

Personal Privacy Protection in Judicial Openness

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Abstract

With the deepening of the reform of China's judicial supporting comprehensive system, the judicial open system has achieved many remarkable results after more than 40 years of reform and opening-up. Judicial openness system plays an important role in the effective supervision of judicial power and the promotion of judicial credibility. However, there is still a contradiction between the extent and scope of judicial openness and the protection of personal privacy in judicial practice due to the vague provisions on the content and status of privacy right in the current law, the non-standard exercise of power by judicial staff, and the conflict between the value of judicial openness and the protection of personal privacy. Therefore, it is necessary to balance the contradiction between judicial openness and personal privacy protection effectively, so that the judicial authority and public opinion can reach the maximum consensus.

Keywords

Judicial Openness, Personal Privacy, Conflict Reasons, Balanced Game.

1. Introduction

Judicial openness has become an indispensable link in the process of promoting judicial reform. Judicial openness is an important basis for judging a fair, just and open judicial environment, an important judicial link to ensure the public's right to participate and the right to know, and an important system for the continuous advancement of judicial reform. With the deepening of judicial reform in an all-round way, the scope and degree of judicial openness have made remarkable achievements. At present, it has built four judicial disclosure platforms, namely, the judicial process information disclosure network, the court trial information disclosure network, the judgment documents information disclosure network and the execution information disclosure network. These four platforms basically cover all aspects of filing, acceptance, trial and execution of litigation, enabling all parties concerned to have evidence to check, facilitating the parties' understanding of the inquiry and progress of the case, protecting the public's right to know and right to supervise, and making the people feel more secure.

However, with the continuous development of economic level and the improvement of social civilization, people's awareness of privacy protection is unprecedentedly strong, forming a contradiction between judicial openness and privacy protection. How to balance the contradiction between judicial openness and privacy protection under the background of comprehensive rule of law and "let the people feel fairness and justice in every judicial case" will be of great significance to comprehensively deepen judicial reform and implement the people-oriented judicial concept.

2. The Protection of Personal Privacy in Judicial Openness

Judicial openness was first proposed by Italian scholar Beccaria in his book *On Crime and Punishment* that trial should emphasize judicial openness. Bentham, a famous British economist, also stressed that openness is the soul of justice. Judicial openness is an important part of the judicial

system reform in China. With the increasing of the strength and scope of judicial openness, the protection of privacy caused by judicial openness attracts more and more attention.

For the legal protection of privacy, some scholars in China advocate drawing lessons from the dual attribute model of foreign countries, that is, the right to privacy is clearly stipulated in the constitution, and the right to privacy is clearly stipulated as a civil right in the private law. The author holds that the protection of privacy should adopt the mode of private law protection. When privacy is violated, it is often urgent to seek relief through private law. In essence, the conflict of interest between judicial openness and privacy is the state's interest measurement between citizens' right of privacy and their right to know, and between their right of privacy and their right of supervision.

3. Analysis of the Causes of the Conflict between Judicial Openness and Personal Privacy

3.1 The Concept of Personal Privacy

Judicial power is essentially a power of judgment. In the process of exercising judicial power, judges need public supervision to see whether they are in the middle and whether they are legal and reasonable. Judicial openness is an inevitable requirement of modern justice. Both east and west have experienced the process of judicial secrecy to openness. In China's ancient feudal society, the law is the ruler's tool, the implementation of fool policy, law for the people is "unpredictable punishment, not to speak of". In the Western middle Ages, the law is also mysterious under the rule of the Pope. The public has no right to know about the law, and the judicial power is firmly controlled by the ruler. And now the judicial requirements of openness, democracy, judicial openness is to let the public understand the judiciary, an important part of the judicial participation, but also the judicial organs to accept the supervision of public opinion necessary means. However, due to the lack of specific provisions on the right to privacy in China's current laws, judges often define the right to privacy by virtue of their discretion in judicial practice, which leads to the disunity of standards, resulting in the conflict between the right to privacy and judicial openness in practice.

Then exploring the concept of privacy and defining the scope of privacy will be the starting point to solve the conflict. Western scholars Warren and Brandis first put forward the concept of privacy right in their book *On Privacy Right*. The right to privacy was initially proposed by two scholars as the right to be alone. Later, with the development of judicial practice, its connotation gradually developed into the field of information and space. Zhang Xinbao, a scholar of civil law in China, has made a new interpretation of the concept of privacy in judicial publicity. He stressed that privacy includes personal information and personal domain as well as personal affairs. The right to privacy involved in judicial disclosure focuses more on the protection of personal information and does not involve interference in private affairs in the private field. Scholar Li Shuang believes that there are differences between personal information and personal data. The difference between personal information lies in the processing and sorting of personal data, while personal data is a simple list of information. Taiwan scholar Wang Zejian believes that personal information is a secret that citizens do not want to disclose or let others know. Citizens' autonomy in the scope and degree of disclosure of personal information should be controlled by themselves, and others should not interfere. The scholar Wang Limin believes that personal information should not belong to the right of privacy at all, but should be regarded as an independent right and the right of privacy in the personality right law. From the above definition of the concept of privacy made by scholars, it can be seen that privacy is a collection of personal information and secrets. The Civil Code of the People's Republic of China gives a new definition of privacy, namely, "the private life of a natural person is peaceful and private space, private activities and private information that he does not want to be known by others". The author thinks that in judicial practice, the definition of privacy should include personal data and personal information, so that the definition of citizens' privacy can be well protected.

3.2 Analysis of the Conflict between Judicial Openness and Personal Privacy

Judicial openness is an effective means to guarantee citizens' right to know and right to supervise, and an important link to enhance judicial credibility. Protecting personal privacy is a respect for citizens' personal dignity. Judicial openness and the protection of personal privacy both have legitimacy and rationality, and the relationship between the two is one and the other, so how to make a choice between these contradictions, not only to maintain judicial credibility and protect the personal dignity of citizens, need to be analyzed in detail.

3.2.1 The Judicial Organs have not Reasonably Mastered the Limits of Judicial Openness

In judicial practice, the parties have to transfer all or part of their privacy rights to the judicial organs for the trust of the judicial organs and the maintenance of their own interests. However, no matter the parties actively request to disclose their privacy, or passively request to disclose their privacy, the judicial authorities should grasp the limits when handling and hearing cases, and everything should not be one-size-fits-all, in order to implement the principle of judicial openness without regard to the consequences of exposing the parties' privacy to the society. We should not make selective or partial disclosure for fear of causing trouble, which is against the principle of judicial openness. In the process of judicial openness, it is an important link to restrict the disclosure of privacy right.

In the process of judicial openness, judicial organs should insist on equality before the law and give equal protection to the parties, whether they are public figures or ordinary people, rather than treating them differently because of their identity and occupation. Usually people say they have no privacy of their own public figures, actually this is wrong, public figures, whether in some extent because of the characteristics of their career, in front of the public media exposure and frequency is more than ordinary people, true they have greater influence than ordinary people themselves, charisma, so they bear the obligation to be more heavier. On the one hand, for the sake of public interest, public figures should be supervised by public opinion based on their influence and appeal. On the other hand, public figures rely on exposure in front of the media to improve their popularity, which can be said to be their means of profit. Although based on this, it does not mean that public figures do not have their own privacy, but just because of their own uniqueness, for them, the scope and degree of privacy protection is lower than that of ordinary people, that is, they have to sacrifice part of the right to privacy for public interests. In judicial practice, the degree of judicial openness must be strictly limited, such as Wang Baoqiang's divorce case in 2017. In this case, the judicial authorities handled the relationship between judicial openness and privacy protection of the parties well. Further details of Wang's divorce were not released online. The practice of judicial organs does not violate the public interest within the scope of the law, reasonably meets the public's demand for security attention, and ensures the public's right to know and right to participate.

3.2.2 The Current Legislation on the Privacy of Citizens is not Clear and Explicit

Privacy is the secret that a person does not want to be disclosed outside the public interest. Privacy can be divided into private secrets and the basic content of life stability. The judgment of private secrets necessarily involves the judgment of the scope of the public interest. Due to the relativity of the scope and content of privacy, the definition of the scope of privacy has always been controversial in judicial practice. The content of privacy is changing with the degree of social and economic development, and quite a part of privacy is generalized in real life. The news recently reported that a male employee posted to his work group photos of female employees working out that had been publicly posted online. The move caused strong dissatisfaction among female colleagues who thought the male colleague had violated their privacy. But how to identify in judicial practice? There is also a lack of uniform standards for the content of privacy and how to determine the extent of violation. It can only be determined at the discretion of the judge, which inevitably creates conflicts.

Throughout the current legislation of Our country, the provisions on the right to privacy of citizens in the Civil Code are more clear than before, but still not specific and clear. As for citizen privacy, it has been attached importance and developed in judicial practice. Because of the scattered and unclear

legal provisions, judicial personnel have a vague definition of personal privacy awareness in judicial disclosure, which often leads to conflicts.

3.2.3 Value Conflict between Judicial Openness and Privacy Protection

Since Beccaria, an Italian scholar, first proposed trial openness, judicial openness has become an effective means to restrict judges, supervise judges and guarantee citizens' right to participate in justice and the right to know. Its existence has legitimacy and rationality, and it is an effective consensus reached by the judiciary and public opinion. Based on their belief in judicial trust and judicial authority, people often support judicial authorities to release their privacy related to case trials in order to maximize their demands in the process of seeking rights relief. With the deepening of the degree and scope of judicial openness and the complexity of people's interests, lawsuits often involve more subjects and more privacy. In the process of deepening the judicial reform, the protection of citizens' personal privacy has been pushed to the forefront. In addition, in practice, a lot of personal privacy is disclosed in the judicial disclosure process, causing great mental distress to the parties and their families in life and work, and people are increasingly concerned about the protection of privacy. Through the above analysis, it can be concluded that judicial openness and privacy protection itself is a conflict of values. Moreover, with the development of economy and the progress of science and technology, there are more and more high-tech products. These products pose a broader threat to people's privacy.

Therefore, we can see that with the continuous development of the rule of law and the continuous awakening of people's awareness of rights, the judicial openness and the protection of personal privacy will inevitably come into conflict. The development and contradiction between the two is an important problem that the society under the rule of law must face in the process of development. It also poses a more severe challenge to judicial justice, urging judicial authorities to follow the principle of proportion between judicial openness and personal privacy protection, and find a common balance between the two.

4. Draw on Experience from Other Countries

Different countries have different regulations on judicial openness and privacy. The author focuses on the American law and German law, which represent the common law system and the civil law system of the legal provisions on privacy and judicial openness.

4.1 Legal Provisions of Privacy

In the United States, privacy is a constitutional right. The Supreme Court recognized the right to privacy as one of the most fundamental constitutional rights and included the right to self-determination. At the same time, the American courts also stipulated that the right to privacy was also a civil right and the basis of the right to resist the police's illegal search through case law. Therefore, in the United States, the right to privacy has the dual attributes of constitutional and private law.

In German law, the Constitutional Court has also included the right to privacy in the Constitution, and specified the principle of proportionality and the details of authorization for state organs to exercise their powers, so as to fully guarantee the exercise of citizens' right to privacy. At the same time, privacy is stipulated in private law in Germany as a general personal right, which becomes a powerful weapon against police search.

4.2 Regulations on Privacy Protection in Judicial Openness

American law has strict rules on judicial openness, and courts do not allow the news media to report the facts of a case in real time during a trial. In the United States, not all judgment documents are published online. The lower courts in the United States only hear some simple cases, so the judgment documents of the lower courts mostly involve the trivial facts of the litigants' disputes and some of the parties' situations. Courts often choose not to publish their judgments online, either through formatted documents or through oral judgments. In contrast, the High court in the United States mostly deals with some complicated cases, and the judgment made by the judge needs to analyze the

jurisprudence, so that it can be used by other cases or the court. Therefore, the judge's decision needs to be made public online. When the Supreme Court of the United States announces the ruling documents, the gender, age and address of the litigants in the case are omitted, and the initials of the litigants are abbreviated. In this way, the privacy of citizens in judicial publicity is protected.

5. Balancing Privacy Protection in Judicial Openness

From Beccaria, an Italian scholar, who first put forward the judgment of judicial openness, to the later development and evolution of judicial development in the East and the West, judicial openness is an inevitable trend, and the degree and scope of openness will become larger and larger. Although different countries have different regulations on judicial openness, they generally follow the value pursuit that judicial openness is an effective restriction and supervision of judicial power and an effective guarantee of citizens' right to know. With the continuous awakening of the awareness of civil rights, citizens attach special importance to their privacy and think that privacy should be protected. However, in terms of the judicial process in Our country, judicial openness takes precedence over the protection of privacy right. This does not mean that the judicial system will be infinitely open and citizens' right to privacy will give way excessively, but in the process of judicial openness, it is necessary to balance the value conflict between the protection of personal privacy and the protection of personal privacy, and try to find a reasonable balance between the two.

5.1 The Fundamental Principle

Judicial openness involves the privacy of the parties, so it must follow some basic principles. The author thinks that we can draw lessons from the principles of procedural justice and proportionality in administrative law to effectively constrain judicial openness.

5.1.1. Principle of Due Process

This is an important principle in administrative law, which requires the public authority to follow legal procedures in the exercise of power and ensure the parties' right to participate and the right to know. In making any administrative decision, the parties shall be notified in advance and their wishes on the administrative decision shall be fully heard. As far as judicial openness is concerned, the degree and scope of openness are beneficial to the public interest. Judicial openness should be both in essence and in form, and be fully and comprehensively open according to the regulations of the central government. Therefore, it cannot simply listen to the will of the parties concerned, and cannot selectively and partially disclose. However, the judicial organ should give full respect to the privacy of the parties in the trial and release of judgment documents. For example, in the process of trial, the court can clarify in the trial and respect the will of the parties in the case of unintentional or intentional disclosure of identity information.

5.1.2. Principle of Proportionality

The principle of proportionality is equivalent to the principle of good faith in civil law and plays an important role in the field of administrative law. The principle of proportionality requires that the organs of state power should learn to make trade-offs when making decisions, achieve a balance between actions and means, and minimize the damage to the parties when the purpose can be achieved. Its essence is that the organs of state power balance between the public interests of the state and the personal interests of citizens. As far as judicial openness is concerned, judicial openness should follow comprehensive openness, accept public supervision, and achieve the goal of educating and popularizing the public. Once this part of personal privacy enters into the public domain, it is conducive to the public interest and no longer belongs to the category of personal privacy. As an effective means of judicial democracy, judicial openness plays a supervisory role in judicial power and guarantees citizens' right to know as long as the means and extent of openness reach the goal of openness. It is not necessary to disclose the information of those who have little connection with the facts of the case, which will not do much damage to the sharing of judicial resources and the

dissemination and learning of legal education, but will play a very important role in the protection of the privacy of the parties.

5.2 Publication of Judgments

With the initial results of the reform of the comprehensive supporting system of China's judicial system, China has established the Chinese judicial documents disclosure network. The disclosure of judicial documents is an important link in judicial disclosure, and the judicial documents need to be disclosed online. Our country is a country of written law, and the court's decision must follow the written law. At the same time, there is a gap between the rule of law in China and those in Britain and the United States. There is still room for improvement in the moral standard of the rule of law of judges. The credibility of the judiciary has not reached the level of full trust of the public, so the judges' judgment activities must be open and transparent, and accept the supervision of public opinion. Therefore, it is necessary and necessary for the judge to publish all the judgment documents concerning the litigious rights and substantive rights of the parties online. It is the citizen's supervision of judicial power, the effective guarantee of citizen's right to participate and the right to know, and the inevitable requirement of modern rule of law.

It is all for judgment in our country at present to take to get to the Internet, and many of the judgment of the involved too much personal information, the parties involved in the addresses of the parties and age, some criminal case judicial documents also involves client id number, etc. More detailed personal information, this also led to pose a greater threat to the parties. The system of the disclosure of judicial documents can learn from the judicial experience of Taiwan. When the judicial documents are disclosed, the court in Taiwan hides the gender, age, address and other information of the parties and only keeps the names of the parties. This can not only play a good judicial publicity effect, but also effectively protect the privacy of the parties.

5.3 Court Proceedings Open

China's judicial openness system adopts the principle of openness, with non-openness as an exception. Only a few cases involving state secrets, trade secrets, personal privacy and minors will be heard behind closed doors, but even in closed cases, all judgments must be made public. With the reform of China's court hearing system and the incorporation of scientific and technological innovation into the judicial process, court hearings can be broadcast live. The Supreme People's Court has special regulations on the trial, and the court with conditions should adopt the way of live trial. Therefore, the vast majority of courts in China have adopted the way of live hearing. But in the process of trial, the parties against each other in the process of exposing oneself and the other party too much personal privacy, some involve the family property inheritance, heritage of dispute cases not only exposed itself and the other party too much identity information, and even exposed, the information of loved ones. Because the trial is spread widely through live broadcast, it is very easy for criminals to use the information of the parties to engage in some improper transactions, thus infringing on the privacy of the parties.

In our country, the purpose and means of judicial openness should be consistent. The essential purpose of the open trial and even the open judicial judgment is to realize the sharing of judicial resources and to supervise and restrict the administration of justice effectively. For the public, let the public achieve the purpose of education and learning, these are conducive to the realization of the public interest. Therefore, it is reasonable for judicial openness to include trial openness, judgment openness and execution openness. But open to a certain limit, in aim to limit the scope, the author thinks that the judicial, especially in public trial publicly link to collect the information of the parties is limited to used in the trial of the trial, and can't let an outsider according to information can be found or the parties to the identity of the real life situation and address, In this reasonable range to achieve judicial openness and personal privacy protection balance.

5.4 Standardizing the Reporting Behavior of the Media

News media is an effective way of judicial openness and social supervision. For cases with extensive influence and communication power in the society, the news media often follow up the cases in real time and report them wantonly based on their own interests and the commercial value of news in order to attract the public's attention. Especially for the public figures involved in the case, the news media will dig out some relevant information behind the facts of the case, which will infringe on the privacy of the parties and their families and destroy the stability of their lives.

In the case of a female student who was forced to jump from a building under threat in Gansu, the procuratorial organ in Gansu issued a decision not to prosecute, and the name of the party involved was not hidden, coupled with the special circumstances of the case caused widespread public concern. Major news media have reported that the actor's name and address and work unit are not hidden, resulting in the actor on the network was excited by the netizens for human flesh search, the actor's house was sprayed paint, posters posters and other ways to damage, some users even to their home to send wreaths, This incident caused the perpetrator and his family's peace to be completely destroyed. It can be seen that in judicial openness, judicial organs should respond to news media reports in a timely manner according to the facts and progress of the case, and should not dare to report or not want to report the case because it involves public opinion. The judicial authorities should protect the privacy of the parties in the case notification, and at the same time guide the news media to fully protect and respect the privacy of the parties when reporting the case.

5.5 Regulate Lawyers' Words and Deeds out of Court

Lawyer's words and deeds play a very important role in judicial openness. A lawyer is a person who, in addition to a client or judge, is more up-to-date with the facts of a case. Therefore, the behavior of lawyers outside the court should be standardized. The trial of the case should be notified by the judicial organ through the legal open way, to avoid too much disclosure of the parties' information outside the court, to the parties' privacy infringement.

In the 2013 gang rape case of Li, because Li was a minor at the time of the crime, the court took the way of closed hearing. At that time, Li's defense lawyer reported the relevant facts of the case to the news media and the public through his personal microblog outside the court, resulting in the disclosure of the identity information of the parties involved in the case. This not only to the actor and also to the victim caused a great life, spiritual harm. Especially, both the perpetrator and the victim of this case are minors, whose mental endurance is fragile, so passively become the focus of the public. Judicial authorities, news media and the public should fully respect the privacy of the victims to avoid secondary harm.

Therefore, lawyers should be effectively restrained by law and judicial professional ethics. At the same time, judicial staff should also be extra vigilant, not to divulge too much information about the case to lawyers and third parties unrelated to the case. The obligation of personal privacy protection in judicial disclosure should not only be undertaken by judicial organs, but also by lawyers and the news media.

6. Conclusion

Judicial openness can effectively bring judicial democracy, restrict and supervise the judicial organs, and establish the authority of the judiciary in the citizens. Judicial openness is also conducive to enhancing judicial credibility. Therefore, we must insist on it. But at the same time, we can also find that with the judicial openness and social progress, privacy has become a growing concern of people. As the concept scope is not clear and the legal provisions are vague, its content and scope are easy to be generalized, and various conflicts are formed in judicial practice. By regulating the behavior of judicial staff, lawyers and news media, the balance between the two can be effectively sought.

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