

Research on the Legal Issues of Personal Information Protection under the Civil Code

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Abstract: The promulgation of the Civil Code marks that China's personal information protection has moved to a higher level, and the Basic Law has completed the superstructure of personal information protection. In recent years, the theoretical research and judicial practice of personal information protection in China have made great progress. However, the legislation of the Civil code defines the protection of personal information as the interests of personality rather than the rights of personality, especially in the context of the increasing infringement of personal information in the network field, this drawback will lead to the limited and scattered protection of personal information. With the human society entering the information network era, the Civil Code should separate the protection of personal information into a chapter, redefine it as the right of personality, and coordinate with the supporting rules of the protection of personal information, so as to form a personal information protection legal system dominated by the right of personal information.

Keywords: Civil Code; Personal Information Protection; The Right to Personal Information; Civil Rights; Civil Rights and Interests.

1. Introduction

As human society enters the era of big data, the risk of personal information being infringed is also increasing. According to the statistics of the China Internet Network Information Center, as of December 2021, the second half of 2021 has the highest proportion of Internet users whose personal data has been leaked, accounting for 22.1% of the network security challenges faced by Internet users. Therefore, the issue of how to best protect personal information deserves our attention and reflection. In recent years, China has paid more and more attention to the protection of personal information, and has promulgated laws and regulations on the protection of personal information, such as Article 40 of the Constitution, which explains the importance of personal information protection in the form of a fundamental law. Article 1034 of the Civil Code also clearly stipulates that the personal information of natural persons is protected by law, which reflects the gradual codification of personal information protection and is the legislative basis for other personal information protection laws and regulations. Article 9 of the Personal Information Protection Law emphasizes the importance of protecting personal information security. However, the orientation of "personality rights and interests" of personal information in China's Civil Code is not conducive to the all-round protection of personal information, and the research on legal issues related to the commercialization of personal information rights deserves further consideration.

protection laws and regulations.

2. The Important Achievement of the Personal Information Protection Clause of the Civil Code

The publication of the Personal Information protection clause of the Civil Code responds to the new problems and challenges such as the infringement of personal information in the era of big data information. It provides a new legislative

model and legislative exploration for the protection of personal information from different angles, and improves the institutional construction of China's personal information protection laws and regulations.

2.1. Clarify the Concept of Personal Information

In the past theoretical research and judicial practice, the concept of personal information is extremely confusing, and even confused with the right to privacy, resulting in conflicts in the application of law. Article 1034 of China's current Civil Code clearly stipulates that "personal information is all kinds of information recorded electronically or by other means that can identify a specific natural person alone or in combination with other information, including the natural person's name, date of birth, ID card number, biometric information, address, telephone number, email address, health information, whereabouts information, etc.

2.2. Clarify the Rights and Obligations of the Subject of the Legal Relation of Personal Information

In the legal relationship of personal information protection, the information processor and the information owner are the information subjects. Because the information processor is the dominant party, it lays emphasis on its obligations, and if it violates the legal provisions or the agreement between the two parties when processing information, it shall bear the corresponding legal responsibilities. As for the information owner, it focuses on the rights it enjoys, such as the rights to consult, copy and raise objections.

2.3. Clarify the Boundaries between Personal Information and Privacy in China

For a long time, the distinction between personal information and privacy has been unclear, and there have even been cases of conflation in judicial practice. The Civil Code defines privacy as a personality right, which belongs to the

specific personality right. It is called the right of privacy, which is the private space, private activities and private information of natural persons who are quiet in their private life and do not want to be known by others, and emphasizes its privacy. And the personal information is defined as a kind of personality rights, belonging to the general personality rights. When privacy and personal information compete, according to the provisions of Article 1034 of the Civil Code, private information in personal information, the provisions on privacy shall apply; Where there is no provision, the provisions on the protection of personal information shall apply. This perfectly separates the two in terms of concept and application of law.

2.4. Fill the Gap in the Private Law of Personal Information Protection

Before the promulgation of the Civil Code, the legal norms of personal information protection in China were mainly reflected in the public law system dominated by criminal law, but the field of private law (especially civil law) was still blank. For example, it is stipulated in the criminal law that "those who sell or provide citizens' personal information to others in violation of relevant regulations of the State shall bear criminal responsibility if the circumstances are serious". It can be seen that although the means of public law can severely crack down on the illegal and criminal behavior of personal information by means of punishment, and protect the infringed personal interests, due to the blank in the field of private law of personal information protection, it is difficult for the information infringed to obtain economic compensation, which is obviously not conducive to the all-round protection of personal information. With the continuous development of computer information technology, there are many new network infringement cases. The behavior of infringing personal information not only infringes on the personal interests of the parties, but also damages the property interests of the parties, resulting in huge economic losses. Obviously, the public law can not effectively remedy the property loss suffered by the victim, and the property interests belong to the field of private law, which is the focus of civil law protection, so the promulgation of the Civil Code effectively fills the gap in the protection of private personal information law in our country. The legislative model of public-private cooperation should be the ideal road for the protection of personal information in our country in the future.

3. The Practical Obstacles to the Commercialization of Personal Information Protection Right in Civil Code

Although the personal information protection right has made great contributions, practical obstacles still exist. First of all, in our current judicial practice, personal information is unlikely to reach the peak of "right". Personal information is a very diverse concept that involves complex personal interests and often overlaps with relevant topics of existing individual rights, making it difficult to define it as a separate civil right. Second, the right to personal information is suspected to be an excessive protection of self-control interests. If the right to personal information is realized in legislation, this could lead to overly expansive claims by data providers for the interests of personal information in everyday life, particularly property interests which are an important

part of the new rights. This will lead to a serious imbalance in the interests of pluralism and hinder the development of values in the personal information society. Overcoming these obstacles is a necessary condition for further perfecting and developing the principle of the right to personal information

4. The Theoretical Support of Personal Information Protection Right in Civil Code

4.1. The Protection of Personal Information is Qualified to Benefit from the Right

Article 990, paragraph 1, of the Personal Rights Section of the Civil Code stipulates that civil subjects enjoy personality rights such as the right to name, the right to reputation, and the right to privacy. Paragraph 2 emphasizes that natural persons enjoy personality rights based on personal freedom and personality dignity in addition to the personality rights listed in the preceding paragraph. Paragraph 2 is actually the supplementary, underlining and subordinate provisions of paragraph 1. The Civil Code does not have a special chapter on the right to personal information, so it can be inferred that personal information belongs to other rights and interests of personality emphasized in paragraph 2. The subject of the legal relationship of personal information exercises the right by dominating and controlling the personal information and excluding the nuisance of others, which is essentially exercising the civil right, so personal information can be elevated to the civil right for protection. To be specific, first, in the era of increasingly developed information technology, for the infringement of personal information, a large number of civil cases have emerged in judicial practice on the grounds of infringement of personal information rights, rather than relying on the right of reputation, right of honor, right to privacy and other specific personality rights. Secondly, the issue of personal information protection has become a social consensus. In the era of network information, the public's awareness of personal information protection has been increasing, and compliance with personal information protection rules has become a public order and good custom. People are calling for further protection of personal information rights and interests at the legal level. Therefore, the elevation of personal information from civil rights to civil rights is in line with the interests of the public. Thirdly, the commercialization of personal information rights and interests will not conflict with the existing legal provisions, of course, for some mandatory provisions of the law, such as the reasonable use of personal information for the public interest, the exception can be provided. To sum up, the commercialization of personal information rights in the Civil Code has certain legal requirements.

4.2. The Legal Basis of Personal Information Protection Right

As a new type of civil rights and interests, personal information rights and interests have a unique right connotation, and the special right connotation also provides a legal basis for independent protection of personal information rights.

Firstly, the right of personal information is a new kind of right independent of the specific personality right in the existing civil code. The connotation of personal information is very rich, and the existing specific personality rights such

as the right of privacy, the right of reputation, the right of honor, etc., cannot include all the connotations of the right of personal information. For example, the improper disclosure of personal private information and the improper distortion of personal information to damage the personality image constitute the violation of the right of personal information. According to the current civil Code, the former and the latter can only be evaluated separately by invoking the provisions of the right of privacy and the right of reputation respectively, while neither the right of privacy nor the right of reputation can be included in the scope of evaluation and regulation at the same time, and only the right of personal information can achieve comprehensive evaluation and regulation of the two.

Secondly, the independence of the right of personal information promotes the development of the protection of personal information in private law. Before the promulgation of the Civil Code, the party whose personal information was infringed could only file a lawsuit based on the right of privacy and reputation, which often could not make up for all the damage. Although the Civil Code has formulated relevant rules for the protection of personal information, its lack of independent status of civil rights will lead to imperfect relief measures and channels. Only by establishing it as an independent civil right can personal information be fully protected and promote the development of private law protection of personal information.

Thirdly, the mode of public power protection has certain limitations. As mentioned above, the protection of personal information is dominated by public law in the case that the Civil Code has not clearly stipulated the rights and interests of personal information. However, criminal punishment is imposed only when the infringement of personal information reaches a serious level, but in reality, most of the information infringement has not reached a serious level, and the infringer can still get away with murder. At the same time, the identification procedure of criminal cases is more complicated, and it is difficult for the parties who have been infringed on personal information to obtain timely relief. In contrast, the procedure for the determination of civil liability is relatively simple, which is conducive to making up for the loss suffered by the victim in time.

5. The Possible Path to Realize the Right of Personal Information Protection in Civil Code

In recent years, with the development of personal information protection theory, most scholars have developed a new concept of personal information right. It is about the right of the information subject to own and control personal information, and to exclude interference from others. It is the sum total of all the specific rights capabilities of an

information subject. Their rights also include personal personality and property interests, personal interests and public interests. The right to personal information is the best way to maximize the protection of personal information rights. More specifically, as pointed out earlier, only when the rules related to the right to personal information are supplemented can the shortcomings of foreign models of personal information protection be effectively avoided. In addition to having the traditional right to personal information, the right to personal information also has the active use of personal information to fully meet the needs of growing subjects, information development and use of personal information, and effective control over the entire process and operation of personal information. At the same time, it can also protect the personal personality and economic interests of the information subject. This right allows the public to use personal information for reasonable purposes, and fully realizes the balance of personal interests, economic interests and public interests, without falling into excessive control of information autonomy.

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