

The System Position and Protection of Personal Information Right in *General Provisions of the Civil Law*

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In the era of big data and Internet+, as the difficulty of personal information acquisition decreases and the degree of publicity becomes higher and higher, which directly leads to the abuse of personal information right, the malignant cases caused by personal information leakage cause the death of the person being swindled. Under this background, the regulation for the protection of personal information right in *General Provisions of the Civil Law* seems to be just in time. This paper analyses the status of the personal right, system position, and specific scope of the personal information right in *General Provisions of the Civil Law*, and explores ways to improve the protection of personal information right according to the needs of personal information use.

Keywords: personal information, *General Provisions of the Civil Law*, big data and Internet+

Although *General Provisions of the Civil Law* provides a solution to the recent hot issues in society and shows self-renovation of the Civil Law adapted to society in the Internet+ era, it provides the protection of personal information right. However, with the specific implementation of the Provision, it is more necessary to clarify how personal information right should be positioned in *General Provisions of the Civil Law*. How to protect this kind of right? Only in this way can the protection of personal information right become the guidance of law enforcement and be applicable to practice.

The Legislative Background of Personal Information Right

Xu Yuyu was admitted to Nanjing University of Posts and Telecommunications with 568 points in the College Entrance Examination in 2016. On the afternoon of August 19, she received an unfamiliar call to grant a grant. Because she received a call from the real education department to grant a grant the day before, she did not doubt the authenticity of the call at that time. According to the other party's request, Xu Yuyu entered the account provided by the cheater with 9,900 yuan for tuition fee. After being found deceived, Xu Yuyu was suddenly fainted and unconscious on her way home. Although she was rescued by the hospital, she died unfortunately. The investigation proves that it is because Xu Yuyu's personal information of receiving the grant was leaked that the fraudster can accurately locate her and defraud her without doubt. The case directly exposed the serious consequences of personal information disclosure and the dilemma of personal information right to be urgently protected. It also promoted the legislation of *General Provisions of the Civil Law* on the protection of personal information right.

In the Internet+ era, due to the characteristics of the big data, such as large scales of the data, variety of the data, fast processing speed, low value density, and so on (Shi, 2013), the data will be transferred several times and personal information right may be violated in any transfer. According to China Internet Association's *Survey Report on the Protection of Netizens' Rights and Interests in China 2016*, "688 million Chinese netizens lost 91.5 billion yuan in economic losses due to personal information leaks and spam messages, with an average of 133 yuan per capita" (Mi & Xu, 2017).

The huge number reveals the current situation of personal information disclosure and also makes people panic. In the era of big data, there are two more prominent problems: The first one is that the collection channels of personal information are more diversified, such as web browsing habits, shopping habits, social networking, and so on. In fact, the right to personal information is suffering tremendous losses. Threats, which will not affect the general information of people's lives, will infringe on legitimate rights through targeted processing; the second one is that the collector of personal information is more complicated. In the original information collection mode, there is a direct connection between the information collector and the information provider, but in the big data and Internet+ era, this direct connection is cut off by the "offensive and defensive alliance" or "benefit sharing" established among the information collectors. The information collectors may share the personal information with other peers and obtain similar information from them, which makes the protection of personal information right difficult to trace. In addition to the pursuit of personal information by profit-makers, whether the government could collect personal information unrestrictedly on the grounds of public security or national security and undermine the legitimacy of personal information right has also received considerable attention. The fact that the U.S. government actually monitors mobile phones is known because of the Snowden incident. Although there is a precedent in U.S. history that the Federal Court has ruled to allow them to obtain personal information in mobile phones with the cooperation of relevant companies, Snowden points out that the U.S. government has already started this work long ago. As far as public power is concerned, it is difficult to exclude the phenomenon of rational use of personal information for the benefit of society as a whole, and this kind of monitoring receives the least supervision.

In the era of big data and Internet+, enterprises and individuals can actually benefit from using personal information. For enterprises, massive personal information is conducive to formulating their own business strategies and individuals can enjoy personalized precise services. But the problem is that during the process of collecting and processing information, not every information collector has taken a proper attitude and reasonable use towards the personal information providers and their personal information. A large number of personal information has been illegally collected for harassment or fraud. In view of this, the protection of personal information right and its supervised utilization has great practical significance in maintaining the normal life order and the social order.

The Position System of Personal Information Right in the Civil Law

The personal information right has been embodied in many aspects in our country's normative documents. In *The Decision on Strengthening the Network Information Protection* of the National People's Congress, it is stipulated that "The state protects electronic information that can identify citizens' personal identity and involve citizens' personal privacy". *The Guidelines for the Protection of Personal Information in Information Security Technology of Information Systems in Public and Commercial Service* promulgated by the Ministry of Industry and Information Technology stipulate that "Personal information refers to the computer data that can be

processed by information systems, related to specific natural persons, and is able to identify that particular natural person individually or in combination with other information". Article four of *The Regulations on the Protection of Personal Information of Telecom and Internet Users* stipulates that

User's personal information refers to use's name, date of birth, identity card number, address, telephone number, account number, and password collected by operators of telecommunication business and Internet information service providers in the course of providing services. It also includes the information which could identify the user independently or could identify the user in combination with other information and the information of the user's time and place to use the service.

The Personal Information Protection Act stipulates:

Personal information refers to all information that identifies a particular individual in real life. It covers a wide range of subjects, including name, age, weight, height, archives, medical records, income, consumption and purchase habits, marital status, educational background, family address and telephone number, etc.

The Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Questions Concerning the Application of Law in Criminal Cases of Infringing on Citizen's Personal Information stipulates that

Citizen's Personal Information means the information recorded by electronic or other means that can identify a particular natural person individually or in combination with other information or various information that reflects specific natural person's activities, which includes name, identity card number, communication contact, address, account password, property status, track and so on.

From the above regulations, it could be seen that the concept of personal information right has not been put forward in recent two years in China, but has developed for a long time. At present, the definition of personal information in China has adopted the mode of summary and enumeration. The outstanding feature is that personal information can distinguish an individual from other individuals. This also basically summarizes the connotation of personal information right.

From the perspective of the legislative system of *General Provisions of the Civil Law*, personal information right is regarded as an important right juxtaposed with property right and personal right, while *General Provisions of the Civil Law*, as the basis of the compilation of the Civil Code, shows that personal information right is an independent civil right and is different from personal right and property right. But at the same time, the position of personal information right is behind personality right. From the legislative system, legislators prefer positioning it as a kind of personality right, that is, personal information right belongs to personality right, which denies its attributes of property right, and because it is relatively important, it should be listed separately.

The protection object of personal information right is the information that individual can be identified as a special individual. The information is all-inclusive, but most of them are closely related to personal life, such as name, portrait, address, mobile phone number, etc. When the information is illegally used, not only the property interests of the individual could be infringed, but also the lives of the individual could be infringed, so personal information right could not be protected as property right only.

Although the lack of personal information has certain property attributes and has certain commercial value, it could also be used as property itself (Liu, 2007). But when considering its content, the components of personality right are more prominent. In addition, the use of personal information is not always for property

purposes. For example, the United States uses personal information to combat terrorist activities. If it is regarded as a property right under this situation, then it is the collection and expropriation of personal property by the government. As a result, the government needs to compensate the individual properly, but it is unrealistic in the case of large-scale access to personal information for the protection of national security. In addition, if the personal information right is considered as the property right, the investigation of the infringement of personal information right will lead to the difficulty of investigation because of the infringement interests' amount is too small, or the punishment of the infringer is not commensurate with the infringement behavior. Most of the infringement for personal information right influence a large scope of individuals but result in small amount of property loss. At this time, if we only pursue the amount of property lost, there will be a difficult problem of accountability. Moreover, the perplexity caused by the infringement of personal information right is more of an impact on their daily life, such as harassment of telephone calls, which is essentially an intervention in the arrangement of personal daily life. Therefore, it should be stipulated as a kind of personality right which best expresses the object violated. The individual could claim compensation for moral damage, and thus effectively protect the rights.

The personal information right should belong to one of the specific personality rights. In foreign countries, some scholars believe that personal information right belongs to general personality right (Zhang, 1996). In our country, some scholars also think so. General personality right refers to more abstract personality right. The personal information right is difficult to define or solidify into law, so it is recognized as general personality right to be protected. But as far as the personal information right is concerned, there are many definitions of it in our country. It is also proved that those definitions are feasible in practice, so there are no difficulties to define. Moreover, the personal information right itself is not very abstract. On the contrary, it could often be embodied into individual specific information, so it could not be identified as the general personality right in both content and form.

The Protection of Personal Information Right

Since *General Provisions of the Civil Law* was passed, there has been a legal basis in civil law for the protection of the civil rights of personal information. Actually, before that, *the Criminal Law Amendment (7)* has stipulated the crime of infringing upon citizens' personal information. In addition, *the Law on the Protection of Consumers' Rights and Interests*, *the Law on Tourism*, *the Law on Network Security*, etc. also stipulate the protection of citizens' personal information rights. Legislation is more inclined to provide the basis for our rights protection, but there are still many difficulties in the practical application.

In order to protect the personal information right, we need to understand the needs of the use of personal information in practice: Firstly, the needs of the government. That is, for the public interest, in order to protect the national security, trace major criminal cases, prevent terrorist activities, and so on, the government needs the personal information. Secondly, that is the needs of the enterprises. The enterprises use personal information for commercial purposes. For formal enterprises, it is reasonable to collect personal information legally for the use of big data, but if some enterprises collect personal information for sale or illegal utilization, then they need to be regulated. Thirdly, that is the needs of the society. For the purpose of investigating a person, corresponding social files will be established, such as personal credit records or blacklists of industries. This demand requires every citizen to be responsible for his own behavior. For example, in the recruitment of civil servants in Liupanshui City in 2015, six candidates were refused to be recruited according to the

“Candidate Examination Integrity Database”.

In order to improve the protection path of personal information right in practice, we need to endeavor and maintain together.

The Government Level

The legislation of personal information right is just the beginning. The government also needs to strengthen the network supervision and tries to prevent the infringement of personal information right from happening. Especially in our country, a large number of personal information is in the hands of state-owned enterprises and the monopoly status of state-owned enterprises could lead to unbridled “consumption” of the information. If we can achieve effective supervision of large state-owned enterprises, it is likely to reduce the problem of personal information leakage in our country. Moreover, there are still no quantitative standards for the management of personal information collection in China, such as who is qualified to collect personal information, which industries can collect which kind of information, who can collect information from whom, and what aspects of the information can be used after being collected. At present, many of the relevant provisions on personal information right are still at the level of prohibitive provisions, which has created the possibility of some enterprises with undesirable purposes to drill holes. Under the situation of insufficient experience in personal information protection, the omission of prohibitive norms is often more serious. The development of Internet and related industries in our country has not lagged behind or even ahead of other countries in Europe and America. Therefore, the relevant legislation of personal information right in these countries has very limited reference significance for our country. Our country needs to adjust based on our own national conditions and formulates norms suitable for our country. Especially for the well-known way of government collection, we need to regulate it through norms and systems to prevent the abuse of public power.

The Society Level

A great difficulty in protecting personal information right lies in the difficulty of defending the rights of the infringed. The difficulty can be manifested in three aspects: Firstly, the infringed often suffers very little damage and it is difficult to pay attention to the infringed indemnity solely based on this damage. Secondly, it is difficult to find the infringer. In many times, the information collected by the infringed person is often just a telephone number or a mailbox address. It is almost impossible for an individual to find the infringer relying only on this kind of information. Thirdly, the damage suffered by the infringed person is not proportional to the cost of defending his/her rights, and then it is unwilling for anyone to do a large amount of investigation just for defending a little interest. In view of the first and third problems mentioned above, collective litigation should be conducted through public interest litigation organizations, so as to concentrate a large number of minor damages together to make the infringed interests relatively larger and to facilitate the submission of compensation for infringement damages. Collective litigation can realize the protection of rights through simple delegation of authority by everyone and can make the cost reduction to a large extent. As for the second point, if a public interest organization has the ability to investigate clearly, the case can be referred to it for investigation. In many cases, if it is difficult for the public interest organization to investigate clearly, the case can be considered to refer to the court for investigation and to mitigate the investigation responsibility of the prosecuting party appropriately. This has also happened in some lawsuits, such as the determination of the rental price of villas. Because the court could use much more government resources than individuals or public interest organizations, it is easier for them to identify the infringers themselves. Or we can consider outsourcing

to third parties. For many investigation companies, it is not very difficult to find the infringed person's follow-up situation based on the available information.

The Enterprise Level

For the management of personal information abuse, the supervision and reflection of the enterprises are very important. In many cases, the leakage of personal information is not the collective behavior of enterprise decision-makers, but the information stolen behavior of enterprise employees for their own interests. Therefore, if we can strengthen the supervision and education of persons who are in charge of the relevant information, we can reduce the infringement of personal information right to a certain extent. At the same time, we can refer to personal credit files and blacklists of individual industries to establish enterprise credit files and blacklists. Any enterprise that leaks or uses personal information badly will be recorded in the blacklist. Furthermore, it is necessary to change the undesirable current cooperation of "offensive and defensive alliance" or "information sharing" to a new state of mutual supervision. Through the establishment of a series of reward and punishment systems, such as punishing bad enterprises and rewarding reporting enterprises, enterprises in the industry could consciously take the initiative to do mutual supervision, which will greatly reduce the cost of government supervision, and at the same increase the overall intensity of supervision.

For individuals, at most of the time, the infringement of personal information right is not a personal fault or mistake; on the contrary, the collection of personal information is difficult to refuse for individuals themselves in many cases. Even in many cases, the personal information right is violated without the participation of relevant individuals. Therefore, it is certain that it has little effect to reduce the infringement of personal information right by improving personal security awareness and network knowledge. Similarly, for today's technology, many times the leakage of information has nothing to do with technology. It is a human problem. No matter how much the technology improves, persons in charge themselves cannot be prevented. At many times, some organizations that have a large amount of personal information are intra-agency local area networks. It is very difficult for attacks coming from the outside. So, the protection of personal information by technology can only be limited to a certain extent, to protect the information that is really stolen by hackers.

Generally speaking, the protection of personal information right needs the response of the whole society, not just the individual who has been infringed, and no one can guarantee that he/she is not the next victim.

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