

The Application of Injunctions against Infringements of Personality Rights

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Abstract: On the basis of sorting out the concept, attributes, and legislative development of the injunction regime against infringements of personality rights, this paper analyzes the practical difficulties in the operation of the regime in light of existing research results and the current state of judicial application. These are mainly manifested in the fact that the applicable conditions are not sufficiently clear, the standards of proof lack uniformity, the criteria for determining urgency are vague, the assessment of “irreparable harm” lacks specific guidance, and the rules on the duration and rescission of injunctions as legal effects remain inadequate. In the future, differentiated application rules should be established around the types of infringements of personality rights, the stages of infringement, and the degree of risk; the standards of proof, the determination of urgency, and the methods for assessing “irreparable harm” should be further refined. At the same time, the rules on the duration and rescission of injunctions should be improved, and the circumstances for rescission upon application and rescission by the court ex officio should be clarified, so as to enhance the operability and stability of the regime. Through the further improvement of the relevant rules, the injunction regime against infringements of personality rights will be better able to realize its function of preventive relief.

Keywords: Injunctions against infringements of personality rights; Applicable conditions; Legal effects

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1. Background and current state of research

Personality rights are among the most fundamental civil rights of natural persons and involve a variety of personality interests such as life and bodily integrity. With the development of social life, the forms of infringement of personality rights are also constantly changing. Under such circumstances, relying only on ex post compensation mechanisms often makes it difficult to achieve ideal results. It is against this background that the Civil Code of the People’s Republic of China established the injunction regime against infringements of personality rights. According to Article 997, where a civil subject has evidence proving that an actor is committing or is about to commit an unlawful act infringing his or her personality rights, and failure to stop it in time will cause irreparable harm to his or her lawful rights and interests, he or she has the right to apply

to the people's court according to law for measures ordering the actor to cease the relevant conduct. After the Civil Code of the People's Republic of China came into effect, research surrounding the injunction regime against infringements of personality rights gradually increased, and existing results mainly focus on the following aspects. Many scholars have focused on the applicable requirements for injunctions. Wang Liming believes that a standard of probability should be adopted for proof^[1]. Wu Yingzi explores the issue of the standard of proof for injunctions against infringements of personality rights and argues that "high probability" should serve as the basis for judgment^[2]. At the level of specific rules, Guo Xiaodong, proceeding from judicial practice, summarizes the practical problems in the application of injunctions^[3]. Zhang Suhua, in light of the preventive function of the injunction regime, puts forward a view on the standard of proof that differs from the path of strict proof^[4]. Overall, domestic research has already accumulated certain achievements on several basic issues, but there is still room for further deepening in terms of the overall institutional structure. In particular, more targeted research is still needed on the systematization of the applicable conditions and the unification of rules. From the perspective of foreign developments, the injunction regime developed relatively early in common-law systems, and the relevant theories are relatively mature. Common-law systems emphasize the close connection between evidence and the necessity and legitimacy of granting injunctions^[5]. When reviewing the issuance of injunctions, U.S. courts focus on the evidentiary advantage regarding the plaintiff's likelihood of success and whether the plaintiff faces a risk of irreparable harm^[6]. This reflects a balance between fairness and efficiency.

2. Basic scope of the injunction regime against infringements of personality rights: The concept and legal nature of injunctions against infringements of personality rights

Injunctions against infringements of personality rights can be traced back to injunctive relief in the common law. The injunction against infringements of personality rights provided for in Article 997 of the Civil Code of the People's Republic of China has certain functional similarities with injunctions in the common law, as both emphasize preventive protection and the timely cessation of infringement^[7]. However, it should be noted that China's regime is not a simple copy of foreign rules, but an institutional design made under the legislative background in which personality rights are compiled as an independent book, combined with the domestic need to protect personality rights. As to what kind of legal procedure injunctions against infringements of personality rights belong to, although there are different views in academia, the more influential view generally holds that they should be incorporated into the category of non-contentious proceedings^[8]. Injunctions against infringements of personality rights are mainly intended to intervene in a timely manner before the infringement causes serious consequences and to promptly prevent the dangerous situation from continuing or expanding. Non-contentious proceedings themselves are characterized by speed and flexibility, and are more suitable for undertaking this kind of judicial task centered on urgent protection.

3. Practical difficulties of the injunction regime against infringements of personality rights

3.1. Unclear rules at the level of applicable conditions

From the perspective of the existing norms, although Article 997 of the Civil Code provides the basic basis

for this regime, it does not further elaborate on several key requirements. For this reason, the standards adopted by courts in specific cases are not uniform, and the results of their application are also prone to considerable differences. Judging from the current situation, the problems are mainly concentrated in three aspects: the standard of proof, the determination of urgency, and the identification of “irreparable harm.” The law gives no clear answer as to the degree of proof that the evidence should reach. When an applicant requests the court to issue an injunction, he or she must explain that the respondent has already committed or is about to commit an infringing act, but there is no uniform standard as to the degree to which such an explanation is sufficient. In practice, some courts impose relatively high evidentiary requirements on applicants, often close to the standard for proving major facts in ordinary civil cases; other courts, taking into account the urgent nature of injunctions, are relatively more lenient in accepting preliminary evidence. Because the standards of adjudication are inconsistent, the same type of cases may receive completely different outcomes in different courts. There are also quite obvious divergences in academia regarding the standard of proof. Some scholars believe that although injunctions are temporary in nature, they directly restrict the respondent’s freedom of conduct and may even affect his or her reputation, and therefore, courts should act prudently when making rulings, and applicants should at least meet the level of proof of “high probability.” The contrary view is that the fundamental purpose of establishing the injunction regime is to prevent infringement in a timely manner. If the threshold of proof is set too high, applicants will often find it difficult to submit sufficient evidence before the harm has fully materialized, which in turn will weaken the proper function of the injunction regime. Both views have their reasons, but they also show that the current law has not formed a stable rule on this issue. If the standard of proof is too high, the regime will be difficult to activate precisely when it is most needed; if the standard is too low, it may increase the risk of wrongful injunctions and thereby harm the respondent’s lawful rights and interests. As for whether the circumstances are urgent, the determination in practice likewise lacks a clear basis. Current law does not explain by what standard urgency should be determined. In some cases, courts tend to find urgency where the infringement of personality rights has already begun or where the risk is clearly present. In other cases, courts require applicants to further prove that the infringement is about to materialize, and otherwise are reluctant to adopt injunctive measures. This difference indicates that in practice, the so-called urgency often depends more on the individual judge’s experience than on a uniform legal standard. The timing of the applicant’s filing for an injunction also affects the determination of urgency. If the applicant knows that the infringement has already occurred, but only applies for an injunction after a considerable period of time, then the urgency claimed will obviously be called into question. Although “irreparable harm” is a core requirement in Article 997, it is itself still a highly abstract concept. Unlike property rights, the consequences of harm to personality rights are often not easily calculated precisely, nor can they all be restored through damages. However, the law does not further explain under what circumstances harm may be found to have reached the level of “irreparable.” From judicial practice, courts usually make a comprehensive judgment in light of such factors as the scope of the harm, the speed of dissemination, the extent of the impact, and the possibility of subsequent restoration, but this method of judgment is relatively flexible and lacks stable boundaries. For example, whether mere mental suffering is sufficient to support an application for an injunction, and to what scale online reputational damage must spread before it produces irreversible consequences, have not yet received consistent answers. The problem of unclear applicable conditions has already become an obstacle to the further development of the injunction regime against infringements of personality rights.

3.2. The rules on legal effects are still not clear

Once an injunction against infringements of personality rights is issued, it will often immediately impose binding force on the respondent's conduct, and therefore, its legal effects should have clear boundaries. However, judging from the current legislative situation, the norms concerning the duration of injunctions, the methods of modification, and the paths of termination are all relatively inadequate. In the same type of cases, different courts handle the legal effects of injunctions in significantly different ways, which undoubtedly weakens the stability of the regime itself. The most prominent problem is the lack of a uniform rule on the duration of injunctions. Article 997 of the Civil Code establishes the right to apply for an injunction, but does not answer the question of how long an injunction should last once it is issued. In practice, some courts link the duration of injunctions to the subsequent litigation procedure, holding that as long as the substantive dispute has not yet been resolved, the injunction may continue to exist. Other courts, by reference to certain practices concerning personal safety protection orders or conduct preservation, set a fixed period and allow the applicant to apply for an extension upon expiration. This difference in handling is not merely a technical difference, but may substantially affect the parties' rights and status. If the duration of an injunction is too long, and necessary dynamic review is lacking during that period, the respondent's conduct will remain in a restricted state for a long time. Conversely, if the period is set too short, the protection of the applicant's rights and interests may be interrupted, forcing him or her to make repeated applications, which not only increases the burden of litigation but also wastes judicial resources. Closely related to the issue of duration is the lack of clarity regarding the rescission mechanism. Under what conditions an injunction should terminate usually does not have a uniform answer. In some cases, it automatically ends after the substantive litigation concludes, while in others, the court must separately make a ruling of rescission. Without a reasonable design of duration and a clear mechanism for loss of effect, it is difficult for injunctions to form a proper balance between protecting the applicant and restricting the respondent.

4. Legislative paths for improving the injunction regime against infringements of personality rights

4.1. Refining the applicable conditions for injunctions

If injunctions against infringements of personality rights are truly to perform the function of preventive relief, the key lies in making the applicable conditions as clear as possible. As to the standard of proof, the current overly vague state should not be maintained; rather, more layered distinctions should be made according to different types of infringement. Differentiated rules should be established according to the stage of the infringement and the type of rights and interests involved. For infringements that have already occurred and are still continuing, if they involve material personality interests that are relatively easy to identify, such as life, bodily integrity, and health, applicants can usually submit relatively direct preliminary evidence, and in such circumstances, the threshold of proof may be appropriately lowered so as to avoid missing timely relief due to excessively high requirements. For rights and interests such as reputation, privacy, portrait, and personal information, whose identification is relatively more complex, applicants should be required to provide materials that can more fully support their claims, so as to reduce the occurrence of wrongful injunctions. As for situations where the infringement has not yet actually occurred but there is a relatively high realistic risk, courts should be allowed to make a comprehensive judgment based on such factors as indirect evidence, patterns of conduct, paths of information dissemination, and the background of prior conflicts between the

parties, rather than mechanically requiring applicants to provide complete and direct proof materials. The determination of urgency also needs to be further refined. For cases where the infringement has already begun and is still continuing, urgency may in principle be presumed to exist, because in such situations the harm is often continually expanding. For cases where the infringement has not yet occurred but the danger is obvious, the focus should be on examining the realistic possibility that the conduct will occur, the temporal proximity, and whether the consequences would be serious once it occurs. At the same time, the timeliness of the applicant's rights-protection response should also be included in the scope of judgment. If the right holder has long known of the existence of the infringement but, without justified reasons, delays in applying for an injunction, then the urgency claimed should be subject to stricter scrutiny. "Irreparable harm" should be concretized from the perspective of the characteristics of different personality interests. The harmful consequences caused by infringements of personality rights are often difficult to fully restore. The determination of "irreparable harm" should be subject to a restrictive interpretation^[9]. Unless the actor's infringement is limited to pecuniary interests within spiritual personality rights, such harm should be recognized as difficult to remedy through ordinary means^[10]. For material personality interests such as the rights to life, bodily integrity, and health, once death, disability, or serious health damage occurs, the harm is usually irreversible or highly irreplaceable, and such situations should, in principle, be directly recognized as "irreparable harm." For spiritual personality interests such as reputation and privacy, the standard of judgment should pay more attention to such factors as the scope of dissemination of the infringement, the duration, whether it is expansive, and the impact on social evaluation and mental state. Only by further concretizing the three core requirements of standard of proof, urgency, and degree of harm can the injunction regime cast off the condition of excessive dependence on individual judges' experience and gradually form a more stable order of application.

4.2. Clarifying the rules on the legal effects of injunctions

The legal effects of injunctions directly concern the stability of the application of the regime. Therefore, it is necessary to establish a relatively complete system of rules around such aspects as duration and mechanisms of loss of effect. Clear provisions should be made for the duration of injunctions. In studying the reasonable setting of the effective period of injunctions against infringements of personality rights in China, such injunctions may be divided into short-term and long-term types, and corresponding periods of validity may be set. Injunctions against infringements of personality rights are different from final judgments and should not exist indefinitely. Where, due to urgent circumstances and before the respondent's opinions can be fully heard, a temporary injunction is issued in advance, its period of effectiveness should be relatively short, so as to avoid the long-term restriction of the respondent's rights on the basis of one-sided information. As for injunctions issued after a relatively complete procedural review, a relatively clear maximum period of validity may be set, and it may be provided that, in principle, it shall not exceed a certain time limit, while allowing applications for extension where necessary. The path for rescission of injunctions needs to be institutionalized. Where the infringing act has ceased, the parties have reached a settlement, or the court discovers that the original ruling was clearly improper, rescission should be allowed. A distinction may also be drawn between rescission upon application and rescission by the court *ex officio*. The former reflects the parties' autonomy of will, while the latter serves to prevent injunctions that are clearly unbalanced or no longer necessary from continuing to exist. Improving the rules on legal effects will allow the injunction

regime to operate steadily. At the same time, in order to achieve comprehensive protection of rights, and taking the necessity of personality-rights protection as the limit, discretion may be exercised in light of the parties' applications and the specific circumstances of the case ^[11].

5. Conclusion

The establishment of the injunction regime against infringements of personality rights reflects the transformation of personality-rights protection in China from ex post relief to ex ante prevention and timely cessation. Compared with traditional damages, this regime can more effectively deal with the practical problems that infringements of personality rights spread rapidly, and their consequences are difficult to reverse. However, judging from the legislative situation and judicial application, this regime still has problems, such as insufficiently clear applicable conditions, non-uniform standards of proof, vague determinations of urgency and “irreparable harm”, and inadequate rules on the duration, modification, and rescission of injunctions. These deficiencies affected the functioning of the regime. Therefore, the applicable standards for injunctions against infringements of personality rights should be refined, the relevant criteria should be clarified, and the mechanisms for the duration and rescission of injunctions should be improved.

Disclosure statement

The author declares no conflict of interest.

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