

The Conflict and Balance between the Privacy Rights of Public Figures and the Public's Right to Know in the Era of "Civil Code"

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Abstract

There is a conflict between the protection of public figures' privacy rights and the protection of the public's right to know in real life. In judicial practice, the "public figure theory" appears many times in judgments to resolve the actual conflict between the two rights. This theory has not been adopted by my country's Civil Code because of the problems of arbitrary conceptual definition, superficial practical application, and lack of authoritative judgment standards and supporting legal norms for substantive malicious elements. Applying the theory of public interest to cases involving the privacy rights of public figures, combined with the Civil Code and current legal norms, can completely solve the practical problem of the conflict between the privacy rights of public figures and the public's right to know, and make the two achieve an ideal state of relative balance.

Keywords

Privacy Rights of Public Figures; Public Right to Know; Substantial Malice; Public Interest.

1. Introduction

The protection of privacy rights has always been a topic of concern in the theoretical circle, and the "Civil Code" has raised the protection of natural persons' privacy rights and personal information to a new level. As an aspect of the privacy rights of natural persons, the privacy rights of public figures have not been specifically regulated in the laws of our country, and there are theoretical and practical difficulties in protection due to its uniqueness. The public right to know as its conflicting right also expands with the development of net-technology. The current academic research mainly focuses on the protection of the privacy rights of natural persons, and the protection and utilization of personal information. There are few results on how to balance the privacy rights of public figures and the public's right to know. The article intends to start with two basic concepts, list the specific cases of the conflict of rights in the current judicial practice in our country, and provide some reference for the balance between the two rights in reality, combined with the legal provisions of our country.

2. Research on the Connotation of Public Figures' Right to Privacy and the Public's Right to Know

2.1. Privacy Rights of Public Figures

2.1.1. Privacy

Independent compilation of personality rights in the Civil Code is one of its highlights, and the enjoyment and protection of the rights of natural persons is more comprehensive. The law clearly stipulates that natural persons have the right to privacy, and the word privacy is clearly stated. (Article 1032 of the Civil Code: Natural persons enjoy the right to privacy. No organization or individual may infringe on the privacy of others by means of spying, intrusion, disclosure, disclosure, etc. Privacy refers to the tranquility of private life of natural persons and

the private space, private activities and private information that others do not want to know.) It is necessary to distinguish between privacy and personal information here. Both personal information (Article 1034 of the Civil Code: The personal information of natural persons shall be protected by law. Personal information is a variety of information recorded electronically or in other ways that can identify a specific natural person alone or in combination with other information, including the natural person's name, date of birth, ID number, biometric information, address, phone number, e-mail, health information, whereabouts information, etc. The private information in personal information shall be governed by the provisions on privacy rights ; if there is no provision, the provisions on the protection of personal information shall be applicable.) and privacy are precisely defined in the law and regulated separately. The terms of privacy rights precede the protection of personal information, and the provisions on privacy rights apply to private information in personal information. It can be seen from this that although personal information and privacy are closely related, the law will obviously place more importance on the protection of the right to privacy.

2.1.2. Privacy of Public Figures

The theory of public figures' privacy rights mainly concerned with public figures still needs further investigation. The public figure theory comes from the United States. In 1964, the "New York Times" v. Police Chief Sullivan (New York Times Co. v. Sullivan) (See New York Times Co. v. Sullivan, 376 US 254 (1964).) experienced the loss of the case and required huge compensation. After insisting on appeal, the New York Times finally won the federal Supreme Court's ruling. In the final opinion, it clearly stated, "Our country has made a far-reaching commitment to the principle that debate on public affairs should be uninhibited, dynamic, and widely open, which is likely to include heated, A vitriolic or even sharp attack . convincingly" prove that the relevant statement was malicious, otherwise the government official cannot obtain compensation for the defamation. Public officials are proposed as a way to differentiate themselves from the general public.

In the judicial practice of our country, to mention this theory, we have to mention the "Zhiyi Fan Reputation Case" in 2002, (Shanghai Jing'an District People's Court (2002) Jing Min Yi (Min) Chu Zi No. 1776 Civil Judgment.) which is the first time that Chinese judges used the concept of "public figure" in the judgment. [20] The judge in this case clearly conveyed the value orientation of protecting the right to supervise news and public opinion in the judgment, and proposed the "duty to endure" of public figures. It is not difficult to understand from the literal meaning, the obligation refers to that as long as the media has no malicious intentions and does not deliberately fabricate facts, public figures should "tolerate and understand" the "minor damage" that may be caused to them. In fact, my country has not raised the concept of public figures to a legal level, and the theory of public figures has not been adopted by the Civil Code. However, using the judicial case function of the Peking University French-Italian search engine to search for "public figures" as the keyword, 3,243 records can be obtained. It can be (data is as of 14:00 on May 26, 2022.) seen that this type of cases is common in judicial activities in China.

2.2. The Public's Right to Know

The right to know, first proposed by American journalists. The specific meaning means that no matter citizens, legal persons or other organizations have the right to know the surrounding information, the state and society should protect the channels for citizens, legal persons and other organizations to know information and the right to obtain information resources, and believe that the right to know should be recognized as a constitutional right. [21] In the 1940s, the United Nations passed a resolution that included the right to information as a fundamental human right.

Although the right to know has always been well known and used in China, the legal level clearly stipulates that the right to know (Article 44 of the "Personal Information Protection Law" individuals have the right to know and decide the processing of their personal information, and have the right to restrict or refuse the processing of their personal information by others, except as otherwise provided by laws and administrative regulations.) is the Personal Information Protection Law promulgated and implemented in 2021. According to the analysis of the meaning of the law, the right to know refers to the right to process one's own personal information, which is not the same concept as the right to know mentioned in the article. The right to know that needs to be discussed here is more inclined to be similar to the basic rights of citizens stipulated in the Constitution, which means that citizens have the right to freely obtain information closely related to public interests through legal channels. Article 19 of China's "Regulations on the Disclosure of Government Information" (Regulations of the People's Republic of China on the Disclosure of Government Information (2019 Amendment) ", the administrative organs shall take the initiative to disclose government information that involves the adjustment of public interests, needs to be widely known by the public, or needs the public to participate in decision-making.) stipulates that government information related to public interests should be disclosed to the general public, and the public's right to know should be directly affirmed.

3. Judicial Status of the Conflict between the Privacy Rights of Public Figures and the Public's Right to Know

The privacy rights of public figures and the public's right to know, as two rights that are accompanied by contradictions and oppositions, naturally have conflicts. Especially at present, relying on the developed network and a wide variety of mobile devices, the speed and scope of information dissemination have reached an unprecedented speed and breadth. Because of this, the contradiction between the two rights has become prominent, and the conflict has become increasingly intensified.

3.1. Specific Cases of Conflict

3.1.1. Appeal of Mouming Liu and Mousong Chen 's Reputation Right Dispute

Basic facts: Mouming Liu and Mousong Chen are both vice-chairmen of Hubei Writers Association. Mousong Chen appealed to the court for Mouming Liu to apologize and bear economic and mental damages on the grounds of infringing the right of reputation. After finding out, the court ruled that Mouming Liu apologized to Mousong Chen in writing to eliminate the influence. (Civil Judgment (2017) E 0106 Min Chu Zi No. 5802 of the People's Court of Wuchang District, Wuhan City, Hubei Province.) Mouming Liu refused to accept the judgment and appealed.

Judgment Result: The second-instance court rejected the appellant's appeal and upheld the judgment. The judgment instance elaborated on the common concept of public figures, and argued that Mousong Chen did not have the legal characteristics of public figures in this case.(Civil Judgment (2018) E 01 Min Zhong Zi No. 645 by the Intermediate People's Court of Wuhan City, Hubei Province .)

3.1.2. Dispute Over the Right of Reputation between Lan and Beijing Weimeng Innovation and Technology Network Technology Co., Ltd. and Wang

Basic facts: Lan is a staff of the Mianyang People's Hospital. She has received widespread attention from the society because she has reported that the people's hospital has excessive medical treatment, who was named "corridor doctor". Wang is a member of CCTV, whose Weibo account is certified as a "senior media person". Wang published a series of Weibo remarks against Lan. Lan believed that Wang constituted an infringement of the right of reputation, and

asked Wang to apologize and compensate for the mental damage consolation money. The court found that Wang 's Weibo remarks did not constitute infringement, and dismissed all of Lan's claims. (Civil Judgment (2015) Haimin Chu Zi No. 16638 by the People's Court of Haidian District, Beijing) Lan then appealed to the Beijing No. 1 Intermediate People's Court.

Judgment result: The court confirmed that Lan was a public figure who accidentally intervened in major social events and had a certain social reputation, and should undertake a higher tolerance obligation, and pointed out that the derogation obligation should be related to the public domain and public interest. It cannot exceed the boundaries of the public interest. (Beijing No. 1 Intermediate People's Court (2017) Jing 01 Min Zhong Zi No. 5729 Civil Judgment.)

3.1.3. An Appeal Case Concerning a Dispute Over the Right of Reputation between Yang and the Southern Weekly News Agency

Basic facts: Yang was reported by the media because of the star incident, which caused widespread discussion in the society. Yang's father also committed suicide by jumping into the sea because of this. Due to the relevant articles published in the Southern Weekend newspaper, Yang believed that her father's personal dignity was violated and her father's reputation was seriously violated, so she filed a lawsuit. After review, the court found that the Southern Weekly News Office objectively did not infringe on Yang's reputation by insulting or slandering, and rejected Yang's claim. (The People's Court of Yuexiu District, Guangzhou City, Guangdong Province (2008) Yue Fa Min Yi Chu Zi No. 598 Civil Judgment.) Yang then appealed to the Guangzhou Intermediate People's Court of Guangdong Province.

Judgment Result: The court determined that Yang and her parents were both voluntary public figures, and the public's right to know was naturally derived. The content of the article involved is linked to social events that the public is concerned about, and naturally becomes part of the public interest, which should be tolerated by Yang. (Guangzhou Intermediate People's Court of Guangdong Province (2008) Sui Zhong Fa Min Yi Zhong Zi No. 3871 Civil Judgment.) The appeal was dismissed and the original judgment was upheld.

3.1.4. Ding v. Zhao and Beijing Ancient Castle Books Co., Ltd. in the Dispute Over Infringement of Privacy Rights

Basic facts: Ding is the only son of the late famous cartoonist Cong Ding and Jun Shen. Ding found a large number of private letters between Cong Ding, Jun Shen and their families, manuscripts on a website, which involved family privacy. Ding believes that the auctioneer Zhao published Cong Ding 's letters and manuscripts without authorization, and the ancient castle company involved in the lawsuit did not review the sale, which constituted a violation of Cong Ding, Jun Shen 's privacy and the plaintiff's privacy rights, and asked stopping the infringement, deleting the letters and manuscripts of the auction, making a public apology, compensating the mental damage consolation money and attorney fees, besides the operating company involved in the lawsuit shall be jointly and severally liable.

Judgment Result: Beijing Internet Court believes that the privacy rights can be reasonably limited, but private information that is not related to public interests should be fully protected. It was judged that the two defendants apologized to the plaintiff; Zhao compensated the plaintiff for mental damage and reasonable expenses totaling 30,000 yuan, the company was jointly and severally liable. (Beijing Internet Court (2018) Jing 0491 Min Chu No. 1813 Civil Judgment.)

3.1.5. Tianjin Newspaper Publishing Co., Ltd. and Wu Dispute on the Right of Reputation

Basic facts: Wu believed that the Tianjin Newspaper Company published relevant reports infringing on her right to reputation, and petitioned to take back and destroy all the allegedly infringing "Satellite TV Weekly", publicly apologized. The court, summed up the characteristics of the reputation rights of public figures in the judgment, and further explained the principles

of public interest, non-profitability and authenticity. It is believed that although the content of the celebrity's private life is concerned and concerned by the public, the concern has nothing to do with the public interest, so public figures cannot be asked to tolerate it. Therefore, Tianjin Newspaper Company was ordered to stop the infringement, publish an apology statement and pay 40,000 yuan for mental damage. (Beijing Chaoyang District People's Court (2013) Chao Min Chu Zi No. 35480 Civil Judgment.) Tianjin Newspaper Publishing Company refused to accept the judgment and filed an appeal.

Judgment result: Beijing No. 3 Intermediate People's Court rejected the appeal and upheld the original judgment. (Beijing Third Intermediate People's Court (2014) San Zhong Min Zhong Zi No. 06367 Civil Judgment.)

3.2. Relevant Analysis of Conflict Cases

3.2.1. The Definition of Public Figures in Judicial Practice is Arbitrary

In the specific conflict cases selected above, the courts all consider whether the parties are public figures when making judgments, and the main factors to be considered are social influence, social public interest, public domain, etc. It can be seen from the case that in addition to the typical literary and entertainment stars (case 4 and case 5), there are also voluntary public figures (case 3) and accidental public figures (case 2). In addition, although Case 1 did not make a positive evaluation of Chen Mousong as a public figure in the case, it still defined relevant aspects of social members with certain administrative positions. However, in practice, it is difficult to determine within which range of social popularity constitutes the popularity required by the characteristics of public figures, and it [3] basically relies on the judge's own judgment, making the definition of public figures more arbitrary.

3.2.2. The Application of Public Figure Theory is Superficial

When the court hears a case, even if the parties are identified as public figures, and the relevant theories of public figures are mentioned in the judgment, they are almost all mentioned in one sentence and discussed in general terms. Public figures should bear a slight obligation of tolerance for acts that infringe on their reputation, because public interests are involved, and public interest judgments often become a key issue affecting the outcome of litigation. [22] And the "duty of moderate tolerance" for public figures is like a fixed template, only scribbled. When the substantive trial and the application of the law are conducted, the basis is still the constituent elements of tort liability, and the public figure theory will basically not have a fundamental impact on the outcome of the case trial.

3.2.3. "Substantially Malicious" Lacks Identification Standards and Supporting Legal Norms

"Substantial malice" is not a legal concept in my country, and it is difficult to determine the standard for "substantial malice". When the court hears cases of public figures, the examination of "substantial malice" mainly relies on the evidence of both parties, which will lead to the problem of allocating the burden of proof. In civil cases, the distribution of the burden of proof is very important, and the production of (Article 64 of the Civil Procedure Law, the parties have the responsibility to provide evidence for their claims.) evidence cannot bear adverse consequences, which will have a decisive impact on the outcome of the case.

4. The Balance between the Privacy Rights of Public Figures and the Public's Right to Know: The Theory of Public Interest

4.1. Theoretical Investigation of Public Interest

In modern political and legal practice, public interest is a frequently used political rationale and legal discourse. [23] Most scholars who recognize the public interest also believe that it is

almost impossible to come up with a generally accepted concept of public interest, especially if it is impossible to give a general definition of public interest in substantive terms, but it is expected that through efforts Describe the public interest as completely as possible. [24] As a historical concept, the extension of public interest will inevitably be affected by social changes and show a certain degree of development and openness. [25]

"Public interest" appears 11 times in the "Civil Code", 3 times are "social public interest", (Article 132 of the Civil Code shall not abuse civil rights to damage national interests, social public interests or the legitimate rights and interests of others; Article 185 infringes upon the names, portraits, reputations and honors of heroes and martyrs, and harms society Article 534 Where the parties use the contract to commit acts that endanger national interests and social public interests, the market supervision and management and other relevant administrative departments shall be responsible for supervising and handling them in accordance with the provisions of laws and administrative regulations.) which are not to abuse rights, infringe the reputation of heroes and use contracts to endanger social public interest; 8 times are "public interest", (Article 117 of the "Civil Code" shall give fair and reasonable compensation for the expropriation or expropriation of real or movable property in accordance with the authority and procedures prescribed by law for the needs of the public interest; Article 243 for the public interest Article 358 Before the expiration of the term of the right to use construction land, if the public interest needs to take back the land in advance, the house and other real estate on the land shall be compensated according to the provisions of Article 243 of this Law, and the corresponding transfer fee shall be refunded; Article 999 shall implement news reporting and public opinion supervision for the public interest, etc. Those who act, may reasonably use the name, title, likeness, personal information, etc. of the civil subject; if the use unreasonably infringes upon the personality rights of the civil subject, they shall bear civil liability according to law; Article 1009 The medical and scientific research activities carried out by a person shall abide by laws, administrative regulations and relevant state regulations, shall not endanger human health, shall not violate ethics, and shall not harm public interests; The person agrees to: (5) Other acts of making, using and disclosing the likeness of the person with the likeness rights in order to safeguard the public interest or the legitimate rights and interests of the person with the likeness rights; Article 1025 The perpetrator conducts news reports, public opinion supervision, etc. Acts that affect the reputation of others shall not bear civil liability, except for any of the following circumstances: (1) fabricating or distorting facts; (2) failing to fulfill the obligation to reasonably verify the seriously inaccurate content provided by others; (3) using Insulting remarks, etc. to degrade the reputation of others; Article 1036 When processing personal information, the perpetrator shall not bear civil liability in any of the following circumstances: (3) Reasonably implemented for the purpose of safeguarding the public interest or the legitimate rights and interests of the natural person other behavior.) The second one is related to expropriation, and the rest can be found in the Personality Rights Section (implementing the rational use of news reporting and public opinion supervision for the public interest, implementing news reporting for the public interest, and exempting public opinion supervision from liability for reputation infringement) and are closely related to the issues discussed in the article.

4.2. The Superiority of the Public Interest Theory

As a traditional capitalist power, the United States' "Public Figure Theory" focuses on protecting the right to freedom of speech and ensuring citizens' free discussion of public affairs, which is quite different from the actual application of judicial practice in China. Collectivism has always been in line with the mainstream values of our society, and the theory of public interest has a natural rooted soil. American scholar Berman famously said: "The law must be believed, otherwise it will be in vain. The life of the law lies in the implementation, and the

implementation of the law is not only the observance of the legal norms, but also the implementation of the law at a deeper level. Recognition and yearning for values."

Applying the theory of public interest to cases involving the privacy rights of public figures, combined with the Civil Code and current legal norms, can completely solve the practical problem of the conflict between the privacy rights of public figures and the public's right to know, and make the two achieve an ideal state of relative balance. .

4.3. Standardize the Use of Public Interest Theory

Although the theory of public interest has its advantages, because rights have a natural tendency to expand and the concept of public interest itself is ambiguous. "Public interest" is a highly abstract "controversial concept " or "uncertain legal concept". [26] In reality, the judgment of public interest mainly depends on judges, which is easy to cause the actual problem of excessive discretion and infringing on private rights. Therefore, the application of public interest theory must be strictly regulated.

4.3.1. Restricting the Scope of Public Interest

Although public interest is an abstract concept, it should have its own boundaries in practical application. The existence of public interests must be based on the confirmation of personal interests , and public interests without personal interests have no value . Only those public interests that can be reduced to personal interests are real. [27] The scope of public interest cannot be expanded indefinitely, resulting in the deprivation of the rights of the majority to the minority.

4.3.2. Optimize the Level of Value Measurement

In judicial practice, the protection of the privacy rights of public figures is generally weaker than that of ordinary social groups, and due to their special identities, they need to undertake a certain limit of tolerance obligations. The transfer of rights to the part involving public interests reflects the choice of the superiority of social rights when measuring values. However , the protection of personal private information and residential privacy of public figures should be greater than the protection of ordinary groups. [28]

4.3.3. Reasonably Use the Principle of Proportionality

The principle of proportionality, known as the "emperor's clause" in public law, was first applied to administrative law. Its essence is to restrain and control public power, and it is applicable to all fields involving the exercise of public power. [29] Some scholars believe that the principle of proportionality can be applied in the field of civil law, while [31] [33] others hold opposing views. [32] Reasonable use of the proportionality principle is of positive significance for solving the conflict between the privacy rights of public figures and the public's right to know.

5. Conclusion

Although the privacy rights of public figures are different from the rights of general groups, there is a huge conflict associated with the public's right to know, but in the final analysis, it is still an issue of privacy protection. The public figure theory lacks the soil to take root in our country, and it cannot solve the substantive rights conflict when it is applied to judicial practice. Therefore, there is no need to distinguish between public figures and ordinary individuals in legal norms. The rational application of public interest theory combined with existing legal norms can achieve a good effect of achieving a balance between the two rights.

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