

The Principle of Public Order and Good Customs in Chinese Civil Code

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Abstract

This paper is aim at interpreting the principle of public order and good customs in civil law, based on Chinese cultural tradition, national characteristics and practical needs. The principle of public order and good customs in Chinese Civil Code exists as a general clause, it contains the dual contents of public order and good customs. And its connotation will show different meanings and key points of construction with the changes of the times. So this principle needs to be further enriched and shown in the trial of specific cases. We should continue to improve the relevant legislation, correct the judicial style and improve the way of adjudication. So as to carry forward the traditional virtues of the Chinese nation and maintain public order and good customs.

Keywords

Public order and Good customs; Civil law; Legislation; Application.

1. Introduction

The Civil Code of the People's Republic of China was promulgated in 2020 and will be implemented on January 1, 2021. This is the first law named after the code after the founding of the People's Republic of China. And the concept of "public order and good customs" is clearly adopted for the first time in Article 8. In the previous civil legislation, the similar expression, "social public interest" or "social morality" has been widely adopted. According to Chinese scholars, these two concepts are equivalent to the principle of public order and good customs no matter in nature or function. [1] However, in the whole civil law system, the expressions of public order and good customs are still lack of unity and system.

The principle of public order and good custom is generally divided into two concepts: "public order" and "good custom". Although it was stipulated in the civil legislation of many countries and regions, but the content and interpretation are slightly different. In France, public order is the concept in French inherent laws. So the principle of public order and good customs in France is mainly explained as public order. But in Germany, the principle inherited the concept of good customs in Roman law and believed that it should not be expanded to public order. Besides, in Japan and Taiwan region of China, they combine two concepts into understanding, and called it social appropriateness. Moreover this principle is called public policy in Anglo American law, and required to incorporate general public interests and good community into consideration. Base on this, the court can refuse to recognize legal effects of certain transactions or acts of parties.

The first thing this article aims to solve is how to understand Public order and good Custom under Chinese context. Especially in recent years, our judicial work has always attached great importance to advocating and maintaining the principle of public order and good customs. People's Courts at various levels has been asked to keep improving judicial style, respect public order and good customs in order to improve the level of socialist rule by law and rule by virtue. The Supreme people's Court has issued some typical cases concerning upholding principles of public order and good customs. Therefore whether considering judicial practice or theoretical

research, the most important thing is to work out a thorough and comprehensive analysis of the principle of public order and good customs in civil code.

2. What Is Public Order

2.1. Meaning of Public Order in Different Disciplines

The word "public order" is familiar to most people; it should not be difficult to understand in terms of language usage, because it is commonly mentioned in daily life. However, the same vocabulary, from different disciplines perspective, can be interpreted to different meanings. In public philosophy, public order as a universal concept shows the orderly state of public life and the dynamic balance structure. Defines the intrinsic structure of personal interests transforming into public interest. [2] In Political science, reasonable public order refers to public order has certain degree of consistency with the subjective evaluation of most members of society. It is not just rely on coercion, but consistent with the dominant values and cultural axioms in society. And it's an order formed on the basis of voluntary cooperation and universal recognition of most members of society. [3] The public order in Private International Law, exists as limitations upon application of foreign law in States. Mainly refers to it's a reservation system, when the court apply a foreign substantive law as quasi-law of foreign civil relations according to their own conflict norms, can exclude the application of this foreign substantive law if its application contradicts the important interests of the court State, basic policies, fundamental moral concepts or fundamental principles of law. [4]

There are two main theories, about the meaning of Public order in Civil Law. One is general order theory the other is general interest theory. The supporters of the former theory, thoughts public order refers to the necessary general order of social existence and development. [5] And its extension of concept is wider than law order. Apart from existing law order, it should include fundamental principles and ideas which underlying the law order. [6] The supporters of the latter theory, define public order as general interests of national society, whose contents are difficult to specify due to the changes in times, but this abstract is precisely its vitality. [7] And it should also include the normative principles and value system of the whole law order. [8] Moreover, this general interest is reflected in the value system and general spirit of law, but not included existing law order. [9]

The difference about the definitions of public order, due to different perspective and emphasis of each subject. But there are still many common factors. In my opinion, the reason is that the inherent attributes and characteristics of the same concept are relatively stable, and this core part is exactly what we should grasp accurately. Therefore, we summarize the definitions given above. It can be concluded that the core meaning of public order is that it is an orderly life state and behavior pattern, its formation needs both the coercive force and domination force of state and government as well as the recognition and cooperation of most citizens, its value embodies in pursuing and maintaining public interests. Of course everything changes, on the basis of the core meaning of public order, it can be rich in meaning according to different needs.

2.2. The Meaning of Public Order in Chinese Civil Code

Rather than defining the meaning of public order through abstract concepts, I would prefer use figurative descriptions to analyze and interpret the concept. Around the core meaning of public order mentioned above, there should be three aspects in the meaning of public order in Chinese Civil Code.

2.2.1. Public Order Has Dual Attributes of Public Rights and Private Rights

Public order involves dual subjects during formation and operation. First, state and government need to exercise public power to govern and manage society and citizens. Secondly, citizens need to realize individual rights. The essence connotation of traditional public order

mainly is state order. The establishment of order centers on state is aimed at informing and managing, but lack of constraints of social force. While the essence of modern public order is social order, which aims at realizing individual rights and pays attention to human free development. [10] Therefore, the dual attributes of public order, public rights and private rights, need constantly internal integration to achieve mutual coordination. Similarly, public order in civil law needs to reflect both the contents of public law and the rights and interests in private law. J. Carbonnier, the contemporary famous scholar from France, has pointed out that public order is a peremptory norm and is opposite to free will of parties. Public order differs from public law. Although public law like Constitution, Administrative Law and so on, is an important source of public order. However, many rules of public order also derive from justice. The essence of public order lies in reflecting and protecting national fundamental interests. [11] French Civil Law also divides public order into political public order and economic public order. Political public order is considered to be restrictive to individualism in order to maintain social basic structural order and incorporate "good custom" into this part. Public order in economy is an intervention to economic relations so as to maintain stable and orderly economic life. The public order in Chinese Civil Code is similar. Social policies and economic policies promulgated by national and local governments are all kinds of ways to exercise public power and affect social political and economic life and restrain people's daily behavior. However citizens will have certain feedback on this kind of top-down public power which may generally agree or refuse acceptance, so public rights and private rights need further coordination integration. Public order contains dynamic checks and balances between public rights and private rights, and a series of factors change will cause public order change. The result is that in judicial application, this criterion will change when judging legal behavior. Public law in different periods based on public order, would change the extent and scope of autonomy of private law.

2.2.2. Public Order Is A Criterion for Judging Legal Acts

Public order as an orderly living state and behavior pattern is firstly real existence, which can be specified and described concretely. Therefore when judging whether a legal behavior violates public order, a clear behavior comparison can be conducted, which also facilitates the application of public order as judgment criterion. Secondly, public order is more objective than subjective, so is more stable. It wasn't formed either by state and government or individuals, but need multi-party's coordination, recognition and behavior repetition after a period of time. Eventually forming behavior patterns and life forms. Therefore public order and good customs can be used as a relatively stable standard to judge legal acts during certain period. Thirdly, public order is formed on the basis of majority recognition and has certain binding force on people's daily behavior. Legal act as one kind of people's behaviors will certainly become the object of public order constraint. Therefore public order can be used as an objective criterion to judge whether social members act in conformity with requirements.

2.2.3. The Value Pursuit of Public Order Is Public Interest

The theory of general interest believe that public order equals public interest. While the theory of general order thought that public order roots in order namely the state of orderly living behavior. However, it does not deny that public order aims at achieving public interest. Therefore public order in civil law also has the value requirement of protecting public interests. Public interest is not only refers to national interests or individual interests or social interests, but instead is a reasonable and equitable state of interest after internal integration and coordination among them. If national interests conflict with individual interests and social interests, we should not sacrifice the latter completely, but should take more consideration about how to realize citizen's growing personal interests and maintain stable state of social interests. Similarly, if desire for personal interests is too strong, it also affects social interests. At this point, we need to adjust personal interests reasonably and reduce loss of social interests.

Some scholars have suggested complete connotation of public interest should include economic interests, ethical interests and institutional interests. In case trials, we can use these three elements to carry out value judgment. [12]

3. What Is Good Customs

3.1. Connotation of Good Customs in Chinese Traditional Custom View

If you want to understand the fundamental connotation of good customs, the first thing you need to do is to comprehend the content of custom. Custom as a word appeared in pre-Qin period of our country, but until Han Dynasty, Chinese traditional concept about custom gradually formed. In this period, the society paid more attention to the relationship between custom and politics, especially emphasizing on through Confucian rites and music to carry out customs' enlightenment. The word custom is composed of two characters in Chinese. One is about wind, another is about vulgar. According to the connotation of good customs, Ban Gu first proposed custom contain both natural factors and humanistic factors, should be divided into "wind" and "vulgar" to understand. Ancient Chinese believed that wind was the origin of local cultural identity, and later directly called the general life style of local people wind. Therefore, wind emphasizes nature attribute, reflects the general life style of local people, which has certain regional character. Vulgar has two meanings. One refers to habit, behavioral patterns that be formed by repetition. Another refers to desire, embodied as personal feelings and desires. [13] Compared with wind, vulgar has more social attributes. Due to people's own individual differences as well as the influence of wind from different regions, vulgar shows special humanity. Besides regionalism and humanity, customs also have variability. This variability is reflected in the changes of customs in different periods, on one hand is related to scientific development, on the other hand is related to political civilization. Ways of governance at different times will be reflected through customs. During the period of Rao and Shun, people can live in good houses, so this period was known as times of peace and prosperity. While during the period of Jie and Zhou, and period, people were at risk of being killed at any moment, so this period was known as chaos. [14] For the long-term stability and orderly development of nation and society, ancient rulers or social elites would make use of inherent variability of custom to adjust some traditions or habits through top-down political indoctrination to avoid bad customs and pursue good customs. The book *Common Interpretation of Customs* written by Ying shao, mentioned that the proper governance of a state is to distinguish and amend customs. [15] It shows that good customs has close relation with politics in Chinese history and plays an important role in governing a country.

Above all, custom was from the original individual behavior, through continuous repetition and dissemination, finally became a behavior pattern with certain universality, stability and regularity. Among these behavior patterns, which no matter kinds or contents are rich and diverse, the one with the character of goodness is very important to nation and society, needs to keep maintaining, developing and pursuing. Confucian thoughts of pre-Qin Dynasty, pointed out goodness means kindness, righteousness, rite, intelligence and trust. These value belief are inherent in human being, which cannot be described or defined comprehensively, but need human being to realize though constant self-practice, achieve harmony between man and nature at last. According to Kant's ethical thoughts, only the behavior based on good will can mean goodness. Kant divides human will into two levels: one is the will of general reason which will be influenced by perceptual experience, while another is good will which is not influenced by perceptual experience but completely based on pure rationality and behavioral motivation. Namely whether a person's behavior is kind is all depends on whether the will itself or the motive is kind. [16] Generally speaking, customs with good attributes should show several characteristics as follows. First is responsibility, Kant emphasized that we should distinguish

the behavior out of responsibility and the behavior conform to responsibility, a custom should not only conform to responsibility formally, but also take the responsibility of caring people and society as the consideration and foundation of behavior, only thus can a custom become a good custom. Second is moral. Good customs should contain certain moral requirements. Moral itself is the criterion for measuring the legitimacy of act. So good customs should conform to moral, avoid moral deficiency, and then adjust the relationship between individual and society. Third is rationality. Plato's exposition about human soul mentioned that human soul consists of three parts, reason, passion and desire. Only when reason adjust and coordinated these three parts as leader, human behavior can be regarded as justice and conforms to kindness. Fourth is people oriented. A kind behavior whose ultimate aim should be human beings. Good customs must be able to serve humanity's legitimate needs and promote the development and perfection of humanity. Therefore, good customs has custom's intrinsic regionalism, humanity and variability, it is the one have ethical value pursuit among many customs types, and also a kind of life-style and behavior pattern that can be accepted generally by most people.

3.2. Good Customs in Chinese Civil Code

Good customs in civil law are often interpreted as moral norms or ethical requirements. Among Taiwanese scholars, there are opinions that good customs is common moral which is necessary for social existence and development. [17] It is also argued that good customs refers to ethical requirements respected by a particular society. It is also argued that good customs refers to ethical requirements respected by a particular society. [18] Moreover, there are views that good customs equates to dominant moral. Besides concept provisions, French Civil Code does not provide any provisions further elaborating good customs whose specific content is determined by judicial practice. But what is the criterion for judgment? Idealism believes that, the court should judge according to moral norms dominated by social life. [19] German scholar, Andreas von Tuhr agreed that good customs in article 138 of German Civil Code does not mean social ethics in strict sense, namely the moral law mentioned by Kant or ethical moral Christian righteousness, namely the precepts (moral norms) in the New Testament and Old Testament. It should be the dominant moral in existing societies, namely the social behavior requirements that were recognized and accepted by most people in society. [20]

Good customs is different from moral. Moral is quite common in civil law. Honesty, fairness and justice and so on are concepts and ethical requirements of moral. Good customs as a kind of customs also contains ethical values. It is often regarded as a bridge between moral and law in civil law. But it doesn't mean that good customs completely equate with moral. Goodness belongs to category of ethic and moral, but customs are real living conditions and relatively specific behavior pattern which are available for reference. In other words, a custom is a virtual determined state, which is used in society or in particular circles. Good as a modifier is an additional concept of value judgment.

The relationship between good customs and civil law is the former complements and limits the latter. Good customs and civil law have certain ethical value requirements, both can be used as reference standards for people's behavior. Good customs also has many contents already standardized into civil law the specific system of civil law and have legal force. In civil law, good customs exists as the bottom line of the stander of behavior. Apply goodness custom to judge and evaluate thus realize supplement and restriction of legal act.

4. The Principle of Public Order and Good Customs in Civil Law

4.1. The Merge Understanding of Public Order and Good Customs

According to the relationship between public order and good customs, whether choosing one concept or merging them into one concept is inappropriate. There are certain parts of public

order and good customs overlap, but both sides cannot completely cover each other's contents. Therefore, I suggest using two concepts simultaneously, which can guarantee the distribution and convenience understanding.

4.1.1. Commonality between Public Order and Good Customs

Firstly, whether public order or good customs, its core content is a stable orderly life style and behavior pattern. This kind of life style and behavior pattern was not only doped into individual factors but also influenced by external forces of state and society at the beginning of formation. It needs multi-party running through certain period, which can finally achieve consensus, obtain universal recognition and acceptance, and become standard which can judge and restrain people's daily behavior.

Secondly, there are some overlaps between the concrete contents of these two concepts. Relevant interpretations of good customs tend to be restricted to contents about family and moral. But according to traditional Chinese history and culture, there are still lots contents about public order in specific customs. Taking land transactions in folk as examples, there is a custom that if you want to pawn a land, you need to inform your relatives or neighbors first. The aim is to ensure transaction safety and reduce costs. But later people began to take advantage of this custom, they always obtain property below the market price which damages the seller's interests. Therefore some local regulations adjust this custom to require the transaction price to be higher than the market price. Obviously, in this example, the changes of good custom involved the content about public order.

Thirdly, the specific contents in good customs and public order are the effects that state domination and social governance actively pursued. Whatever age or period is, pursuing stable and orderly living conditions is always the goal that rulers and social elites strive to achieve. Whether in the period of ritual civilization or rule of law, public order and good customs are basic behavior bottom line and the most basic value requirement.

4.1.2. Differences between Public Order and Good Customs

Differences exist in stability. According to French scholars, since 19th century, social morality as an origin of good customs, its basic ideas in French mind are still the same, the standards judging good customs also have no changes. On the contrary, since the promulgation of French Civil Code, the scope of public order has been continuously expanded. In France, the country's intervention towards social economy has become stronger. Freedom of contract became increasingly waning. [21] The same thing happened in China. Formation of custom depends on repetition of spontaneous behavior, which takes a long time. Moreover, because of Chinese broad geographical scope, the regional diversity of customs are rich, which is not convenient for unified adjustment. Especially, the change of content is limited in terms of defining custom types in category of goodness. Even if ancient rulers could use power to improve their customs, it would take a long time to work out. On the contrary, public order is easier to change. In modern society, public order is more unified, combined with national public power, which ensures that when public order changes, the power of its impact would be more direct and the scope would be broader.

Differences exist in political attributes. Simplified interpretation of politics is that governments undertake social governance activities. It needs to carry out top-down unified management actively through exercising public power. However, in the formation and development of public order, more political attributes will be shown than good customs. Different political ideas and means in each period can make public order change accordingly. For example during planned economy period economic order will be strictly regulated and personal freedom will be restricted too.

Differences exist in value types. The formation and development of public order and good customs need to be carried out around human beings. Because the daily life of human beings

have strong ethical attribute, so public order and good customs naturally possess ethical values. Although there are varied customs, but with goodness as limitation, the inherent value of good customs is mainly concentrated on ethic. Different from good customs, besides ethical value, public order contains economic value, institutional value and so on.

4.2. The Orientation of the Principle of Public Order and Good Customs in Civil Law

4.2.1. General Clause in Civil Code

As for the definition of general clause, according to Taiwanese scholar, Mr. Yang Renshou, general clause refers to some clause provide only about the generalization of principles. And only through judges' fair judgment in specific cases can the normative functions of principles be embodied. [22] General clauses are similar to uncertain legal concepts. One feature is indefinite extension uncertainty and the other is content abstraction. However, the first impression of public order and good customs in daily context is not abstract or boundless. Order and customs both are specific behavior patterns, which can be enumerated and described. Compared with the concepts like integrity, fairness and justice, public order and good customs is more concrete. Nonetheless, under civil law context public order and good customs needs to be incorporated into law order. As a principle involving public interest and good ethics, it inevitably become abstract and need certain value measure in specific application.

Legal norms include legal principles and legal rules. Legal principles are the reason why legal rules exist and determine the validity and legitimacy of legal rules. Specific legal rules are kind of norms that guiding people's behavior. Whether a legal act pursuant to legal rules has validity and legitimacy or not needs the legal principle like public order and good customs to measure and judge. Along with the constant development and change of legal system, Many types of behavior, which originally regulated by public order and good customs are instead regulated by new specific legal rules because the behavior appears too often. Thus, through the coordination between public order and good customs and specific legal rules in department law, can finally realize the consistency and systematization of civil law norms.

4.2.2. Coordinator between Public Law and Civil Law

The principle of public order and good customs as coordination between public law and civil law mainly embodies in two aspects. One is applying this principle can protect constitutional fundamental rights. The other is public law can adequately restrict civil law by applying this principle.

According to the first aspect, constitution as public law adjust the relationship between citizens and public power, needs to protect citizens' fundamental rights, prevent unlawful infringement from public power. However along with the development of times, the violations of citizens' fundamental rights were also appeared in the field of civil law. But if the norms of public law are applied directly in the field of civil law to protect citizens' fundamental rights, might result in unclear boundary between public law and private law, might cause public law excessive interference private law. Therefore the principle of public order and good customs can act as coordinator between public law and civil law under this circumstance. Through applying the principle in specific civil cases can negate the effect of the civil legal act that infringe citizens' fundamental rights, thereby realizing the protection of civil fundamental rights in the field of civil law. This indicates that the principle of public order and good customs can maintain the balance of inherent value between public law and civil law.

On the other hand, civil law adjusts the relationship between equal subjects and emphasizes freedom in private law. Therefore, there are numerous acts generated based on autonomy in the field of civil law, some of them inevitably would harm social politics, economy, finance, tax and other aspects of order. And these orders generally are maintained by mandatory norms of

public law. However, mandatory norms in public law cannot cover all aspects, and should not intervene in the field of private law excessively. This situation requires the adoption of the principle of public order and good customs realize the regulation by public law in the field of civil law. Public order in this principle, contains dual attributes of public rights and private rights, while good customs contains the attribute of top-down political indoctrination. So, the principle can complement mandatory norms in public law to regulate some behaviors that harm social order or public interests, and avoid the excessive restriction that the public law bring to the freedom of private law in the field of civil law. The process of applying the principle of public order and good customs to judge the effectiveness of relevant behavior is not only the process of coordination but also the process of restriction.

4.2.3. Connection between Legal Norms and Social Facts

No matter public order or good customs took long time to form. In the process of formation, they need multiple parties in the whole society hold together to cooperate and coordinate. And this process is full of social fact and effected by related factors, Therefore, the principle of public order and good customs tend to be stabilize after formation but still have inherent variability. This variability precisely enables the principle to reflect state and social order state in time, insures the principle possess developmental attribute.

Reviewing legal norms, law belongs to social sciences, so the legal norms' formation and interpretation and application all depend on the related factors come from society, culture, economic and politics. However laws must possess strong stability and cannot be arbitrarily changed especially statutory laws, so law is inevitable hysteretic and undistributed. In this realistic situation the principle of public order and good customs can be able to provide legal norms with up-to-date social facts in the procedure for legal application. So that legal application can consider political, cultural and economic factors timely, and some hysteretic and rigid contents can be supplement, the legal norms would be more complete.

5. The Legislation and Application of the Principle of Public Order and Good Customs

5.1. Relevant Legislation of the Principle of Public Order and Good Customs

As one of the important principles of civil law in civil legislation, the principle of public order and good customs is stipulated in all countries. The connotation is still relatively unified. In addition to the general provisions, there are also specific provisions on public order and good customs. In the French debt law, there are detailed provisions on the violation of public order and good customs. For example, if the cause of the debt, the condition of the contract or the subject matter violates the public order and good customs, it is regarded as illegal and invalid. In Germany, there is a general provision on the principle of public order and good customs, which is regarded as a restriction on legal acts and on the autonomy of private law. In addition, there are restrictions on profiteering, unjust enrichment and tort respectively. Among them, the provisions on tort do not require that the act of harm must be a legal act, and its purpose is to protect vulnerable groups more thoroughly. Although the legislative contents and applicable standards of other countries can be used for reference, our country should consider rationally how to carry out the relevant legislative provisions and judicial application according to the characteristics and needs of our country's daily life and culture.

In terms of the relevant legislative content of the principle of public order and good customs in our country, first of all, it needs to be affirmed that this principle has been clearly stipulated in the first Civil Code of our country. At present, there are mainly five legal provisions on public order and good customs in the civil code. First of all, Article 8 is a clear general provision on the principle of public order and good customs. Secondly, with regard to the order of the application

of the law, Article 10 holds that the application of habits in the process of application of the law should not violate the principle of public order and good customs. Thirdly, articles 143 and 153 are the provisions on the effectiveness of civil legal acts, and the principle of public order and good customs can be used as the standard for judging the invalidity of civil legal acts. The fourth provision is Article 979, which involves the application of the principle of public order and good customs to judge whether the negotiorum gestio is established. Finally, there are some provisions in the compilation of personality rights. Articles 1012 and 1015 are about the restrictions on the right of name by the principle of public order and good customs. Article 1026 stipulates that when judging whether an act constitutes an infringement of the right of reputation, the principle of public order and good customs is one of the factors that need to be considered in the process of fact-finding. It can be seen that with the birth of the Civil Code, many of the contents of public order and vulgarity previously stipulated in various departmental laws have been uniformly stipulated.

In addition to the Civil Code, there are a number of judicial interpretations related to the civil legislative provisions on the principle of public order and good customs, which mainly focus on the following aspects. First, the effectiveness of contracts, such as private loan contracts, modified labor contracts and mediation agreements all require that they cannot violate public order and good customs. Second, in the process of civil procedure, if the evidence formed or obtained seriously violates the public order and good customs, it cannot be used as the basis for determining the facts of the case. And the court will not enforce a notarized debt instrument that violates the public order and good customs. Third, in the protection of personality rights, Law of the People's Republic of China on the Protection of Heroes and Martyrs was promulgated and implemented in May 2018. The formulation of the law is expected to defend the legitimate rights and interests of heroic martyrs by judicial means, and then safeguard public order and good customs.

According to the current legislative situation, the provisions on the principle of public order and good customs are still abstract as general provision. Specific applicable guidelines or liability and other contents are not reflected in the legal provisions, but are more conveyed through judicial cases. This kind of treatment, to some extent, will be too fragmented and lack a clear system. However, because the public order and good customs that a country needs to maintain in different periods will change, the understanding of public order and good customs may be more suitable for judges to weigh and define in specific cases. In this way, we can ensure that the fundamental interests in specific issues are maintained under specific time and conditions.

5.2. Judicial Application of the Principle of Public Order and Good Customs

In judicial practice, there are many content about maintaining the principle of public order and good customs in both the guiding opinions about the trial work of people's courts and the guiding cases and classic cases issued by the Supreme People's Court.

On the one hand, it is required to pay attention to the role of public order and good customs in the trial work. As early as 2015, the Supreme people's Court emphasized the need to maintain public order and good customs in Several Opinions of the Supreme People's Court on Cultivating and Practicing the Socialism Core Values. It is mentioned in the opinions that public order and good customs are important contents of building a country and a society under the rule of law. People's court has the duty to sanction and eliminate immoral behavior through judicial means. And it is necessary to grasp the times of public order and good customs, especially in view of the problems existing in the current society, such as allowing death but not to save, benefiting oneself at the expense of others, unfilial and heartless phenomenon and so on. Vigorously advocate noble behavior in line with traditional virtues. Through the handling of specific cases to lead a good social fashion, and promote morality and law to play a role

together. In the civil and commercial trial work in recent years, people's courts have conscientiously implemented public order and good customs as one of the basic principles of civil and commercial trials. For example, in the family trial, the pilot program of the reform of the mode and working mechanism of family trial were conducted across the country. It is required that in the process of family trial, the healthy and proactive marital and family relations shall be maintained, the traditional Chinese family virtues shall be promoted, and public order and good customs shall be protected. Moreover, in the cases involving regional characteristics, it is required to combine the local rules and regulations, and pay attention to the traditional ethics. Actively use good customs and regional habits to thoroughly and effectively resolve contradictions and disputes.

On the other hand, it is shown as the referee guidance function of the principle of public order and good customs in specific cases. The first is the basic type, such as the contract content violates the public order and good customs, which leads to the invalidation of the contract. Specific cases involve private lending contracts, change of labor contracts and so on. Another example is the case about ill-gotten gains, the behavior of obtaining husband and wife's common property based on the improper relationship of lovers should be regarded as ill-gotten gains, because this kind of behavior is not only immoral but also contrary to public order and good customs. In the aspect of tort, the damage is based on the illegal act that violates the public order and good customs, would not be recognized as a tort. Finally, the most typical and common cases are still family cases. For example, the divorce cases of the elderly can not be dealt with simply according to the general divorce cases, and the direct judgment of divorce will be too reckless. Because the marital relationship of the elderly involves their children and children's families, the influence is even greater. And in this kind of family cases contains the family responsibility and social responsibility required by the public order and good customs.

In addition, there are some cases with special national conditions and some new types of cases that arise with the development of the times. First, the violation of village rules and regulations is also regarded as a violation of public order and good customs. Village rules and regulations have strong local characteristics, but they are the code of conduct and ethics of villagers' daily life, which belong to the composition of public order and good customs. Therefore, the violation of village rules and regulations can also be regarded as a violation of the principle of public order and good customs. The second aspect is the protection of the rights and interests of special groups and vulnerable groups. Such as the protection of the martyrs' right of reputation and honor. Especially with the development of public interest litigation in recent years, through the judicial means of public interest litigation, we can effectively safeguard the reputation and honor rights of heroic martyrs and further correct the principle of public order and good customs. There is also the protection of the rights and interests of minors. Such as child model, which belong to a new industry born as a result of the rapid development of the Internet economy, but it also exposes the problems related to the lack of the protection of children's rights and interests. In order to avoid acts harming the legitimate rights and interests of minors in this industry, judicial opinions have been issued to clearly stipulate that in the child model's activities children shall not be allowed to wear clothes that violate public order and good customs to shoot. What's more, the rights and interests of the disabled shall be protected too. In the trial of specific cases to effectively protect the right of residence of the disabled, which is not only in accord with the requirements of public order and good customs, but also in accord with the legal obligations of humanitarianism and the duty of help among relatives. Third, in the enforcement of civil cases, the performance of the principle of public order and good customs is more prominent. With the promotion of the task of solving the difficulties in the enforcement of civil cases, the intensity of enforcement has been greatly enhanced, accompanied by the gradual expansion of the radiation scope of public power. In the process of enforcement, there are the running-in of public rights and private rights, and some special

circumstances in social life are frequently appeared. Therefore, it is more necessary to standardize the operation of enforcement, consider more practical factors, follow the connotation of the principle of public order and good customs, realize the combination of law and emotion, and ensure the completion of the enforcement.

6. Conclusion

The principle of public order and good customs is common in our country, either in law or in daily life. The purpose of this paper is to analyze and understand the public order and good customs, which is rooted in the historical and cultural background of our country, so that readers can have a more in-depth understanding of the specific connotation and development process of public order and good customs, as well as the complex relationship between them. On this basis, we can further explore the reasonable position of public order and good customs as a legal principle in the civil code. Finally settled in judicial practice, we still need to continue to make efforts to promote the reasonable application of this principle. At present, in terms of legislative provisions and judicial application, great attention has been paid to the application of this principle. There are still several points to be grasped in the process of application in the future. First, the principle of application of this principle should be negative. Because the application of the law is not only the application of individual legal provisions, but should be the application of the whole system of norms. Combined with the content of the positioning of the principle of public order and good customs in civil law in the third part of this article, we can see that the application of the principle should be negative. The purpose of its application is to limit the private law autonomy of the parties to a certain extent, rather than to actively enforce a moral act. The second is the applicable rank of the principle of public order and good customs. In dealing with specific cases, it will involve the judgment basis of different effectiveness and order, such as the autonomy of the will of the parties, legal provisions, trading habits, public order and good customs. However, according to the provisions of Article 10 of the Civil Code, the principle of public order and good customs should be applied after legal provisions and habits. However, no matter what kind of norms are applied. No matter what kind of norms are applied, the most important thing is to protect the parties' legal disposition of substantive rights and interests and the legal choice of procedural rights made by the parties under the autonomy of the will. Third, the judge should pay attention to the refinement of the content of the principle and the comprehensive consideration of many factors in the application of the principle of public order and good customs in specific cases. The principle is abstract, but it is precisely because of its abstraction that it can provide adjudication standards and basis in all kinds of cases. However, this requires the judge to materialize the principle of public order and good customs in the judgment of the case. For example, the public order can be refined to national macro policies, market order and financial security, and the good customs can be refined to rural rules and regulations, family responsibility, and social customs. And in the process of application, multiple factors should be prudently considered to ensure the objectivity and accuracy of personal value judgment. Finally, the judge should fully explain reasons in adjudicative instruments.

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