

# *The Standard and Trend of Modernization of Basic Principles of Civil Law in China*

**Han Bing**

*Shanghai University of Political Science and Law, Shanghai, 201701, China*

**Keywords:** Basic principles of civil law, Modernization, Standard, Trend

**Abstract:** The standard of modernization of basic principles of civil law in our country is mainly reflected in the mutual reflection and unification of value standard and positive standard. The basic principles of civil law mainly include the principle of fairness, the principle of honesty and trustworthiness, the principle of autonomy of will, the principle of prohibition of misuse of rights and the principle of order and morality. In the process of modernization development, more attention should be paid to the optimization of the content system of civil law based on public order and good custom. We expanded the content of the basic principles of the Civil Law with a view to social issues. Emphasis should be placed on highlighting the essence of rights in civil law, and the relationship between the exercise of rights and the performance of obligations should be properly handled.

## **1. Introduction**

Quote:

The modernization of the basic principles of civil law should reflect the independence of established laws and theoretical systems. In the process of handling civil disputes by adhering to the basic principles of civil law, we should start from its own ontological needs. Namely, the construction and implementation of civil law should be closely around the construction of market economy and cultural system. The modern standard study of the basic principles of civil law in China should be analyzed and identified according to the established legal order, the external system and the internal value. It is necessary to deal with the actual civil activities and legal relations by relying on the basic principles of systematic civil law that are more in line with the realistic background, and to manifest its unique spirit of civil law.

First, the multi-angle interpretation of the connotation of the basic principles of civil law in China

(1) Instrumentalist perspective

Civil law is a tool to deal with legal disputes and a reference basis for the fairness of citizens' rights and obligations. The interpretation of the connotation of the basic principles of civil law, from the perspective of instrumentalism, emphasizes more on its role and value. That is to say, the basic principles of civil law are the embodiment of the overall intention of the legislative body, but also a tool to break the legal limitations. China should strictly adhere to the basic principles of civil law, efficient, fair, just handling of civil disputes and legal issues.

## (2) The perspective of the definition of civil rights

The principle of civil law is the basic principle to be followed when defining rights and obligations, but it is not the basic principle to be adhered to in legislation. In specific civil activities, we should follow the principles of fairness, honesty and trustworthiness, autonomy of will, prohibition of misuse of rights and order and morality. The basic principles adopted in the legislation mainly include scientific principles, rule of law principles, and the most important and core constitutional principles. In order to study the modern standard of the basic principles of civil law in our country, we should make an in-depth analysis on the exercise of rights and the fulfillment of obligations.

Reference to the modernization of basic principles of civil law in China

### (1) the interpretation of the core of civil law with reference to the standard of value

The construction and implementation of civil law system should not only generate a relatively perfect system, but also optimize the internal value system by adhering to the established unified principles. From a certain point of view, civil law is the spiritual guidance for people to get along with each other on an equal basis, a serious and systematic agreement on rights and obligations, and more importantly, a “human law” that embodies human freedom. The spiritual core of civil law is the equality and freedom of the individual in the society. The study on the modernization standard of the basic principles of civil law in China can explain the spirit or core of civil law from the dimension of value standard. The determination of the value of civil law is mainly based on the satisfaction of human needs. That is, people's yearning for freedom, justice and a better life is not only the concrete manifestation of the basic principles of civil law, but also the goal of constantly optimizing and perfecting the content of law. The basic principles of civil law should be personalized, modern and flexible, and can effectively deal with the complex relationship between civil subjects. Adhering to the principle of honesty and trustworthiness, the principle of freedom of contract, the principle of autonomy of will and so on, guide and restrain the civil subject to standardize and standardize the exercise of rights and fulfill obligations.

### (2) Analyze the function of civil law based on empirical criteria

As the norm of maintaining social order and dealing with civil legal relations, civil law must adhere to the established legislative norms and basic principles. It is necessary to enrich and expand the functions of civil law according to the specific problems, so as to effectively restrict the civil behavior of civil subjects. Based on the empirical standard, this paper studies the systematization of the external form of civil law. This paper makes a concrete analysis of civil subject, right, obligation and object, and establishes a correct understanding of the constitution of the basic principles of civil law from the aspects of content and ideographic behavior. For example, from the perspective of content, we should emphasize the principle of attaching importance to both rights and meanings of civil law. From the aspect of ideographic behavior, civil law shows the principle of autonomy of will. In the process of analyzing the modern standard of the basic principles of civil law, we must have a clear understanding of the functions it possesses and actually shows. In the process of dealing with the legal relationship between civil subjects based on civil law, the principle of equality of personality should be reflected to ensure the good protection of the legitimate rights and interests of the parties, and the principle of ownership should be reflected reasonably. According to the demands of democratic subjects, give them a proper result of legal treatment.

Analysis on the modernization development trend of the basic principles of civil law in China

(1) More attention should be paid to the optimization of the content system of civil law based on public order and good customs

The modernization of the basic principles of civil law should gradually incline to the absolute equality of personality and the relative equality of social individual status. In the process of social members participating in social activities and practicing labor behaviors, they should be ensured to

have independent personalities and be able to deal with complex interpersonal relations rationally. From a certain point of view, fully displaying the equality of personality is a symbol of the modernization of the basic principles of civil law. In the process of optimizing and perfecting the content system of civil law, we should pay attention to the public order and good custom as the basis. The research on the trend of modernization of the basic principles of civil law in our country should be deeply discussed around the equality of personality. Specifically, when members of the society actually participate in the market competition, there will be the problem of seizing social resources. When the market economy system still needs to be further perfected, it is necessary to constrain the motivation and behavior of the competition subject according to the standard of public order and good custom. Usually, people with a certain social status have most of the social resources. These people abuse their dominant position and “legally” exercise their rights in the absence of legal regulation. At this time, if social resources want to get a fair allocation and distribution, it is not feasible to use only the legal constraints, we need to combine public order and good customs for moral guidance and supervision. Therefore, the modernization development of the basic principles of civil law in our country should pay attention to the guidance of people's ideology, coupled with legal constraints and restrictions, so that all people can achieve relative fairness and justice in the market competition, and ensure the equality of civil law personality.

(2) Expand the content of the basic principles of the Civil Law with a view to social issues

The principle of autonomy of will should be fully embodied in the process of formulating specific legal provisions and regulations for the subject of private law. Namely, social problems are dominated by individual members' behaviors, and their legal consciousness, moral character, self-management ability and so on will have a very important impact on the final development of the situation. The basic principles of civil law, as laws and regulations to regulate the society and serve people, should be realized according to their own values, and constantly reform and innovate. The content of the basic principles of civil law should be expanded and improved with the guidance of social problems. The connotation of autonomy of will should be extended in the process of fulfilling the provisions of laws and regulations in accordance with the principle of honesty and trustworthiness. Based on the established public order and good customs, the legal prohibitions and legal permits should be re-sorted and improved. For example, in the aspect of social insurance payment, modern legal regulation should be carried out according to the current corporate negligence behavior. In order to help the poor and the weak, enterprises should be forced to fulfill their social security obligations based on specific civil law provisions. The whole society should attach great importance to the social insurance payment of migrant workers and freelancers, and better protect the vulnerable groups through the formulation of perfect and flexible civil rights. Based on diversified social insurance policies, people can truly realize autonomy of will. That is to give the social vulnerable groups greater freedom of contract, according to their own will to choose whether to enjoy the civil rights, and guide them to actively fulfill the obligations of the civil law. Our country should think deeply about the welfare policy, and take this as the train of thought, actively promote the modernization of the basic principles of civil law, and can reach the expected standard.

(3) Emphasizing the essence of rights in civil law and properly handling the relationship between rights and obligations

The modernization of the basic principles of civil law should emphasize the ability to deal with disputes and problems. At the same time of innovation and optimization of content and system, we should reasonably define the scope of the fulfillment of rights and obligations. The civil law should strengthen the protection of the vulnerable groups, and on the premise of reflecting the seriousness and rigor of legal theory, the concept of double meaning should be understood and interpreted in a new way. According to the modern standard of the basic principles of civil law, it should be able to

optimize and extend flexibly. Based on civil rights, it can fully guarantee people's life safety and personal freedom, and lead the public to establish a good legal thinking. The emancipation of human individual thought is really brought into the system engineering of legal system construction and perfection. The essence of civil rights should be highlighted and corresponding rights and responsibilities should be fulfilled in accordance with the principle of self-consciousness. The modernization of the basic principles of civil law should weaken the traditional sacred principles. In the process of asking people to exercise their rights honestly and trustfully, they also need to actively guide and supervise the fulfillment of their obligations. Should not be too much emphasized rights, and appear rest 扞 is the problem. The right of civil law should be reflected correctly, and the fulfillment of obligations should be emphasized. Both the original General Principles of the Civil Law and the Civil Code to be implemented in 2021 should stipulate the conditions and constraints for the performance of rights and obligations. At the same time, it can truly handle the relationship between the performance of rights and obligations, maximize the role and value of the basic principles of civil law, so that it has the remarkable characteristics and advantages of modernization. In particular, under the characteristic socialist market economy environment, we should have a comprehensive understanding of the needs of the basic principles of civil law in the emerging fields. While expanding the scope of the application of civil law, it can effectively solve and deal with civil disputes and legal problems, and provide a fair and transparent theoretical reference for people to exercise their rights and fulfill their obligations.

## 2. Conclusion

In short, under the background of the new era, we should analyze the standard of modernization of the basic principles of civil law in China from different angles and perspectives. In order to show the fairness and impartiality of the law, the value of the civil law should be correctly defined and the basic principles of the civil law should be strictly adhering to in the process of application. With the development of social economy, the content of the basic principles of civil law should be enriched. That is, according to the complexity of civil activities and the diversity of social culture, it can uphold the principle of advancing with The Times and innovation, and deal with the legal issues between civil subjects flexibly and humanly. Based on the continuous improvement of the civil law theory system, to build a free, beautiful and fair environment for the public.

## References

- [1] Cui Y H. *Application of Basic Principles of Civil Law in Judicial Activities* [J]. *Law and Society*,2020(26):177-178.
- [2] Yi Jun. *Civil Code: Rooting Chinese Culture and Highlighting National Wisdom. Construction of National People's Congress*,2020(07):42-43.
- [3] Chen Lei. *A Brief Analysis of the Value of Basic Principles of Civil Law on Cultivating College Students' Literacy* [J]. *Legal Review*,2020(17):196-197.
- [4] Zhang Min, Cheng Liang. *Research on the Application of Basic Principles of Civil Law in Intellectual Property Law* [J]. *Legal Review*,2020(16):43-45.
- [5] Wang Tianqi. *Research on the Basic Principles of Contract Law* [J]. *Legal Review*,2020(11):193-194.
- [6] Han Bing (August 1978), female, from Weifang, Shandong Province, is a doctor and associate professor, mainly engaged in civil law research.