

Reflections on the Sinicization of the French Civil Mutual Aid Contract PACS System

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Abstract: The French PACS system has been implemented for more than 20 years to protect the rights of non-marital partners. The phenomenon of non-marital cohabitation is becoming a social reality in China. Non-marital cohabitation will lead to issues related to the identity of the parties, division of property, and child support. Therefore, in line with the main purpose of facing social reality, protecting the rights of non-marital cohabiting partners, and stabilizing social life, China should include non-marital cohabitation in the scope of family law adjustment. Because there is no relevant legislation on the protection of the rights and interests of cohabiting partners in China before this, this article starts from three perspectives: the development history of the French PACS system, the possibility of the Sinicization of the PACS system, and the significance of the Sinicized PACS system to the development of Chinese society. By discussing the similarities and differences between China and France on the conclusion procedure, property distribution, and dispute resolution in the cohabitation relationship, the proposal of the Chinese PACS system is proposed.

Keywords: Non-marital cohabitation; civil mutual aid contract; PACS; Sinicization

1. Introduction

In France, unmarried cohabiting men and women are excluded from the law, and they are not prosecuted by law, they are also not protected by law. Their union is not recognized, and there is no implicit legal obligation between them, even if the parties have agreed obligations will not be enforced by law.^[1] In response to the issue of unmarried cohabitation, France passed the 99-944 ' Civil Partnership Contract ' law on November 15, 1999, and added it to the Civil Code. The establishment of the PACS system is to solve two practical social problems in France at that time: one is the protection of personal and property relations between French homosexual groups; the other is the to relieve low marriage rate and high divorce rate in French society. Although the PACS system is not just a simple private contract concluded in front of a notary, the state government can not be the registration authority for PACS due to the informality of the system. The conclusion of the PACS model is completed in court, and the DOJ's leadership of the system's conclusion process avoids the dilemma of the state government. The PACS system is neither a statutory union nor a simple property contract; it is neither public law nor private law. ^[2]Whereas the PACS system has constructed a parallel legal system between marriage and cohabitation through a series of legislative guarantees. Compared with cohabitation, the PACS system has more legal support for the protection of the rights of cohabitants; compared with the conclusion of marriage, the procedures and obligations that both parties need to be performed are also simpler.

2. The Possibility of PACS System in China

The data on marriage registration services released by the 2020 Civil Affairs Development Statistical Bulletin pointed out: "In 2020, 8.143 million pairs of marriages were registered in accordance with the law, a decrease of 12.2 per cents over the previous year. The marriage rate was 5.8 per thousandths, a decrease of 0.8 percentage points from the previous year. The number of divorces handled in accordance with the law was 4.339 million, a decrease of 7.7 per cents from the previous year, of which 3.736 million were divorced by civil affairs departments, and 603,000 were divorced by court judgment or mediation. The divorce rate is 3.1 per thousandths, a decrease of 0.3 thousand points from the previous year.^[3]"According to the 2016-2020 marriage rate and divorce rate statistics released

by the Ministry of Civil Affairs, the downward trend of China's marriage rate since 2016 is huge. There are two main reasons for the low marriage rate and high divorce rate in Chinese society today:

2.1 Imbalance between residents' income and economic development level

Since 1978, China's economy has been developing rapidly, but the per capita disposable income can't match the economic development speed. The data of the 2020 National Economic and Social Development Statistical Bulletin of the People's Republic of China shows that: The per capita consumption expenditure of the national residents in the whole year is 21210 yuan, which is 1.6% lower than that of the previous year. Meantime, the Engel coefficient of Chinese residents is high and more than half of the expenditure is used for living.^[4] Due to the imbalance between economic development and residents' income, people seldom marry under the life pressure.

2.2 Changes in gender ratio and the age structure

The seventh national census bulletin (No.4) data show: ' Among the national population, the male population accounts for 51.24%; Female population accounts for 48.76%. The total sex ratio (100 for women, male to female ratio) was 105.07.^[5] It can be seen that the imbalance between men and women has been serious in China, which will lead to a large number of leftover people. And 90th generation become the main group of marriage in China now. They pay more attention to the realization of individual value rather than the group value. Therefore, although China has added the system of divorce cooling off period to reduce the divorce rate in the process of revising the Civil Code, this system cannot promote the improvement of China's current marriage rate. China should face the needs of young people, adapt to the development of the times, protect the rights of cohabitants, and try to build a new personal relationship to solve this social problem. If PACS system is used to provide a run in period for both parties and play the protection function of divorce cooling off period, it will form a legal cycle, allowing more young people to try to enter the marriage and also protecting the existing marriage.

To sum up, the practical needs of Chinese society have changed. This social pain cannot be solved by simple policy adjustment, so China can learn from the PACS system of France to solve the problem of high incidence of social cohabitation and solve the problem of low marriage rate and high divorce rate in combination with local policies.

3. The localization of the PACS system in China

3.1 The Sinicization of the PACS Contracting Model

3.1.1 Establishment of China's PACS system conclusion procedure

In France, the conclusion of a PACS relationship is confirmed by the court of the place of residence of the parties living together. The eligible parties confirm the conclusion of the PACS model by submitting the original of the partnership contract they signed and the documents that prove their birthplace and haven't yet established a partnership to the residence court. The parties may amend the cohabitation contract at any time by submitting a joint written statement to the court where they submitted the original contract.^[6] The court's determination of cohabitation isn't suitable for China, so it should be confirmed by the civil affairs department. PACS contracts concluded in France can be customized, but most people only declare their cohabitation partners in the contract.^[7] Therefore, China should regulate the content of rights and obligations of cohabitation agreement. China's cohabitation agreement should include the following: (1) the name and residence of the parties; (2) the location of the common living place; (3) Property ownership mode; (4) property division matters after relationship breakdown; (5) Agreements on child support; (6) Methods to resolve disputes. The cohabitation parties who are prepared to conclude the PACS model will conduct equal and free consultations on the above provisions, and may add other necessary matters.

3.1.2 China PACS system relationship termination procedure

When terminating the PACS, it can be immediately dissolved by mutual consent, which is far from the French divorce regulations.^[8] Partners in PACS mode can be terminated in four different ways. There are three types of immediate termination: the death of the partner, the marriage of the partner and the submission of a joint written declaration to the court. The fourth method, unilateral termination by a

written declaration, takes effect three months after the date on which the termination was notified to the other party and to the court. Chinese PACS system should also respect the wishes of both partners, but the termination should be regulated. The termination of PACS should be divided into natural termination and legal termination. The constitutive elements of dissolution include: the death of the partner or the conclusion of marriage, and the immediate termination of the partnership when the constitutive element occurs. The statutory dissolution should include the following two modes: (1) the two parties reach an agreement. When the cohabiting partners reach an agreement, it can be immediately lifted by submitting a joint written statement to the civil affairs department for PACS approval; (2) Unilateral termination. When the cohabitation partner proposes to unilaterally terminate the cohabitation relationship, it should provide written notice to the other party and send the corresponding termination statement to the civil affairs department. The relationship is automatically terminated three months after the termination statement reaches the opposite party and the civil affairs department.

3.2 The Sinicization of Property Relations in the PACS System

3.2.1 Property ownership model in Chinese PACS system

France's property ownership model for cohabitation partners was revised in 2006. The revised system stipulates that the default system for both parties to the PACS model is property independence, with the exception of joint ownership.^[9] However, in the process of PACS model conclusion, if one of the cohabiting partners can't prove the actual investment obtained by the specific property, it will be presumed that the cohabiting partners share the property together.^[10] The property ownership mode of the Chinese PACS system can refer to the provisions of the marriage and family law on the agreed property system, the legal property system and the personal property exclusive to one party of the husband and wife. However, because of the significant differences between cohabitation and marriage, the default mode of ownership of the property of a cohabiting partner in China should be distinguished from the default mode of joint ownership between a married couple. The Chinese PACS system respects the relevant agreement on property ownership in the cohabitation agreement, but it should be recognized as personal property system when there is no or unclear agreement. And items that can't be said to be funded in daily life should be identified as co-owned.

3.2.2 Property Disposal after PACS System Relationship Released in China

The default system under PACS is property independence. Under this system, unless the PACS contract stipulates otherwise, the cohabitation parties are responsible for their own property and assets.^[11] The PACS system stipulates that partners fairly allocate the benefits and losses generated during the partnership when the relationship breaks down. The property of the cohabitant is distributed on the same principle as the marital property and the cohabitant is entitled to compensation for losses suffered as a result of the relationship, such as incapacity of the primary caregiver.^[12] Besides, there is no legal inheritance right between the cohabitant who concludes PACS, and the survivor can only obtain the inheritance through testamentary succession. In this case, cohabitant bound by PACS is still considered strangers in inheritance. But to protect the survivors, France has reformed PACS system. This reform grants survivors the right to enjoy the house where their cohabiting partner lives within one year after the death of their partner, but survivors must provide reasonable consideration to their heirs. The provisions of debt repayment are similar to the marriage. Based on the provisions of Articles 514-4 and 515-5 of the French Civil Code, the debt settlement of cohabitant is handled on the agreement of their agreement. If there is no corresponding clause in the cohabitation agreement, the cohabitant shall bear an independent obligation to pay off their debts during the cohabitation. However, the reasonable debts arising from the cohabitation of both partners shall be jointly and severally liable to the creditor.

The Chinese PACS system should respect the matters of property arrangement in the agreement when the two parties don't involve the issue of inheritance. When both parties adopt the property independence system in the agreement, both parties are only responsible for their respective property when the relationship ends. If the property ownership system of both parties is jointly owned, the property issue will be resolved in accordance with the distribution of jointly owned property in the Chinese Civil Code when the couple's feelings are broken. China should refer to the relevant provisions on inheritance in the civil law and the provisions of France that allow survivors to use the houses they lived in within one year after the death of their partners and pay reasonable consideration to solve the problem of inheritance of cohabitants.

China's PACS system should refer to Article 1060 and Article 1064 of the Civil Code to supplement

the debt settlement rules of the cohabitation agreement when there is no agreement or the agreement is unclear--cohabitant shall be jointly and severally liable for the debts incurred from the necessary expenses for living together. In other cases, the debts incurred by the individual shall be paid by the individual, and the cohabiting partner shall not bear the corresponding liability.

3.2.3 Solution to the problem of child rearing after the dissolution of PACS system in China

In France, only children born in marriage are identified as legitimate children, while children born during the conclusion of PACS relationship are identified as illegitimate children. Although the French PACS system does not have provisions on issues related to parents and children, the issue of child support after the termination of cohabitation partnership in the Chinese PACS system should be compared with the provisions of parents and children in the Marriage and Family Law of the Civil Code. After the termination of the Chinese PACS relationship, the issue of child support should consider the interests of minor children on the basis of respecting the autonomy of the parties. The people's court shall be responsible for the trial of the dispute settlement of the issue of child support after the breakdown of the cohabitation relationship. The people's court shall decide on the basis of the specific situation of the partners in the cohabitation, in accordance with the principle that is most conducive to the growth of minor children. Children under the age of two are directly raised by the mother; for children who have reached the age of two, the people's court shall make a judgment by assessing the specific conditions in the case that the cohabitant fails to reach an agreement; for children who have reached the age of eight, the people's court should respect their true wishes. After the termination of the cohabitation relationship, both parties shall negotiate on an equal basis on the child support fees. If the negotiation fails, the people's court shall make a judgment. The party who has not raised a child shall bear part or all of the maintenance fees. The party raising the child shall cooperate with the other party in exercising the right to visit the child. However, if the visit isn't conducive to the child's physical and mental health, the people's court may terminate the right to visit in accordance with its authority, and resume the visit after the cause of termination disappears.

4. Conclusion

The fact that marriage and cohabitation compete with each other is a spreading sociological trend, and the legislature should respond to protect vulnerable cohabitants. Marriage is to promote social stability and personal happiness, this goal should also be the focus of China's non-marital cohabitation partner legislation. Only when the relevant norms recognize the cohabitation partnership, and at the same time help the cohabitation partners to define their relationship and let them better understand their rights and obligations, can they help to promote the stability of these unmarried cohabitation partnerships and meet the needs of China's current social reality.

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