

The Institutional Dilemma and Development Path of the Internationalization of Commercial Law in the Context of the Civil Code

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Abstract: The promulgation of the Civil Code has had a profound impact on China's commercial law system. Fundamentally speaking, the Civil Code is universal in the international community, and the internationalization process of commercial law is realized under the framework of the Civil Code. The Civil Code contains a large number of provisions on the commercial legal system, which to a certain extent has also had an impact on the international commercial legal system. This article first analyzes the connection between China's "Civil Code" and the international community, and then analyzes the problems in the development of the internationalization of commercial law from the aspects of legislation technology and commercial system, and proposes a corresponding development path. Then, a questionnaire survey was conducted on the effect of the internationalization of commercial law after the development path. The results showed that the number of votes for "good" and above was close to half, which means that the development path can effectively deal with the institutional dilemma of the internationalization of commercial law in the context of the Civil Code.

1. Introduction

In the international community, in order to obtain greater benefits, countries often cooperate with other countries, that is, international cooperation. In the process of international cooperation, not only the interests of both parties must be considered, but also the interests of their own countries must be considered. When conducting international cooperation, national interests must be the main focus. Fundamentally speaking, this is also the legislative purpose of the Civil Code.

Many countries in the world have their own civil codes, and many of them have discussed the Civil Code. Matějková, Jitka's article aims to answer the question of how the concept of natural law has affected the 2012 Czech Civil Code (2012 private law reform) in the field of non-pecuniary damages, and to what extent and system these effects are reflected. The Czech Civil Code is the basis of all private laws today. It confirms natural rights and protects human personality on this basis [1]. Wang, Liming's article discusses and evaluates the "autonomy" of personality rights in the "New Civil Code". The final conclusion is that the confirmation of individual rights in the Civil Code still needs to be tested in future court rulings to promote the protection of such rights [2]. Ojha,

Megha focused on the degree of integration of civil law in all directions. Trying to figure out why Indians can now count on the Indian government to effectively implement the Civil Code. Studies have shown that the internationalization of civil law is the main cause of this phenomenon [3]. Regarding business law, some people have also done research. Through the analysis of the development of e-commerce of fresh agricultural products in the legal environment of e-commerce, Wan, Yan-Jiao concluded that the "E-commerce Law" has played a positive guiding role in the healthy and sustainable development of e-commerce of fresh agricultural products [4]. Dubovec, Marek conducted in-depth research and analysis on the decentralized commercial law developing in the direction of digital assets, and finally concluded that commercial law can promote the development of technology, especially assets traded in a decentralized blockchain system, hoping to generate more applications and promote new business practices [5]. These studies all have certain insights into the Civil Code and commercial law, but there is a lack of research on the internationalization of commercial law, especially after the birth of the Civil Code, the dilemmas that commercial law will face and how it will develop in the future.

If the internationalization of commercial law wants to get out of the current institutional dilemma and find a future development path, it must be perfected in the context of the Civil Code, so that it can continue to develop in the future. At the same time, the internationalization of the commercial legal system is also an important part of the internationalization of our civil law. However, there are certain differences between the civil law system and the commercial law system, so there can be no direct comparison between the two, only indirect comparison.

2. The Relationship between Commercial Law and the Civil Code

The Civil Code is the main form of commercial law, and commercial law is an important part of China's socialist market economy system and is a special form of law. Fundamentally speaking, commercial law and the Civil Code are inextricably linked. In the process of the development of commercial law, the Civil Code also plays an irreplaceable role. The relationship between commercial law and the Civil Code is mainly manifested in the following aspects:

First, the connection between commercial law and the Civil Code is very close. Both are indispensable and important components of the legal system, which determines that commercial law and the Civil Code are essentially consistent.

Second, in the context of the Civil Code, commercial law will also be developed accordingly. For example, in the commercial law system, the corporate legal person system is an important system.

Third, to a certain extent, commercial law is based on the Civil Code.

Fourth, the Civil Code has had an important impact on commercial law. On the one hand, the "Civil Code" is the basis for regulating commercial relations and civil relations; on the other hand, the commercial legal system will also be affected and restricted by the "Civil Code", thereby promoting the development of the commercial legal system.

Therefore, fundamentally speaking, the relationship between the Civil Code and commercial law is very close, which determines that commercial law will inevitably be affected and restricted by the Civil Code. At the same time, commercial law will also be affected and restricted by the Civil Code, thereby promoting the internationalization of commercial law. In commercial law, legal subjects and legal acts are two main aspects. In commercial law, a legal subject refers to a person engaged in commercial activities; while a legal act refers to a certain relationship of rights and obligations formed by a commercial subject when engaged in commercial activities.

The internationalization of China's commercial law is a historical process, not achieved overnight, but has gone through a process from passive to active, from introduction to innovation, from unification to coordination, and from domestic to international [6]. As a comprehensive law,

the Civil Code is open and inclusive in its institutional design. Its openness refers to the integration of commercial law with civil and commercial law, absorbing the legislative experience of the "General Principles of Civil Law", as well as the legislative experience of the "German Commercial Code"; its tolerance refers to the "Civil Code" as the basic legal source for the internationalization of Chinese commercial law. From the legislative level, the internationalization of commercial law is driven by the development needs of China's market economy and is the result of the combined action of national will and market laws. Judging from the needs of the internationalization of commercial law, due to the continuous development of economic globalization, international commercial transactions are becoming more and more frequent. In order to ensure its own economic security and trade development, the country has integrated domestic law with international practices, forming a situation where both international commercial legislation and domestic commercial legislation are equal [7]. With the continuous development of commercial legislation in various countries around the world and the continuous innovation and improvement of commercial law, a series of new commercial law concepts and systems have been formed. For example, the concepts of business conduct, company system, and bill system have been introduced in the civil law system; the concept of "business" has been introduced in the field of civil and commercial law; and the concept of "maritime insurance" has been introduced in the field of maritime commerce. These concepts are based on the commercial subject as the main body to define commercial activities to meet the needs of commercial transactions.

3. The Problems and Dilemmas of the Internationalization of Commercial Law

In China, the commercial legal system was introduced to China from modern western capitalist countries, and its formulation and implementation are influenced by western capitalist countries. This influence is not only reflected in its legal system, but also in the commercial legal system [8]. As an important content of private international law, the commercial system has particularities in terms of adjustment objects, legal principles, and legal application. Fundamentally speaking, China's commercial system is developed on the basis of the civil code. Therefore, China's commercial legal system will inevitably be affected by the Civil Code in the process of formulation and implementation, and China's Civil Code is universal and international, so China's commercial legal system also has problems.

First of all, the conflict between the commercial legal system and the international commercial legal system. Commercial law is a special form of law, which will be influenced by the international community in the process of formulation and implementation. However, the relationship between the commercial law system and the international community is not clearly stipulated in the Chinese Civil Code, which has led to conflicts between the Chinese commercial legal system and the international community. For example, there are no provisions on cross-border cooperation in China's "Civil Code", while the "Maritime Law" incorporates relevant content into the "General Principles of Civil Law", which has led to conflicts between China's commercial legal system and the international community [9].

Secondly, China's commercial legal system lacks corresponding legal norms. Although the Civil Code is a basic law, there are still shortcomings in commercial law. For example, in China's "Civil Code", the commercial law system is only stipulated in some principled provisions, which leads to great uncertainty in the application process of China's commercial law system. This uncertainty is not only reflected in the application process of the commercial legal system, but also in the application process of the international commercial legal system. The Chinese Civil Code cannot regulate the international commercial legal system.

Finally, there is a conflict between China's commercial law system and the international

community. With the continuous development of social economy, trade exchanges between countries have become more and more frequent, and countries will be influenced by the international community when formulating their own laws, so China's commercial legal system will inevitably be influenced by the international community [10].

The imbalance in international exchanges of Chinese commercial law not only restricts the internationalization trend of Chinese commercial law “from the outside to the inside”, but also restricts the internationalization trend of Chinese commercial law “from the inside out”, affecting the overall internationalization trend of China's commercial legal system [11].

Since its accession to WTO in 2001, China has always been in a passive position, especially after its “accession to WTO”, China has carried out a large number of “amendments” and “transplants” in seven aspects such as “foreign Investment Law”, “Foreign Trade Law”, “State-owned enterprises”, “taxation”, “finance”, “intellectual property”, and “market order”, which highlights the huge gap between Chinese commercial law and “International Commercial Law” [12].The interaction between Chinese business law and international business norms is more based on China's reference to international business norms, but the absorption and integration of international business norms are still insufficient. In addition, due to China's lack of experience in international commercial dispute resolution and the lack of support from the legal system, there are often many problems in the process of resolving international commercial disputes. Therefore, China should strive to build a sound legal system to meet the needs of international commercial dispute resolution.In addition, China should also learn from the mature experience of the international commercial courts that have been established internationally to improve its ability to handle international commercial disputes.

The influence of Chinese commercial law in the world is not strong, which reflects the unbalanced exchanges of Chinese commercial law in the world.In addition to legal transplantation, through bilateral and multilateral rules, domestic law has become an internationally common business rule. This is also an important way of internationalization of business law. The reason why U.S. business law has been able to internationalize so quickly is inextricably linked to its international success.The "General Principles of International Commercial Contracts" is a major achievement in the internationalization of commercial law. When formulating specific norms, it draws heavily on the “United States Uniform Commercial Code” and the “United States Contract Law Restatement”, and its concept of "International Restatement" also draws on the "Law Restatement" of the United States [13].There have been thousands of cases around the world about the application of the general rule, but the cases applicable to China have not been retrieved, indicating that China still has great shortcomings in the application of the general rule.

4. The Future Development Path of Commercial Internationalization

The Civil Code is a generally applicable law in the international community, and it is also the basic framework of a country's civil law. It can not only provide legal guidance to the international community, but also have a profound impact on the commercial legislation of other countries. The composition of the Civil Code is shown in Figure 1.

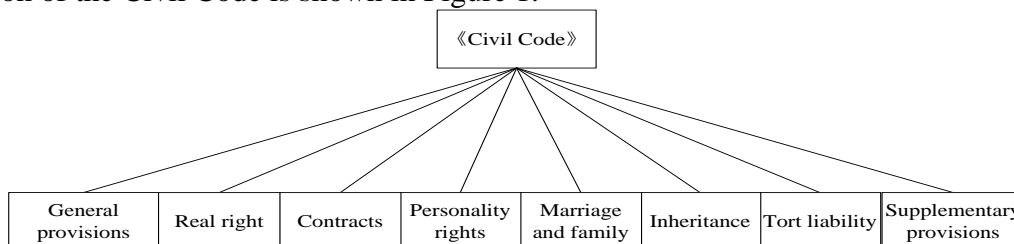


Figure 1: The composition of the Civil Code

In the context of the "Civil Code", the internationalization of commercial law is facing many problems. We must fully recognize the importance of the "Civil Code" to the internationalization of commercial law and take effective measures to solve it. Specifically, we should start from the following aspects:

(1) Actively participate in the formulation of the international commercial legal system, so that the pace of internationalization of China's commercial law can be accelerated, thereby enabling China to play a more active role in international commercial activities.

(2) Actively strengthen the ties between China's commercial legislation and the international community, bring China's commercial law into line with the international community, and continuously improve China's commercial law system through legislation.

(3) Actively learn from the excellent foreign commercial law experience, and on this basis continue to innovate and improve China's commercial law system, so that China can gain greater advantages in the process of internationalization of commercial law.

(4) Continuous exploration and innovation in strengthening the integration of international law and domestic law, and improving the domestic law system, so that the Civil Code can play a more active role in the internationalization of commercial law [14].

The basic institutional norms of commercial law are a general term for business entities and business practices. Among them, the general principle of a business subject is the definition of a businessman, which includes the acquisition of the personality and business qualifications of a business subject, the commercial capabilities of a special subject, and the rights of commercial personality. At present, the "Civil Code" has established "profit-non-profit" as the standard for distinguishing legal persons, but this provision is different from the normative setting of the general provisions of commercial subjects in the Civil Laws of countries with civil law systems, and cannot replace the requirements of the general provisions of commercial subjects and enterprises in commercial law, especially for natural persons engaged in commercial activities, this provision is obviously insufficient. Like commercial legal persons, commercial natural persons are also an important part of commercial entities. Their nature is that of individual merchants and they have the same continuous business characteristics as commercial legal persons. However, its provisions in the Chapter "Natural Persons" of Chapter 2 of the Civil Code-General Provisions make it legislatively separated from commercial entities, which has caused the definition of individual industrial and commercial households to be unclear. Because there are no general rules for business entities, the definitions of various entities cannot be unified, so the definitions of natural person enterprises other than legal persons in the civil law system cannot be extended, which requires us to independently define each business-related legal norm, so that there will be inconsistencies between different definitions and standards, resulting in a legislative dilemma [15]. China's existing civil legal system cannot effectively provide for this, but the civil legal system of extraterritorial countries provides a reference for this. Therefore, under the premise of maintaining the current civil law system, it is a rational and realistic choice to realize the provisions of the basic system of commercial law in the form of the "General Principles of Commercial Law".

Through questionnaires and comparative analysis, the actual effect of the development path is confirmed. The credibility analysis formula of the questionnaire survey is shown in equation (1)-equation (3).

$$\alpha_{ii} = \frac{2\alpha_{jj}}{1 + \alpha_{jj}} \quad (1)$$

Where, α_{ii} is the confidence estimate of the entire test; α_{jj} is the correlation coefficient of the two halves of the test scores. It should be noted that if there are fewer measurement questions, such as less than 10 questions, this method is not suitable for estimating reliability.

In addition, the use of the half-point method is based on the fact that the test that is artificially divided into two halves should be equivalent, that is, the scores of the two halves of the test have the same average or standard deviation. When this condition is not met, the following two formulas need to be used to estimate the reliability.

$$\alpha = 2 \left(1 - \frac{K_x^2 + K_y^2}{K_z^2} \right) = 1 - \frac{K_v^2}{K_z^2} \quad (2)$$

In equation (2), α is the confidence value, K_x^2 and K_y^2 is the variance of the two halves of the test scores, K_v^2 is the variance of the difference between the two halves of the test scores, and K_z^2 is the variance of the total test score.

$$\delta = \frac{T}{T-1} \left(1 - \frac{1}{\gamma} \right) \quad (3)$$

Where T is the number of analysis items and γ is the maximum characteristic root value. As can be seen from the above formula, when the number of analysis items is large, the theta confidence coefficient is likely to be larger, and the larger the maximum characteristic root, the larger the theta confidence coefficient value.

The investigation team went to a foreign-funded enterprise and put the products of the internationalization of commercial law into the enterprise for trial. After one month of trial, the investigation team conducted a questionnaire survey of the company, with 200 people surveyed, and the results are shown in Table 1.

Table 1: Development Path Application Satisfaction Questionnaire

	Very good	Good	Average	Poor	Very poor
Profitable	15%	30%	32%	17%	6%
Coordinated	19%	24%	36%	12%	9%
Continuous	18%	26%	32%	18%	6%
Reliable	14%	28%	33%	19%	6%

It can be seen from Table 1 that after the trial of the foreign-funded enterprise, the development path has received nearly half of the praise. The sum of the four indicators of profitability, coordination, continuity and reliability has reached more than 40%, and the general proportion is also at more than 30%. Although the sum of the poor and very poor accounts for more than 20%, it does not affect the general level. Therefore, it can be concluded that if the specific development path of commercial internationalization can be effectively implemented, it will eventually get out of the previous predicament.

5. Conclusions

The internationalization of commercial law is an important basis for the dissemination and development of commercial law in the international community, and it is also an inevitable trend of the internationalization of commercial law. With the rapid development of China's economy, China's trade exchanges with countries around the world are getting closer and closer, and it is playing an increasingly important role in the international community. In the process of formulating the "Civil Code", China should take the "Civil Code" as the basis, actively learn from the legislative experience of other countries and regions, and further improve China's commercial legal system. At the same time, the research and exploration of the international commercial legal system should also be strengthened to provide new ideas for China's commercial legislation. However, the research

in this article is still insufficient, and there are too few respondents to the questionnaire. A questionnaire of 500 people will be considered in the follow-up work.

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