gone through a long history of development in China. Article 132 of the Civil Code of the Peoples Republic of China stipulates the principle of prohibiting abuse of rights, which specifically stipulates as follows: "Civil subjects shall not abuse civil rights to harm the interests of the state, the social public interests or the legitimate rights and interests of others [1]." It is generally believed that the so-called abuse of rights means that the exercise of rights violates the purpose set by the rights and harms the interests of others unreasonably [2]. However, after a relatively short time when the principle of prohibiting abuse of rights was established and developed in our country, there is no unified cognition in the academic circle about the identification and legal effect of the right abuse, the status and the function of the principle of prohibiting abuse of rights, the relationship between the principle of prohibiting abuse of rights and the principle of good faith and the principle of public order and good custom. There are also many problems in the concrete application of the principle of prohibiting abuse of rights, such as the unclear standard for the identification of abuse of right and the chaotic application of this principle in judicial practice. Throughout the development and application of the principle of prohibiting abuse of rights in various countries, France has a relatively mature theoretical basis and practical experience for reference. Therefore, this thesis intends to identify the application, status and function of the principle of prohibiting abuse of rights from the perspective of comparative law, referring to the French jurist Louis Josserants "De l esprit des droits et de leur relativité" and the application of this principle in French judicial practice and combined with our judicial practice.

2. The identification of the abuse of rights

2.1 Constituent elements

Combined with Article 132 of the Civil Code, abuse of rights manifests in two ways: procedural and substantive. This means that the obligee abuses their right by infringing upon the rights and welfare of others or jeopardizing public welfare. However, since the definition of "abuse" is not clear,

Article 132 cannot serve as a direct basis for adjudication. Therefore, it is necessary to clarify the criteria for abuse of rights to ensure consistent judicial application of this principle. The assessment of typed elements is beneficial for reasonably constraining judicial discretion and enhancing the comprehension of the principle of preventing abuse of rights in both theory and practice.

Chinese scholars hold divergent views on the constituent elements of the abuse of rights. Professor Peng Chengxin posits that it manifests as a conflict between opposing interests, with the appearance of rights being a key factor [3]. According to Professor Wang Yanling, there are four elements: the first is the enjoyment of rights; the second is the exercise of rights, including acts and omissions; the third is improper exercise of rights, which involves illegal purposes and methods; and finally, subjectively speaking, faults on part of the subject of rights may include intention and negligence [4]. According to Professor Wang Liming, there are three elements: the first is the enjoyment and exercise of rights as a premise; the second is causing harm to others as the main purpose; and the third is that exercising one's rights infringes upon the legitimate rights and interests of others [5]. Professor Mao Shaowei believes that the core elements of right abuse can be summarised as the following three items: The obligee is entitled to and appears to exercise his rights; however, abuse of civil liberties occurs when the right holder's actions violate the principle of good faith and the principle of public order and good custom and such abuse can harm national interests, social welfare or the legitimate rights and interests of others [6]. It is commonly held that the enjoyment and exercise of rights are fundamental components of right abuse, yet there remains controversy over how the purpose, manner, and resulting harm from exercising those rights constitute such abuse.

In terms of the purpose of exercising rights, the teleology of rights has achieved great success in France. This theory posits that all legal rights are inherently social and have a mission to achieve social goals from their very roots [7]. Therefore, the granting of individual rights is predicated upon the realization of societal interests as a whole, and the exercise of such rights must not deviate from their social purpose; otherwise, it constitutes an abuse of said rights and violates their fundamental spirit. According to the general system of liability, French jurist Louis Josserant proposed three types of acts: wrongful acts, improper acts, and excessive acts [8]. An unlawful act is inherently an improper act, meaning that the actor has no right and violates the rights of others. The improper behavior refers to the excessive exercise of rights, which deviates from the original purpose and spirit of the right creation system. The excessive act denotes that the obligee legally and properly exercises his rights but causes significant harm. Josserant posits that only improper behavior falls under the umbrella of abuse of right. He asserts that "the theory of abuse of right concerns the alteration in the purpose for a right which is exercised, meaning that exercising a right does not align with the purpose prescribed by law and the underlying rationale behind its creation [9]." It is concluded that whether the purpose of exercising the right changes should be the key factor to judge the abuse of the right.

To summarize, the concept of abuse of rights entails three constituent elements. Firstly, the obligee exercises a right; if he lacks the right or exceeds his right, it cannot be considered an abuse of rights. Secondly, the purpose behind exercising must be improper. If intent to harm is taken merely into account when determining whether there has been an abuse of rights, this will unduly narrow its scope. In the Clement-Bayard case in France, the landowner's construction of threatening works was primarily aimed at coercing his neighbor into purchasing his land at an exorbitant price[10]. This constituted illegal speculation and thus fell within the ambit of abuse of rights. Whenever the exercise of a right deviates from its social purpose, it amounts to an abuse thereof. Thirdly, the exercise of rights may result in harm to the interests of others or the public interest. According to Josserant, "liability for an improper act must be based on actual damage, and the responsibility of proving such damage should rest with the party seeking compensation [11]." In fact, such damage can include harm already inflicted upon the interests of others or the public interest. This is because when a right is exercised improperly, it matters little who exercises it.

2.2 Identification elements

Unlike the constituent elements, which are indispensable, the key constituent element of abuse of rights lies in the improper purpose behind exercising a right. However, judging the subjective intent of the obligee is difficult, thus it must be combined with objective behavior and identification of damages caused.

Most scholars in our country believe that the identification of abuse of rights should be based on both subjective and objective standards. Some scholars have also categorized such abuses of rights according to domestic and foreign legislation as well as precedents. The Encyclopedia of International Comparative Law has summarized six criteria for determining abuse of rights, which include intentional harm, lack of legitimate interests, choosing harmful ways to exercise rights, damage greater than the benefits gained, and violation of the purpose of rights and violation of the general principles of tort law [12]. With the advancement of legislation and judicial practice, new forms of rights abuse have emerged, such as conduct that violates creditworthiness, behavior that exceeds reasonable limits of harm, negative exercise of rights and so on [13].

However, the typology of rights abuse cannot be divorced from the initial identification elements. Domestic scholar Peng Chengxin has proposed four distinctions in meaning, behavior, interest and purpose of right [14], while French legal expert Louis Josserant has categorized various forms of identifications of rights abuse in French precedents into four categories: the identifications of willing, technology, economy and task or purpose of right [15]. The identification of willing is the most fundamental form of identification, encompassing the willing of harm, malice, abuse of rights and deception of the law, other motives mixed in with willing of harm. Therefore, identifying subjective elements in cases of right abuse is exceedingly complex and requires a specific analysis that takes into account existing types of right abuse as well as legislation and precedents. In terms of technology identification, Josserant posits that "unintentional negligence can only constitute an abuse of right within the scope of transforming or having an improper motive, and the degree of negligence may be disregarded [16]." Therefore, it is concluded that identifying the objective behavior of the obligee must be combined with assessing whether there has been a change in the purpose of their rights; otherwise, the scope of the abuse of the right will be expanded. Economic identification encompasses the absence of legitimate interests, disproportionate gain in relation to harm caused to others, but But non-self-interested rights should not be discriminated by interests. The identification of task or purpose can effectively capture all instances of abuse of right. The identification of task or purpose can almost summarize all situations of abuse of right. "The social function of rights is a general and abstract identification, while the concept of just motive provides a specific and concrete application within this broader framework [17]." If identifying just motives proves difficult, improper motives may be used as evidence in support. When identifying the abuse of rights, a combination of subjective and objective elements should be employed to facilitate the classification of such abuses. However, none of these four elements are deemed indispensable.

3. The legal consequences of abuse of rights

As a form of illicit conduct, the abuse of rights should entail corresponding legal consequences. Given that the abuse of rights can manifest in various ways and implicate multiple types of rights, the legal consequences will vary accordingly.

According to Chinese scholars' research, the abuse of rights may lead to severe legal consequences, including the most serious one, loss of power. The principle of prohibiting the abuse of rights only targets the behavior of exercising the rights, and has no impact on the generation, transfer, or elimination of said rights. Therefore, deprivation of such rights should only occur in extremely serious circumstances and with great care to avoid negatively affecting the right holder's exercise thereof and undermining the sacred principle of private property. The abuse of civil litigation rights, such as false litigation, malicious litigation, and abuse of the right to withdraw, may result in the loss of these rights. The second is to impose restrictions on the right holder, limiting his ability to exercise the right

without completely revoking it. The right can be resumed if certain conditions are met. For instance, under the Patent Law, compulsory licenses may be granted by the State patent administration department in cases of patent abuse falling into two categories: If the patentee fails to exploit or fully exploit their patent without justifiable reasons within three years from the date of grant and four years from the date of application, they may face consequences; and the act of exercising patent rights by the patentee is recognized as a legally sanctioned monopoly aimed at eliminating or reducing its adverse impact on competition [18]. Thirdly, the conduct is deemed invalid, meaning that the intended legal consequences do not materialize when the obligee abuses his right. For instance, if shareholders abuse their shareholder rights in a company, such actions will be considered null and void. Moreover, if such misconduct results in losses to the company or other shareholders, they shall be held liable for compensation under applicable laws [19]. The fourth is to assume civil liability, which includes ceasing the infringement, providing monetary compensation, restoring the original state and other measures. In cases where rights abuse persists, victims have the right to demand an end to such behavior; if damage has been caused by rights abuse, victims have the right to seek restitution. If restitution is not feasible, monetary compensation may be awarded instead. Monetary compensation has a broader scope of application and can be combined with other legal remedies.

In France, while many articles do not explicitly state the specific purpose of rights, the theory of abuse of rights has been widely applied in judicial practice. French courts have developed diverse solutions to address such abuses. Judges are granted discretion to fully consider fairness and existing legal policies; however, they must avoid excessive intervention. For example, if parents object to their children's marriage, it is inappropriate for a judge to intervene as they cannot fully assume the role of a parent. Therefore, applying sanctions of restitution becomes difficult [20]. Legislators must regulate social value orientation through clear restrictions on rights and obligations. Existing precedents indicate that sanctions against the abuse of rights include civil liability, restoration of the original state, monetary compensation, etc. At times, legislators may strengthen these sanctions by stipulating civil fines or even criminal liabilities [21].

To conclude, the abuse of rights should be assessed based on specific circumstances and result in legal consequences depending on the existence of applicable legal regulations. In cases where such regulations exist, abuses of rights must be addressed in accordance with established rules. Given that the abuse of rights can manifest itself in various forms, most commonly as torts, it is imperative to handle it according to Paragraph 3 of Article 3 of the Interpretation of the Supreme People's Court on Some Issues concerning the Application of the General Provisions of the Civil Code of the People's Republic of China (No.6 2022) [22]. In the absence of specific legal rules, firstly judges should be granted the authority to interpret existing rules expansively and to apply them in a manner that addresses abusive conduct within the context of particular circumstances, thereby closing any gaps in the law. Although the literal content of the law may be overly restrictive, it is imperative that provisions addressing instances of rights abuse are incorporated into existing legislation. The second is to enable judges to apply abstract principles to solve the problem. While judges possess discretion, they should refrain from resorting to general provisions as the use of principles can be uncertain and may result in judicial abuse of discretion. Therefore, when applying principles to adjudicate cases, judges must accept supervision and have an obligation to explain the source of their discretionary criteria and specific considerations.

4. The status of the principle prohibiting the abuse of rights

4.1 The correlation between the principle of abuse of rights prohibition and the principle of good faith

The principle of good faith is the fundamental principle of the Civil Code. Article 7 of the Civil Code stipulates that civil subjects engaged in civil activities shall observe the principle of good faith, uphold honesty and fulfill their obligations [23]. There are varying perspectives within academic

circles regarding the correlation between the two, however, the author concurs that they possess distinct emphases and can coexist while intersecting and overlapping [24].

From the perspective of application scope, the principle of prohibiting abuse of rights applies to civil rights, including real property rights, contracts, personality rights, marriage and family law, inheritance law and tort liability. Meanwhile, although traditionally applied only to contract law and other fields, there is now a trend towards gradual expansion of the principle of good faith [25]. However, this still requires a certain legal relationship between parties. Compared to the principle of good faith, the principle of prohibiting abuse of rights has a wider scope of application. According to Article 7 of the Civil Code, the principle of good faith applies only in situations where there is commitment and trust between parties, and it does not extend to matters concerning personality rights, marriage, inheritance, tort liability or public interest protection.

From the perspective of function and value, the principle of prohibiting abuse of rights and good faith serve as fundamental principles in civil law. They both restrict autonomy of will, declare values, fill legal loopholes, and establish judgment norms. However, there are still differences between them. Firstly, the principle of good faith conducts an "exercise review" on "existing rights" rather than the content of legal acts. Where a right has been established and the exercise of that right constitutes an abuse thereof, such conduct shall be prohibited [26]. This point is similar to the principle of prohibiting abuse of rights, but the scope of "exercise review" of the principle of good faith includes abuse of rights, change of circumstances and invalidity of rights. Secondly, the principle of prohibiting the abuse of rights embodies the function of "continuous creation" of rights. This means that judicial decisions are used to measure the interest groups protected by law and to repeatedly strengthen the boundaries of recognition in order to construct a consistent structure for creating firstly and creating continuously rights, which is not present in the principle of good faith. Finally,the principle of good faith advocates the proper exercise of rights and promotes the virtue of good faith through positive guidance, while the principle of prohibiting abuse of rights warns against negative intentions to regulate the exercise of rights.

4.2 The correlation between the principle of prohibiting abuse of rights and the principle of public order and good custom

Public order and good customs, abbreviated as POGC, is a fundamental principle universally recognized by civil law in continental countries [27]. Article 8 of the Civil Code stipulates that civil subjects engaged in civil activities shall not violate the law or POGC [28]. Although there has been limited academic discussion on the relationship between these two concepts, it is believed that they have distinct emphases and can coexist while also intersecting.

From the perspective of application scope, the principle of prohibiting abuse of rights applies to situations where individuals enjoy civil rights, while the principle of public order and good customs applies to situations where individuals enjoy rights, has no right, and exceeds his right. However, both principles are applicable in fields such as marriage and inheritance, involving protection of public interests. The two principles differ in emphasis: the principle of prohibiting abuse of rights requires that the obligee exercises his right while protecting the interests of others and public interest, whereas the principle of public order and good custom is mainly applied to situations involving social morality and public interests, regardless of whether or not the obligee exercises his right. The scope of application of the two concepts overlaps to some extent, but complete coincidence is difficult to achieve. Specifically, the abuse of rights will violate public order and good customs if it damages public interests.

From the perspective of function and value, both the principle of prohibiting abuse of rights and the principle of public order and good custom serve as fundamental principles in civil law. They function to restrict autonomy of will, declare values, fill legal loopholes, and establish judgment norms [29]; however, there are still distinctions between them. Firstly, as the opposite principle of good faith to some extent, the principle of prohibiting abuse of rights also serves as an "exercise review" function that primarily restricts wrongful acts of the obligee. Meanwhile, the principle of

public order and good custom functions as a "content review" that mainly examines legal acts' content to ensure compliance with current effective legal orders [30]. Secondly, the principle of prohibiting abuse of rights typically serves to generate legal norms that can be employed to regulate and prohibit such abuses by refining relevant legal rules. By contrast, the principle of public order and good customs is a linear principle whereby judges generally classify illegal behaviors before determining whether they contravene this principle; there is no need for corresponding creation of new legal rules[31].

4.3 The status of the principle prohibiting the abuse of rights

Although the principle of prohibiting abuse of rights shares similarities with the principles of good faith, public order and good custom in terms of scope and function, it should be regarded as an independent principle in civil law.

Article 51 of the Constitution of the People's Republic of China stipulates as follows, "citizens of the People's Republic of China, when exercising their freedoms and rights, shall not harm the interests of the state, society and the collective and other lawful freedoms and rights of citizens [32]." This provision establishes the principle of prohibiting abuse of rights, which is not limited to the Civil Code. However, in the Civil Code, Article 132, Chapter 5, Part 1 embodies this principle differently from other principles such as equality, voluntarism, fairness, good faith, public order and good custom and green. The principle of prohibiting abuse of rights shares some similarities with these principles. Therefore, some scholars argue that the principle of prohibiting abuse of rights is actually a reverse provision within the core field of the principle of good faith. It lacks the character to be independent from the fundamental principles of civil law [33]. In this respect, the author contends that the principle of prohibiting the abuse of rights has a more stringent prerequisite for application than other fundamental principles, namely, that the obligee exercises the right; therefore, it is more reasonable to include it in the chapter of civil rights. Moreover, the principle of prohibiting the abuse of rights reflects the social nature of rights; its scope and functional value cannot be entirely replaced by other basic principles. Therefore, it should stand as an independent proposition.

5. The function orientation of the principle of prohibiting abuse of rights

As an independent principle of civil law, the prohibition of abuse of rights not only serves to restrict the autonomy of private law and fill legal loopholes, but also reflects a certain degree of consistency in the operation of legal codes. Simultaneously, it fundamentally embodies the social nature of rights, clarifies their limits, and standardizes their exercise. The establishment of this principle carries far-reaching social significance.

5.1 The principle rephrases the legal framework to eliminate loopholes and improves legal rules

The existence of legal loopholes is inevitable due to two reasons. Firstly, the limited rationality of legislators makes it impossible for them to consider all circumstances in the application of laws, and laws are constantly evolving through practical implementation. Secondly, there is a time lag between judicial practice and legislative practice, making it relatively difficult to address legal loopholes through legislation. In judicial practice, although various rights are clearly stipulated in law, the forms of right abuse are diverse and the specific situations can be complicated. Additionally, existing legal rules may not always suffice. Judges possess the discretion and can compensate for legal loopholes through expanded interpretation of specific rules, purview expansion, legal continuation, etc. When rule interpretation is exhausted, the principle of prohibiting abuse of rights must be upheld. Simultaneously, the principle of prohibiting abuse of rights can serve as a legislative guide, explicitly specifying instances of such abuse that have arisen in judicial practice but lack specific regulations for application, and facilitating the refinement of the legal system.

In France, the system of near neighbor nuisance has developed and tends to be comprehensive due to the extensive application of the principle of prohibiting abuse of rights in precedents and continuous exploration by scholars. In our country, prior to the introduction of relevant laws, judgments declaring the "industrial injury is not responsible" clause in labor contracts invalid and cases holding serious lighting and noise polluters accountable represent supplementary legal measures aimed at prohibiting abuse of rights [34]. Currently, while our civil law has undergone significant development and improvement, there remains potential for the abuse of intellectual property rights, shareholders' rights, and other areas. Therefore, it is still necessary to maintain the principle of prohibiting abuse of rights as a general clause in order to serve as a foundation for legal judgments and ensure proper enforcement.

5.2 The principle embodies the consistency of the operation of the Civil Code

The civil code consists of both internal and external systems, with the external system aiming for logical consistency and the internal system striving for a unified concept of values that serves as the foundation for constructing the external system and provides evidence for judges to adjudicate cases in situations where legal loopholes exist [35]. The establishment of an external system is a necessary but insufficient condition for the construction of a civil code system. Logical consistency does not necessarily equate to value unity, and only an internal system can integrate values into a unified civil code system [36]. The explicit establishment of various principles enables the internal system of the Civil Code to directly convey its core values to the public. Through constant improvement of specific rules based on these principles, the code can evolve into a self-improving and self-operating system.

The determination of the abuse of a certain right involves not only the application of specific legal rules, but also embodies the principle of prohibiting abuse of rights, which is the result of joint operation between internal and external systems within the Civil Code. In cases involving complex abuses, this principle serves as both a fundamental basis for judgment and a last line of defense against such abuses while also providing guidance for improvement.

5.3 The principle embodies the social nature of rights

From the perspective of rights development, the evolution of the principle of prohibiting rights abuse reflects a shift from the individual priority of rights to the social priority of rights, highlighting the social nature of rights. Since the inception of legal rights, individualism has prevailed. Following the French Revolution, the theory of innate human rights gained widespread popularity and individual rights were deemed sacrosanct absolute rights. Although limitations on these rights were reflected in Roman law, protection of such rights often outweighed their limitations. The 1855 Cour de Colmar decision regarding "the construction of tall chimneys to shade a neighbor from the sun" is widely regarded as the genesis of the principle of prohibiting abuse of rights, which has since undergone significant development in various jurisdictions.

According to relativity of rights, the abuse of rights undermines the social dimension of rights. Law cannot play a normative role if it is separated from human society. Therefore, law is inherently social and rights have certain social functions. Each right has a specific societal mission, which means that every right should be realized in accordance with its systemic purpose. The abuse of rights is antithetical to the purpose, spirit, and ultimate goal of the system [37]. The spirit of rights, their relativity, and their potential for abuse are three inseparable concepts that represent different forms and expressions of a single truth: the social nature of rights [38]. The principle of prohibiting abuse of rights embodies the social nature of rights. Without such social nature, this principle would be incapable of regulating citizens' exercise of their rights.

5.4 This principle establishes the boundaries of rights and governs their exercise

From the perspective of the purpose of rights, the principle of prohibiting abuse of rights serves to demarcate the "internal" boundary of rights and regulate the motivation behind exercising them. Louis Josserant categorized rights into absolute rights, egoistic rights, and altruistic rights based on their

respective purposes. He believed that the latter two would constitute abuses of rights [39]. The absolute right is subject to extremely strict objective restrictions, and its exercise within the prescribed scope cannot be deemed abusive regardless of motivation. The concept of "absolute" does not derive from abstract notions but rather emerges in specific situations. This "absolute" denotes a bottom line that may only be breached when no other options exist. Absolute rights are essentially relativized "absolute" rights [40]. In fact, the classification of the scope of rights abuse based on the purpose of rights still relies on the relativity of rights. In addition, categorizing rights according to their intended purposes can help clarify their "internal" limitations."

From the perspective of exercising rights, the principle of prohibiting abuse of rights helps to clarify the external boundaries and standardize their exercise. This principle requires not only a legitimate motivation for exercising one's right but also an exercising of rights that avoids harming others or public interests, serving as a warning against those who intend to abuse their rights. The purpose of a right defines its "internal" boundary, while the manner in which it is exercised determines its "external" boundary, which allows for a clear understanding of the reasonable scope within which a right may be exercised.

From the perspective of the concept of legal rights, it is necessary to enhance the public's understanding of the principle of prohibiting abuse of rights. The concept of legal rights was introduced in modern times and has rapidly developed during the period of reform and opening up. Despite the establishment of the principle of prohibiting abuse of rights in the Civil Code, there still exists a prevalent worship for absolute individual rights. The notion of "rights as sacred" and other related concepts remain deeply ingrained in certain segments of society. As such, it is imperative that the concept of preventing the abuse of rights be developed in order to standardize the masses' understanding of their own rights.

6. Epilogue

In order to establish a comprehensive legal system in the post-civil code era, we must focus on perfecting and integrating both internal and external systems. Principles serve as guides for rule application, while the application of rules enriches the principles' connotations. Therefore, an in-depth study of the principle of prohibiting abuse of rights is constructive. Of course, every theoretical study and discussion cannot provide the ultimate definition of "what is right" or "what constitutes an abuse of rights". However, they can deepen our understanding and promote original cognition. After all, social facts are so diverse that norms alone cannot exhaust them. Therefore, theoretical discussions on the identification of abuse of rights, typification and effect conferment can only serve as a forward-looking guide. The development of richer connotations and typified analysis must rely on long-term practice and active cooperation in judicial practice. In short, rights are the foundation of civil society; the use and restriction of rights are two sides to protecting those rights - an eternal theme in a "rights-based" society.

References

[1] Article 132 of the Civil Code of the People's Republic of China.

[2] Wang Liming. "On the Prohibition of Abuse of Rights - Also Commenting on Article 3 of the Interpretation of the General Provisions Chinese Legal Review 2022, No. 3, p. 1-20.

[3] Peng Chengxin. "On the Legal Application of the Principle of Prohibiting Abuse of Rights" Chinese Law Journal 2018, No. 3, p. 249-268.

[4] Wang Yanling. Reflections on Establishing the Principle of Prohibiting the Abuse of Rights in Civil Law Hebei Law Journal 2006, No. 7, p. 53-56.

[5] Wang Liming: On the Prohibition of Abuse of Rights - Also Commenting on Article 3 of the Interpretation of the General Principles Chinese Legal Review 2022, No. 3, p. 1-20.

[6] Mao Shaowei. Commentary on Article 132 (Prohibition of Abuse of Rights) of the Civil Code Chinese Journal of Applied Law 2023, No.1, p.201-212.

[7] Jacques Gasdan, Gilles Gubo, Muhie Fabh Manan General Principles of French Civil Law Law Press, 2004, p. 720.

[8] Louis Joslan, "Relativity of Rights China Legal Publishing House, 2002, p. 222.

[9] Louis Joslan, "Relativity of Rights China Legal Publishing House, 2002, p. 7.

[10] Louis Joslan, "Relativity of Rights China Legal Publishing House, 2002, p. 18.

[11] Louis Joslan, "Relativity of Rights China Legal Publishing House, 2002, p. 18.

[12] Qian Yulin. "Legal Analysis of Prohibiting Abuse of Rights Modern Law 2002, No. 1, p.55-61.

[13] Qian Yulin. "Legal Analysis of Prohibiting Abuse of Rights Modern Law 2002, No. 1, p.55-61.

[14] Peng Chengxin. "On the Legal Application of the Principle of Prohibiting Abuse of Rights" Chinese Law Journal 2018, No. 3, p. 249-268.

[15] Louis Joslan, "Relativity of Rights China Legal Publishing House, 2002, p. 229.

[16] Louis Joslan, "Relativity of Rights China Legal Publishing House, 2002, p. 242.

[17] Louis Joslan, "Relativity of Rights China Legal Publishing House, 2002, p. 250.

[18] Article 48 of the Patent Law.

[19] Article 20 of the Company Law.

[20] Louis Joslan, "Relativity of Rights China Legal Publishing House, 2002, p. 65.

[21] Jacques Gasdan, Gilles Gubo, Muhail Fabh Mannan General Principles of French Civil Law Law Press, 2004, p. 720.

[22] Interpretation of the Supreme People's Court on Several Issues Concerning the Application of the General Provisions of the Civil Code of the People's Republic of China (Fa Shi [2022] No. 6), Article 3, Paragraph 3.

[23] Article 7 of the Civil Code of the People's Republic of China.

[24] Wang Yanling. Reflections on Establishing the Principle of Prohibiting the Abuse of Rights in Civil Law Hebei Law Journal 2006, No.7, p. 53-56.

[25] Wang Liming. "On the Boundary between the Principles of Public Order, Good Customs, and Good Faith Jianghan Forum 2019, No. 3, p. 129-136.

[26] Yu Fei. "Differentiation between the Principles of Public Order, Good Customs, and Good Faith" Chinese Social Sciences 2015, No. 11, p. 146-162+208-209.

[27] Li Shuangyuan, Yang Dequn On the Judicial Application of the Principles of Public Order and Good Customs Law and Business Studies Vol. 31 (2014) No. 3, p. 63-71.

[28] Article 8 of the Civil Code of the People's Republic of China.

[29] Luo Shigui. "The Legal Nature of the Principles of Public Order and Good Customs in Chinese Civil Law Journal of Chongqing University (Social Sciences Edition) Vol. 24 (2018) No. 5, p. 139-150.

[30] Yu Fei. "Differentiation between the Principles of Public Order, Good Customs, and Good Faith Chinese Social Sciences 2015, No. 11, p. 146-162+208-209.

[31] Wang Liming. "On the Boundary between the Principles of Public Order, Good Customs, and Good Faith Jianghan Forum 2019, No. 3, p. 129-136.

[32] Article 51 of the Constitution of the People's Republic of China.

[33] Yu Fei. "Differentiation between the Principles of Public Order, Good Customs, and Good Faith Chinese Social Sciences 2015, No. 11, p. 146-162+208-209.

[34] Liu Shiguo. "Legal loopholes and their supplementary methods" National People's Congress Legal Review 2010, No.1, p. 209-226.

[35] Fang Xinjun. "Implementation of the Integration of the Internal System and the External System with the Civil Code System - Comments on the Basic Principles of the General Principles of Civil Law Chinese and Foreign Law Vol. 29 (2017) No.3, p. 567-589.

[36] Fang Xinjun. "Implementation of the Integration of Internal System Externality and Civil Code System Abstract of Social Sciences 2017, No.8, p.74-76.

[37] Jacques Gasdan, Gilles Gubo, Muhail Fabh Mannan General Principles of French Civil Law Law Publishing House, 2004, p. 721.

[38] Louis Joslan. "Relativity of Rights China Legal Publishing House, 2002, p. 258.

[39] Louis Joslan. "Relativity of Rights China Legal Publishing House, 2002, p. 258.

[40] Liu Zuoxiang. "The Theory of Relativity of Rights and Its Debates: Based on the" Abuse of Rights "Theory of Joslan in France Tsinghua Law Vol. 7 (2013), No. 6, p.110-121.