

# *An Analysis of the Essence and Elements of Intention realization*

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**Abstract:** The proviso to Article 480 and the second paragraph of Article 484 of the Chinese Civil Code stipulate that contracts can be established between the parties based on intention realization. The essence of meaning realization is the absence of a relative person's declaration of intention, which differs from usual commitments in whether notification is required. In terms of constituent elements, the establishment of a contract based on the realization of intention does not require the so-called intention of commitment. When the parties have no intention of commitment, they should follow the rules of incorrect expression of intention or retention of true intention. In addition, whether the offeree has an undeniable act of acceptance should be judged from the perspective of an objective third party.

## 1. Introduction

The proviso to Article 480 of the Chinese Civil Code and the second paragraph of Article 484 actually affirm the way in which the parties can establish a contract based on intention realization. In judicial practice, many courts have used the concept of intention realization in their judgments, but after observation, it has been found that many courts have a deviation in their understanding of the essence and constituent elements of intention realization; What is the essence of meaning realization? What are the specific constituent elements? These are issues that urgently need further analysis and clarification.

## 2. Analysis of the Essence of intention realization

In Larenz's view, the realization of meaning is purely an act of implementation rather than an act of expression<sup>[1]</sup>. Starting from the traditional view that "expressionless behavior is expressionless", Larenz's expression clearly excludes the scope of meaning expression from the realization of meaning. It further cites typical situations of meaning realization, such as "pre occupation of non active property" and "abandonment of ownership over movable property". The former is a factual act, while the latter is a legal act, which inevitably raises deeper doubts about the essence of meaning realization. How can it produce both intended and legal effects? Next, regarding why the realization of meaning does not belong to the expression of meaning, Larenz explains as follows:

"Because the actor did not express anything, and obviously did not want to express anything to anyone." The author analyzes this as follows: taking the realization of meaning in contract signing as an example, first of all, the expression in the realization of meaning is reflected through the behavior of the offeree, and non-verbal expression does not mean there is no expression; Secondly, to be precise, it is not that the actor does not want to express anything to anyone, but rather that they do not need to express anything to anyone, and the intention is to abandon the requirement of fulfilling the promise. According to Professor Larenz's standards, any expression that is not explicitly expressed will be excluded from the category of expression of intention, and any expression of intention without a relative party must also be excluded. Silence with specific expression value also has no reason to stay in the group of expression of intention. This explanation clearly unreasonably limits the scope of application of the expression of intention, which seems to be Larenz's second choice after abandoning the theory of social typical behavior<sup>[2]</sup>. In addition, there is a logical barrier to believing that the realization of meaning does not belong to the expression of meaning. That is, since the realization of intention does not belong to the expression of intention, how can it reach a consensus with the offer and establish the contract? A contract is a product of the consensus of the two parties. If it is believed that the realization of intention does not belong to the expression of intention, a very paradoxical phenomenon will occur. If a party enters into a contract through the offer realization method, then there is only one expression of intention in the contract, because the realization of intention is not an expression of intention; So the question arises, what did this offer come to an agreement with and establish a contract? From then on, in the case of establishing a contract through the realization of intention, does the legal effect ultimately arise from intention or legality? In this way, a monster that was neither a cow nor a horse was raised. In today's society where the theory of factual contracts is nearing its end, it must be acknowledged that in order for a legal act to be established, the expression of intention is an indispensable element. What truly makes a legal act effective based on the content of the expression should be the expression of intention or the will of the parties involved, rather than anything else (of course, it also needs to have corresponding requirements for establishment and effectiveness). This is the essence of private law autonomy.

Nowadays, Germany generally believes that the situation regulated by Article 151 of the German Civil Code must also have a commitment, but it does not need to be taken by the other party<sup>[3]</sup>. In addition, some scholars, from the perspective of interpretive theory, believe that Article 484 of the Chinese Civil Code uses the phrase "acceptance does not require notice", clearly treating the realization of intention as a form of acceptance. According to Article 479 of the Civil Code, "acceptance is the expression of the offeree's intention to agree to the offer", it can be concluded that the realization of intention also belongs to the expression of intention<sup>[4]</sup>. The above insights are based on the author. In summary, it should be considered that the realization of intention is a form of expression of intention, and its difference from the usual offer acceptance is that the realization of intention does not require "notice", so it is an expression of intention without a counterpart.

### **3. The constituent elements of meaning realization**

#### **3.1 Necessity of Commitment**

Professor Wang Zejian believes that the realization of intention should be necessary to have a commitment intention. If the parties have no subjective commitment intention and only rely on objective facts that can be recognized as commitments to establish a contract, the realization of intention will become a factual act<sup>[5]</sup>! This statement may seem reasonable, but it is worth further examination. He cited a typical example in the book that lacks awareness of expression: "A sends a book to B as an offer to sell tangible goods, but B mistakenly opens it up for his son's purchase and

reads it." Based on the examples given, it refers to the lack of commitment, which should be the lack of awareness of expression. As far as the German general theory is concerned, the expression of consciousness is no longer a constituent element of the expression of intention, and even if it is lacking, it does not affect the validity of the expression of intention, except that the person expressing the intention has the right to revoke it. In fact, the realization of intention is not necessarily based on the commitment intention (expression consciousness). Firstly, even if there is no expression consciousness, it does not affect the validity of the expression of intention. The true intention of the parties can be fully respected by analogy with the rule of erroneous revocation; Secondly, it cannot be assumed that a lack of awareness of expression leads to the realization of intention becoming a factual act. If so, wouldn't it be that any contract established based on a lack of awareness of expression in a commitment would be considered as a "contract established based on facts"? This understanding is not reasonable.

However, although the realization of intention is not necessarily based on the promise of intention, because its essence is still the expression of intention, it should still have the constituent elements of the expression of intention itself. In traditional theory, the composition of meaning expression can be divided into internal elements and external elements. External elements refer to the expression of behavior, while internal elements refer to behavioral meaning, expression consciousness, and effect meaning, respectively. However, the German general theory no longer regards the expression of consciousness and the effect of meaning as the constituent elements of expression of meaning<sup>[6]</sup>. Therefore, the two elements that expression of meaning should possess are the expression of behavior and the action of meaning, which should also be possessed in the realization of meaning.

### **3.2 According to trading habits or the offeror's prior declaration of commitment without notice**

The realization of intention cannot be applied in any situation, and the establishment of a contract and the time of its establishment are closely related to the interests of the parties, so it can only be applied in special circumstances. Firstly, according to trading habits, situations where meaning can be realized can be applied, such as booking hotels, ordering banquets, and purchasing books from old bookstores according to price lists. Regarding trading habits, Article 7 of Interpretation 2 of the Contract Law stipulates that there are two types: (1) practices that are commonly adopted and known or should be known to the counterparty at the time of entering into a contract in the place of the transaction or in a certain field or industry; (2) The customary practices frequently used by both parties. In addition, trading habits only have the effect of filling loopholes to some extent<sup>[7]</sup>. If the offeror explicitly states in the offer that the acceptance needs to be notified, then there is no reason to believe that the offeree can make the acceptance effective without notice. Secondly, there is a situation where the offeror declares in advance that acceptance does not require notice: if the offeror explicitly states in the offer letter that acceptance does not require notice. It is worth mentioning that scholars generally believe that the offeror can also give up the acceptance notice by implication. If Party A urgently purchases from Party B, instruct Party B to ship immediately; In this case, if there is no special agreement between the parties, the contract shall be established from the time when Party B delivers the goods to the first carrier.

### **3.3 The offeree shall engage in an act that is deemed to be a factual acceptance within a considerable period of time**

#### **3.3.1 Performance behavior with identifiable commitment facts**

There are two main types of behaviors that can be recognized as expressions of commitment, one is the performance behavior, and the other is the acceptance behavior. The former refers to the performance of debts incurred due to the formation of the contract, such as mailing items ordered by the offeror by mail; Or to prepare for fulfilling the contract, such as reserving rooms for guests in hotels. How to understand the preparation for fulfilling the contract? When can it be called preparation for fulfilling a contract? There seems to be room for comparative analysis regarding the provision of Article 467 (2) of the Civil Code regarding the irrevocability of an offer: "... (2) The offeree is in favor of believing that the offer is irrevocable and has already prepared for the performance of the contract." The phrase "prepared for the performance of the contract" in this provision may be understood in the same way as the phrase "prepared for the performance of the contract" in the act of performance in the realization of intention. "; According to scholars, the preparatory act of relying on the binding force of an offer can manifest as starting production, preparing materials, or entering into a contract for this purpose, and in some cases, it can also manifest as hiring workers. The above list has reference value for reference.

#### **3.3.2 Acceptance behavior with identifiable commitment facts**

The so-called acceptance behavior refers to the act of the offeree exercising contractual rights, such as hotel guests consuming beverages or food in refrigerators, or opening magazines that are offered and sent. There is also a question here, whether certain receiving actions by creditors can be considered as an acceptance of a new offer from the debtor. For example, if a creditor claims an undisputed claim to its debtor and the debtor only sends him a check for a small portion of the claimed claim, there may be a settlement or a one-time compensation offer (known as an exemption trap, Erlassfall). However, it cannot be inferred solely from the act of cashing the check that the creditor has the intention to make a commitment to the compensation offer. From the perspective of a neutral third party, it cannot be assumed that creditors are willing to waive most of the debtor's debts. Therefore, at this point, intention realization is not applicable, and compensation, settlement, or exemption contracts are not established<sup>[8]</sup>. However, the author believes that the real problem in this case lies in the debtor's partial performance, and from the perspective of objective creditors, it is difficult to explain whether there is a settlement or exemption offer (exemption is a joint action in Germany), rather than whether the creditor's partial acceptance constitutes a commitment.

It should be pointed out that whether it is a performance behavior with a recognizable acceptance fact or an acceptance behavior with a recognizable acceptance fact, it is the result of judging from the perspective of an objective third party. That is, when the offeree performs or accepts a performance behavior, there is reason to believe that it has the intention of acceptance from the perspective of an objective third party, and therefore the acceptance contract is established.

## **4. Conclusion**

The method of establishing a contract based on the realization of intention has already been explicitly stated in Chinese law, but in practice, many courts have insufficient understanding of the concept and requirements of the realization of intention, resulting in errors in its application. The essence of meaning realization is still meaning expression, so the rules related to meaning expression can naturally be directly applied. The only difference between a promise fulfilled by will

and a usual promise is whether notice is required. However, it is precisely this difference that divides the two into expressions of intent with or without a counterpart; Therefore, both follow their own rules in interpreting and issuing judgments. In terms of the constituent elements, if the intention of commitment refers to the expression of consciousness, this article believes that a commitment based on the means of intention does not need to have the so-called intention of commitment. The issue of the parties not having the intention of commitment can be handled by applying the rules of erroneous revocation or retention of true intention.

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