

Comparison of the application of credit right between administrative litigation and civil litigation

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Abstract: In recent years, with the continuous development of China's social credit system, the national unified financial information basic database led by the People's Bank of China has been increasingly developed and improved. The rapid development of the credit reporting industry has led to an increase in the number of personal credit reporting cases year by year. However, in the case that citizens are included in the list of people who have been executed for breaking their promises, the phenomenon that civil cases and administrative trials are judged differently in the same case originated. The different status and degree of protection of the same legal interest in civil and administrative fields reflect that the legal status of credit right as a new right in different departmental laws is debatable. In the process of handling practical cases, the credit right is protected by the judge as an independent right and an independent cause of action in civil litigation and judged according to law. On the other hand, administrative litigation, under the specific circumstances of the government information disclosure regulations, has failed to properly handle the illegal administrative acts that may infringe on the credit legal interests of the administrative counterpart and reduce its social reputation evaluation. Based on this dispute, this paper will explain its handling method and the legal theory behind it.

Keywords: credit right; Administrative behavior; right

1. Introduction

Personal credit information, as an important measure to measure the credit status, economic strength and willingness to perform the contract of civil subjects, is often objectively evaluated by professional credit reporting institutions according to strict norms. The existence of dishonesty records will seriously hinder individuals from making full use of credit information, affect the realization of their property interests, and then lead to economic loss compensation. The protection of personal credit information cannot be separated from the support of credit right. The Civil Code, which was implemented on January 1st, 2021, emphasized the personality attribute, and directly included credit in the scope of reputation protection. As a result, when the judgment involved personal credit information rights and interests infringement cases, the court often defined it as a dispute over reputation rights, and then dismissed the claims for compensation for economic losses and consolation money on the grounds of "the public's evaluation has not decreased", "the facts have not been fabricated" and "after investigation".^[1] Credit is the trust and evaluation of civil subjects' honesty and trustworthiness and economic performance ability in society. Although the credit right has not been clearly defined in China's civil legislation, there are still different views on whether the credit right is a personality right, a property right or a mixed right in theory and judicial practice, but a consensus on safeguarding the credit right as a civil right has been formed. Credit right has dual attributes of property and personality, and should be protected by corresponding laws to promote a virtuous circle of social and economic life.

2. There are frequent differences in the theory of credit right and different judgments in the same case

In the case of Chen Mou v. Industrial and Commercial Bank of China, ICBC was required to resume the use of the credit card involved and cancel its bad credit record. The court of second instance ruled that ICBC should cancel the bad credit record of Chen Mou, and the bad credit record caused by the exchange should be cancelled as a whole. On the other hand, in the case of Wu Mou's refusal to accept the administrative penalty imposed by Beijing Dongcheng District Administrative Law Enforcement Bureau, the administrative organ entered Wu Mou's penalty information and personal

information such as bad behavior into the bad public information platform, and the behavior that led to his social evaluation was evaluated by the judge as an accessory behavior of administrative penalty, and there was a connection between them. Therefore, the act of entering Wu Mou's bad behavior into the bad public information platform according to law is an incidental obligation of the former administrative punishment, and it has no separate litigation. From this, we can easily see that it is also an infringement of citizens' credit rights, but in the perspective of different types of departmental laws, the specific results are different. In civil cases, Chen Mou's claim to restore credit and cancel bad credit records was supported by the judge; In administrative cases, Wu Mou's request to cancel the disclosure of bad behavior has not been supported. In the final analysis, it is the normative opinion that the independence of credit right in the two departmental laws has not been universally unified. Tracing back to the source, through the provisions of Article 1012 of the Civil Code, there are great differences in court judgments such as infringement of the right of name and reputation in civil trials. The distinction between different causes of action is also very different, not to mention in the administrative field. If we want to unify the judgment standards of credit right in the administrative field, we should first realize the independent right of credit, which will force the civil law scholars to speed up the research on credit right.

The content recorded in the credit information system is an objective description of overdue repayment in form, which will become an important or even the only basis for guiding the society to recognize the credit degree of the recorded person and the social evaluation standard. Any overdue records will degrade the social evaluation of its credit and increase its resistance to engage in various market transactions in the future. There is no denying the right and obligation relationship between civil subjects and financial institutions. Financial institutions lend to civil subjects, and the two sides form private lending, both of which belong to equal subjects in civil legal relations. In administrative cases, the entry of citizens' bad information into the bad information publicity system belongs to the incidental obligation of the previous administrative act, and the administrative organ makes a specific administrative act and publicizes the information of the administrative counterpart, which only represents one act in the eyes of the judge. However, this judgment is worth considering. In the case of Chen Mou v. Industrial and Commercial Bank of China, Chen Mou made two requests to the judge: first, he asked for a judgment to restore the normal use of his ICBC credit card; Two, cancel its bad credit records of Chen Mou. The court supported Chen Mou's request for the maintenance of credit right, that is, the revocation of bad credit information. However, in the administrative litigation case in Wu Mou, the request to cancel the publicity of bad behavior was not supported by the court. As a citizen's right, we get different judgment results in civil litigation and administrative litigation, which will undoubtedly lead to the decline of judicial credibility in China. In these two cases, the trial practice of administrative cases did not judge credit as a right, but regarded it as an incidental compulsory trial of the former administrative act. Credit is protected as an independent right in civil trial. In the final analysis, the case of different judgments in the same case between civil trial and administrative trial is different in the nature of credit, so can the judgment result of civil case be used as the guiding result of dispute resolution in administrative case? Can the protection rules of credit right in civil law be applied to administrative law?

3. Application of credit right in civil trial

Hart divides law into primary rules and secondary rules, and expounds the similarities and differences between primary rules and secondary rules.^[2] The primary rule is a kind of obligation rule, that is, it requires people to engage in certain behaviors or not to engage in certain behaviors. The second sex rule is a kind of right rule, that is, what people can do or not do, or what others are required to do or not do. It can cause changes in material movement and also cause changes in obligations or responsibilities. According to Hart's right choice theory, then the credit right completely conforms to the characteristic description of the secondary rule (right rule). In civil trial, taking credit right as an independent right enjoyed by natural persons is just like giving natural persons the right to freedom, the right to dispose of their own bodies in personal rights and the right to control their own property in property rights. Credit right, as the object of crime, means that in the case of credit card, the people's bank of China or the Industrial and Commercial Bank of China, a specific bank, put the person who broke the promise into the list of the person who was executed for breaking the promise according to the regulations. If the administrative organ that carried out the specific act is an illegal and unreasonable administrative act. Then, the illegal specific administrative act infringes on the civil rights of citizens such as privacy and reputation. If we accurately compare the provisions of Article 1029 of the Civil Code: civil subjects can inquire their own credit evaluation according to law; If it is found that

the credit evaluation is improper, it has the right to raise objections and request necessary measures such as correction and deletion. The credit evaluator shall check it in time, and if it is verified, it shall take necessary measures in time. Although the article stipulates that citizens have the right to credit, the law does not use the word right to describe the credit right of natural persons, nor does it use the right to describe and locate the credit right.

The identification, judgment and justification of a *fait accompli* represents that rights contain both rules and facts. Protecting credit as a right is more in line with the trend and basic requirements of civil law development under the situation of China's economic development.^[3] Verifying the independence of credit right in civil law is conducive to clarifying the right boundary between credit right and name right, reputation right and privacy right. It can be seen that it is in line with Hart's theory of legal generation that the credit right is proved to be a right in civil trial. Compared with the right of name, reputation and privacy, the development of credit right in China is slow and started late. At present, many scholars have made unremitting efforts to prove it. For example, scholars such as Wang Zejian, Li Xintian and Yang Lixin believe that credit right belongs to personality right. Article 824 of the German Civil Code holds that credit right is a spiritual personality right to safeguard the social influence and evaluation of civil subjects. Spirit is inseparable from human body, so it is impossible to calculate and evaluate credit right with money and its economic efficiency. Wu Handong, Qin Youtu, Cheng Hehong, Feng Guo and other scholars put forward that credit right is a mixed commercial right that mixes personality right and property right from the perspective of commercial field and economic efficiency of credit right.^[4] The internal cause is that credit right can bring users or owners in today's digital network platform, and credit right is a mixed commercial right with personality right and property right. In the commercial field, credit can not only bring huge property benefits to its owners, but also measure its value in terms of money, which has evolved into an intangible property. Reputation right is about reputation right, privacy right is about privacy right, and credit can't be taken for granted because it has the obligation to repay property. Articles 110 and 1024 of the Civil Code stipulate that "the civil subject enjoys the right of reputation. No organization or individual may infringe upon the reputation right of others by insulting or slandering. Reputation is a social evaluation of the morality, prestige, talent and credit of civil subjects. " It can be seen that the Civil Code clearly includes citizen's credit in the category of reputation right for indirect protection according to law. Because China has not established the credit right as an independent personality right, if we still protect the credit right of civil subjects in today's social credit according to the traditional way of protecting reputation right, its channels and means are not mature enough. It is not difficult to see from the judgment result of *Chen Mou v. Industrial and Commercial Bank of China* to cancel its bad credit record that in civil trial cases, the credit right is tried as a right, but not in the field of administrative law.

4. Application of Credit Right in Administrative Cases

In administrative cases, the word "protection" is basically not applicable to citizens' credit rights. In the case of *Wu Mou's refusal to accept the administrative penalty imposed by the Urban Management Bureau*, Beijing Dongcheng Urban Management Law Enforcement Bureau held that the Urban Management Law Enforcement Bureau had the obligation to publicize the results of its administrative penalty imposed on *Wu Mou* and incorporate them into the public credit information service platform. One of the reasons for the court's judgment is that this work is an incidental obligation of the Dongcheng Urban Management Law Enforcement Bureau to make an administrative punishment decision, and its effectiveness is dependent on the accused punishment decision, which does not have a practical impact on *Wu Mou's* rights and obligations alone. If the effectiveness of the accused punishment decision disappears, the publicity effectiveness will also disappear. Now the court finds that there is nothing improper in the decision of the accused punishment made by Dongcheng Urban Management Law Enforcement Bureau, so there is nothing improper in entering the administrative punishment result into the public credit information service platform. The author believes that the reasons for the court's judgment have great room for consideration. First of all, we should consider whether the Beijing Municipal Government Information Disclosure Regulation, which stipulates that citizens' bad behaviors can be recorded in the bad information network, violates its parent law, the People's Republic of China (PRC) Municipal Government Information Disclosure Regulation; Secondly, it is debatable that *Wu Mou's* rights and obligations are not actually affected by the public behavior of taking the court's judgment as an administrative penalty decision. The previous punishment was a corrective action against *Wu Mou's* stall-setting behavior, so the act of publicizing *Wu Mou's* information is an infringement of *Wu Mou's* credit right and reputation right. This will lead to the reduction of its social and economic credit benefits and social evaluation, which will have a substantial

impact on its rights and obligations. Therefore, it can be seen that the Urban Management Bureau has made two administrative acts against Wu Mou's stall behavior: first, administrative punishment; Second, information disclosure behavior. The second act, that is, the disclosure of information in Wu Mou, is obviously an illegal and unreasonable administrative act with no legal basis.

Credit right is protected as a civil right in civil cases, but in administrative cases, it is confined to the situation that relief cannot be realized. How to realize the good transition and application of civil law norms in administrative law is a difficult problem that administrative law must solve. Applying the credit right in the civil code to protect citizens in administrative cases is because if there is a legal loophole in solving administrative disputes, and the civil code can provide the corresponding legal basis to solve the dispute, then it is not necessary to apply the civil code in the administrative law field, but it is obligatory to apply the civil code, Professor Wang Guisong thinks so. However, when this kind of dispute occurs, why not cite other provisions and principles in administrative law that can be solved by analogy, but directly cite civil law norms across disciplines? The administrative law started late and developed late in China, and it has a history of being separated from the civil law itself, so as to realize the power and expectation of intervening in the country and realizing the management function. Now, when administrative law encounters difficulties, it needs the joint efforts of scholars in theory and practitioners in practice to realize that administrative law relies on civil law norms.

Credit right can be directly applied as a general legal system in civil law norms. In the case of Yang Minghua v. Hechuan County People's Government's land administrative reply, Chongqing Higher People's Court cited the jurisprudence of unjust enrichment in civil law norms. In the case of Chen Mou v. Industrial and Commercial Bank of China (ICBC) revoking the request for disclosure of bad information, the judge could have directly quoted the relevant jurisprudence on credit right and reputation right in Articles 1029 and 1024 of the Civil Code.^[5] However, the judge did not use civil law norms in the administrative trial process, which led to the failure to protect the rights of the administrative counterpart, which was not conducive to protecting the rights and interests of the counterpart, and caused a wrong judgment on the unreasonable administration of the Dongcheng District Urban Management Law Enforcement Bureau in Beijing. In this case, the relevant civil law norms can be directly applied because there is a lack of corresponding normative system in administrative law, and the norms must be universal in terms of prescription, principles and technology, which do not conflict with the existing administrative law norms. The above cases show that it is reasonable to cite civil law principles or jurisprudence in administrative trial cases, but the use of this implication is not necessarily completely correct.

5. Particularity of civil rights protection in the field of administrative law

In the field of administrative law, according to the theoretical basis of criminal incidental civil action, many scholars also put forward the theoretical model of administrative incidental civil action. Let's not talk about the confusion of procedural issues between civil litigation and administrative litigation, such as the limitation of action, the time limit for proof, the jurisdiction of litigation and the effectiveness of judgment. Theoretically, they are two different disciplines, and there are some barriers between the origin and purpose of administrative law and the adjustment scope of civil legal relations that civil law should deal with. In order to realize the protection of civil rights and interests in the field of administrative law, we should first make clear the elements of administrative behavior and discuss its rationality, due process, suitable subject and legal behavior. From a global perspective, there are the following methods: first, administrative incidental civil litigation; Second, civil litigation before administrative litigation; Third, civil litigation and administrative litigation are carried out simultaneously. In judicial trial practice, in order to solve litigation efficiently and conveniently, the existing laws should be improved, and the Civil Procedure Law, the Administrative Procedure Law and other departmental laws should clearly establish procedural issues such as the limitation of action, the jurisdiction court, the burden of proof, and the time limit for proof, so as to effectively curb the judicial jumble and waste of judicial resources due to the immaturity of jurisprudence and practice when faced with cross-disciplinary cases. We should strengthen the study and exchange in hearing such cases, coordinate the types of administrative litigation cases and effectively control the number of cases with different judgments in the same case. Credit right is not found in the Civil Code, so there is such a big difference between administrative law and civil law trial.

Based on the discussion in this paper, the dispute in this case is that the administrative organ made two penalties for an illegal act of the relative person. The public behavior immediately after the decision on punishment infringes on the civil rights and interests of the relative person. At this time, the

remedies of the counterpart can be divided into the following ways: first, to request the cancellation of the first punishment decision; Second, file an administrative lawsuit to separately investigate the behavior of the administrative organ to disclose information. Because the credit right has not been confirmed as independent, the court does not admit that publishing bad information is actionable when trying administrative litigation. The establishment of the credit right in civil law circles will provide a theoretical basis for demonstrating that the public behavior made by administrative organs is illegal in this case, which is only the specific focus of controversy in this case. To solve all administrative disputes, administrative litigation should be based on strict consideration of specific administrative actions. To solve the "prerequisite problem" in litigation, in this case, whether the credit right belongs to a right is a prerequisite for the judge to judge whether the administrative organ infringes, and then judge whether there is an infringement fact or not. Secondly, a civil lawsuit can be filed in administrative litigation. If the verdict of the civil lawsuit will affect the judgment of the administrative case, the trial of the administrative case should be suspended at this time, and the civil case should be tried first. Moreover, judges should take the initiative to explain in such cases, and give tips to the counterpart, so as to reduce the situation that judicial resources are consumed because civil disputes hinder administrative litigation in the future.

6. Conclusions

In the trial of civil cases, the credit right is protected and tried as a right in the category of citizens' personality rights. It can be seen that in the process of dealing with the increasing number of credit cases, it is an established rule to judge the credit right as a right in most cases. But this is not the way to deal with it in administrative law. Credit rights and interests have dual attributes, but it has not changed the attribute of personality rights at all. In practice, for the purpose of public management responsibility and maintaining the credibility of the government, administrative cases often produce the result of different judgments in civil and administrative cases. In order to solve this problem, it is suggested to deal with it from the following aspects. Enhance the protection of personal credit information rights and interests, and put an end to the infringement of rights and interests through legislation. On this basis, we will speed up the formulation of detailed rules for the implementation of regulations on the protection of personal rights and interests, and urge the handling of administrative cases through the operation process, use norms, and refinement of violations in civil cases on the protection of credit information rights and interests. The government should strengthen the effective supervision on the protection of personal credit rights and interests, reduce the loopholes in the social credit system from the root, and realize the goal of curbing public rights and protecting private interests.

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