

# *Research on Investigation into the Utilization of the Concept of Alteration of Circumstances*

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**Abstract:** The Civil Code's promulgation has made the situation change principle unmistakably evident in our country's legal documents. Article 533 is a testament to the precise application of the situation change principle to our nation's social progress. The setting of this article not only has a more clear constitutional elements, but also adds a renegotiation system, which can improve efficiency. However, there are also shortcomings, such as unclear renegotiation system, few reference cases in practice, and difficult to define the situation of "major changes in contracts". Consequently, the solution is suggested, in order to more precisely utilize Article 533 of the Civil Code in judicial practice and to further the advancement of contract transactions and guarantee the steadiness of economic and social order, based on the examination of these issues and the interpretation of the legal principle of the situation alteration.

## **1. Introduction**

The principle of change of circumstances originated from the Notes on the Ladder of Jurisprudence in the 12th and 13th centuries. With the development of market economy and the continuous revision of the theory, it has formed a relatively mature theory in German law. In the era of China's contract law, the concept of change of situation was not explicitly laid out due to the apprehension that it would be hard to differentiate between change of situation and business risk, if misuse could disturb the equilibrium of social transaction order. It was only in the Judicial interpretation of Contract Law (2) that the application of the principle of change of situation was explicitly declared in the law, until the Civil Code was issued.

Under the background of China's market economy, there are various situations in which the basic conditions of contracts have undergone major changes, but due to historical reasons, the judicial organs lack clear standards on which circumstances can apply Article 533 of the Civil Code. Under the sway of German law, China has grasped the significance of the concept of alteration of circumstances and its components. However, there are some problems hindering the flexible application of Article 533 in our judicial practice. This paper endeavors to elucidate the judicious utilization of Article 533 in judicial practice, as well as to advance the more exact utilization of Article 533 in reality, by examining its components and essence.

## 2. The significance of Article 533 of the Civil Code

In contrast to the Interpretation of Contract Law (II) which interprets change of circumstances in a more general manner, Article 533 of the Civil Code offers a more exact, lucid, and reasonable interpretation. This article shifts the "objective circumstances after the contract's establishment" to the "basic conditions of the contract" from the substantive condition, and eliminates any situation that "does not meet the contract's purpose". It is plainly unjust to one of the parties to only maintain the ongoing execution of the agreement. Renegotiation is added from the procedure to maintain the contract and exert the surplus value of the contract by promoting the active negotiation between the parties. It can be seen that the provision has obvious positive significance.[1]

### 2.1 Unveil the components of the alteration in the circumstance

The Civil Code's Article 533 can be broken down into five components, with the first being the prerequisite elements, which necessitate that a transformation in conditions has taken place, and that this alteration is the basis for the agreement's conclusion; however, the parties could not have foreseen this at the time of the agreement's conclusion, thus making it a commercial risk.(2) Prior to the conclusion of the contract, a change should be made in order to meet the time requirements, as if it were done prior to the contract's end, it would be impossible to finish the task. the parties can foresee or should have foreseen such a change of circumstances, if it occurs after the completion of performance, it will not lead to an imbalance of interests between the parties;(3) Subjective elements: the parties cannot foresee, and the occurrence of the situation is not attributable to the parties to the contract;(4) Objective conditions: the degree of impact of major changes in circumstances exceeds the general business risk, that is, it is not a business risk;(5) The contract's performance can persist, yet this will bring about unmistakably unjust results.

The Interpretation of Contract Law (II) does not provide provisions on the change of circumstances, however, the split conditions have improved the application of the change of circumstances principle, highlighting the distinction between the change of circumstances and business risk, and force majeure-induced change of circumstances can also be applied to the change of circumstances principle, thereby elucidating the connection between force majeure and the change of circumstances.

The principle of change of circumstances should not be employed without limitation. If it goes beyond the inherent framework and is abused at will, it will damage the principle of strict adherence to the contract, otherwise it will not only make the interests of the parties to the contract unbalanced, unable to give full play to the economic benefits of the contract, but also lead to a heavy blow to the market economy. By dividing Article 533 of the Civil Code into its constituent elements, judicial personnel can not only be made more lucid in their application of the relevant circumstances, but also recognize that the fundamental principle of the alteration of circumstances is to balance the interests of the parties, maintain the unfairness of the contract, and guarantee the successful realization of its value.

The explicit provision of the principle of change of circumstances during the Contract Law, as clarified by the constituent elements of Article 533, is clear and can be applied in judicial practice with accuracy. This clarifies the scholars' doubts about the distinction between change of circumstances and force majeure and commercial risks, thus solving the problem.

### 2.2 Establish a renegotiation system to improve efficiency

In terms of the economic value of the renegotiation itself, on the one hand, when the contract needs to be adjusted to achieve the efficiency after the event, the renegotiation can provide an

opportunity to optimize the contract and avoid the problem that the residual value of the contract cannot be played due to the inability of the judicial organ to efficiently optimize the contract because it does not understand the contract. On the other hand, renegotiation is a negotiation between the two parties, and only the judicial organs are allowed to intervene if it cannot be resolved. Subjects who are the most knowledgeable of the contract's intent and procedure, as well as how to refine it, are the parties. Compared with changing or cancelling the contract by the judge, it can obviously save costs and improve efficiency, so as to play the positive significance of the renegotiation system in resolving disputes. It can be seen that self-negotiation not only reflects respect for the autonomy of will, but also guarantees efficiency, can promote the two parties to the contract to reach an agreement, reduce the pressure of court judgment, and promote social progress and economic development.

The renegotiation system's stipulations are in agreement with the legal basis of the principle of change of situation, which is a representation of the principle of good faith. This is because in the renegotiation system, both parties must not only take into account their own interests, but also the interests of the other, thus fulfilling the obligation of mutual comprehension. The ideal state of the renegotiation system is that the parties correct the unfairness caused by the change of the situation based on the state of honesty and credit. Negotiations conducted in a malicious manner can impede the realization of the system's worth and even amplify the unnecessary cost of such negotiations, thus detrimentally impacting the trading society.

### **3. From the Civil code's viewpoint, issues and causes of alteration in circumstances are present**

Despite the intentional lack of clarity in this article, such as the indefinite renegotiation system, the vague norms will likely cause apprehension of practical application, and few cases have been seen of judicial practice applying the change of circumstances due to a lack of justification. Moreover, there is no clear definition of "major changes in the contract" in the law. These problems all make the judicial personnel in the application of confusion, lack of reference and other problems, resulting in the Civil Code article 533 after the express provision of the principle of change of circumstances, there are still no reason in the judiciary, dare not apply the situation, cannot play the value of the article.

#### **3.1 The renegotiation rules are not clear enough**

The Civil Code has increased the process of renegotiation, but the legislative use of the expression "adversely affected parties can renegotiate with the other party", in which the word "can" indicates that renegotiation is not mandatory, avoiding the dispute over whether renegotiation is a right or an obligation, and the provision does not specify the length of renegotiation. Nor was there any detail on how to guarantee the effective exercise of renegotiation.

The ambiguity of the renegotiation time may not only fail to exert the positive effects of the system, but may even cause negative effects. Because the long negotiation time may aggravate the unfairness of the contract with unbalanced interests, produce the risk cost that the parties cannot bear, and reduce the probability of the possible implementation of the system, it is necessary to clarify the period of the renegotiation system to ensure the effective operation of the system.[2]

In addition, there are many defects in the current rules of the renegotiation system designed by the academic community, which will lead to new risks: First, there is a huge dispute over whether the liability should be set up, which is easy to lead to the criticism of excessive infringement of the autonomy of the parties, and if the liability is not set up, the renegotiation system may be ignored; Secondly, the application of specific rules depends on the application of many vague standards, and

these vague standards not only cause judicial personnel to have doubts in the application, leading to fear, but also make the original value of the renegotiation system unable to play. Therefore, in order to further play the positive value of the renegotiation system, it is necessary to design fine rules, such as the setting of elements that can exclude situations where there is no room for renegotiation. This kind of rule plays a positive role in alleviating the rigidity of renegotiation obligation and avoiding futile negotiation to ensure the efficiency value of renegotiation.

### **3.2 Reference cases are relatively few**

Limited to historical reasons, judicial personnel do not use the principle of change of situation, there is no big data applicable to our country, cannot sum up the template standard. The court has been wary despite the Interpretation of Contract Law (II) clearly outlining the system of alteration in circumstances. Judging from the judgment results, the number of courts supporting change of circumstances is extremely limited, and mainly focuses on the obstacles to contract performance caused by changes in national policies and laws. In the decade since the law of change of circumstances was enacted in 2009, there have been few instances of its application in our judicial practice, demonstrating that the legislative purpose of change of circumstances has been hard to realize and its local significance is hard to exploit.

For this historical reason, despite the explicit provisions of Article 533 of the Civil Code, the judicial organs still have many doubts about whether to apply the change of circumstances in actual cases, and they dare not to apply the change of circumstances for fear of misuse, which leads to the lack of rational application in relevant cases in practice. Even if the judiciary wanted to apply it, there was a lack of precedents for reference.

### **3.3 Defining a "material alteration in the fundamental conditions of the agreement" is arduous**

Interpreting and determining "major changes in the basic conditions of the contract" is a key element of Article 533 of the Civil Code. The expression of the exclusion method adopted in the law is not rigorous enough and is rare in the perspective of comparative law.[3]

Look at the theoretical definition. According to the relevant legislative information, this "significant change" should be an objective situation to the extent that it shakes the basis of the contract. There are two important qualifiers in the Law, "enough to shake" and "objective circumstances". The former means that the change of major events only needs to cause certain obstacles to the establishment or performance of the contract, and does not need to cause the loss of the contract foundation or the failure of the contract purpose. The contract's foundation is shaken due to the drastic changes in the social economy, surrounding environment, and objective conditions required by it, which are not subject to subjective control by the parties, but rather are the result of such changes. This, in turn, creates obstacles in the consideration relationship between them. [4]

However, the theoretical definition is fuzzy and lacks specific applicable standards, which leads to the problem of difficult judgment in practice.

## **4. Supporting proposals to promote the accurate application of the situation change**

To ensure Article 533 of the Civil Code is properly applied in judicial practice, taking into account the difficulties mentioned, measures are proposed to address the aforementioned issues, allowing the Code to reap its rewards, safeguard the parties' interests, and sustain the equilibrium of Chinese social transactions. This, in turn, will foster the growth of society.

#### 4.1 Supplementary judicial interpretation of the renegotiation system

First of all, the supplementary interpretation of the renegotiation system can provide a more reasonable application direction while giving the renegotiation system a qualitative quality. There are two theories about the characterization of renegotiation system: right theory and obligation theory. Characterizing the renegotiation system as a right is more reasonable than the obligation theory, because not all renegotiations end in a satisfactory agreement, the parties should have the right to seek other solutions, and characterizing renegotiation as an obligation will ignore the rational choices made by the parties based on the autonomy of will, for example, the parties have considered that there is a better solution. The renegotiation system can not be adopted. Negotiations between the parties, if necessary, would not only impede the effectiveness of resolving the issue, but also place an excessive load on them and restrict their autonomy. In addition, renegotiation should belong to the right of formation. Compared with consensual initiation, the exercise of the right of formation reduces the initiation cost of negotiation. Moreover, the interests of both parties in the contract tend to fluctuate, and if the opening of the renegotiation procedure requires the consent of the parties, the communication time will be extended, which may lead to more obvious interest imbalance between the two parties. In the process of renegotiation, the parties often have contradictions, so as to endanger the stability of social transaction order.

Secondly, it is necessary to set a time for renegotiation. As an illustration, Article 6.2.3(1) of the General Principles of International Commercial Contracts stipulates that there are two prerequisites for making a request for renegotiation: first, the request for renegotiation should be made without delay; second, the reason for renegotiation should be stated when the unfavorable party requests for renegotiation. Based on the above identification of renegotiation as the right to form, the exclusion period can be set. On the one hand, it can prevent the parties from maliciously delaying after the change of the situation, allowing the unfair state to continue to develop, and hindering the settlement of contract disputes. Negotiating delay can lead to a worsening of the disparity of interests between the two sides, as well as an increase in the complexity and expense of the negotiation.

#### 4.2 Expand the discretion of judges

First of all, since the damage degree of the equivalence relationship cannot be calculated with certainty, in order to make it concrete, a certain discretion of the judicial personnel should be recognized. The judicial personnel should be aware of the applicability of the principle of good faith and the degree of discretion in the case, and Article 533 of the judicial practice should also incorporate the principle of change of situation, which is a reflection of the same principle, thus bringing it to light.

Daring not to employ the concept of alteration of conditions to address issues in judicial practice, judicial personnel, restricted by past causes and bereft of applicable examples and precise criteria, are confined. If they want to change the status quo, continuing to narrow judges' discretionary power will only backfire. Only by encouraging judicial personnel to apply it independently and dare to reason can Article 533 be applied in practice. Therefore, the discretion of judicial personnel should be expanded, and judicial personnel should be encouraged to promote the balance of interests between parties when applying Article 533, so as to ensure the stability of social and economic order.

There is no need to worry that the general clause would give excessive discretion to the judiciary. On the one hand, there are many provisions in our civil law that require judicial officers to implement at their discretion, not only Article 533; On the other hand, many general clauses are developed to be operable through continuous exploration and revision of the applicable direction in

practice. It is not advisable to escape time just for fear of making mistakes.

From the point of view of law and economics, the relationship between the renegotiation system and judicial intervention is precisely the opposite of what is assumed: that the latter can compensate for the risk of the parties being swayed by opportunism in the renegotiation process, thus allowing the renegotiation system to maintain its essential value.

Demonstrated through practice, the principle of change of circumstances grants judicial organs the authority to interfere directly with the contractual relationship, thus enabling them to more expeditiously suggest novel solutions when the parties are unable to resolve it independently, thus allowing the law to adjust to the alterations of social and economic conditions, harmonize the interests of the parties, and guarantee the usual economic circulation.

#### **4.3 Set quantitative criteria for "significant changes in the underlying conditions of the contract"**

The basis of unpredictability, particularly for commercial entities that have grown in the market and possess the capacity to foresee the supply-demand correlation and price fluctuations in the economic market, is the sudden and abnormal character of major changes. This is also the fundamental basis for contract parties to carry out transactions. Only when the major changes have enough "sudden" and "abnormal" can they effectively break through the scope of the two parties' foresight, thus constituting "unforeseeable" in the system of situation change.

Judicial personnel, with an intuitive understanding of the factors that influence the verdict, can classify the facts of the case, and identify similar factors through an analysis of the case's actual circumstances, the contract type, the market's price fluctuation, and the extent of the fluctuation range, etc. Formulating quantitative standards to clarify the particular conditions and motivations for judging "major changes" in practice, and encouraging judicial personnel to use the concept of change of circumstances more judiciously, so that the judgment can continue the beneficial effect while restraining the related detrimental effect, is the aim.

In fact, German law has made a detailed explanation to the principle of the change of circumstances in theory, but why can not be directly applied to our judicial practice. Scholars and their theories have honed and implemented the concept of change of circumstances in German law, providing a solid theoretical basis and direction for economic and social practice. Consequently, the principle of change of circumstances is not more limited in German justice. However, in China, due to historical factors, although the theory in German law has been studied, the principle of change of circumstances is not limited. However, the lack of judicial practice of the application of precedent, in the judiciary is inevitably afraid of the hand. Secondly, there are also shortcomings in the study of theories, such as the inconsistencies in the definition of legal articles, which makes it more difficult for judicial personnel to grasp in practice. Formulating quantitative standards, in order to accurately apply article 533 in our nation, necessitates an understanding of economic and social development, as well as the construction of the legal system.

## **5. Conclusions**

In our nation, Article 533 of the Civil Code elucidates the relevant conditions of the principle of change of circumstances, yet there are numerous difficulties in practice, including the unclear renegotiation system, inadequate reference cases when utilized, and the obscurity of the definition of "major changes in the basic conditions of contract". This article has proposed corresponding measures based on the examination of the sources of these issues. It is hoped that, through the analysis of the law and the implementation of solution measures, the renegotiation will be clarified, its provisions enhanced, judicial personnel's discretion broadened to facilitate the application of the

law, and quantitative criteria for "major changes" established. This should ultimately lead to the accurate application of the situation change principle in our nation.

In conclusion, it is evident in what situations the concept of alteration of circumstances should be theoretically implemented. In our country's judicial practice, it has also put forward a further improvement plan, not only to ensure the interests of the parties when the situation changes, but also to maintain the stability of social transactions order.

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