

The Construction of Civil Public Interest Litigation Protection Path of Heroic Personality Interests in China

-- From the Perspective of Internet Space

Xu Wang¹, Qian Zhang^{2,*}

¹School of Law, East China University of Political Science and Law, Shanghai 200062, China

²College of civil and commercial law, Shandong University of Political Science and Law, Jinan, 250014, China

*331537110@qq.com

Abstract

The spirit of heroes and martyrs has become the consensus of the whole society. It is an important part of national spirit and socialist core values, and belongs to the spiritual social public interest. Under the influence of historical nihilism, the use of Internet space to insult and belittle the reputation and honor of heroes and heroines has a great impact on the mainstream ideological security of the network, and even damages the spiritual social public interests. Strengthening the protection of civil public interest litigation of Internet infringement on Heroic personality interests is an important path to the legalization of cyberspace governance, and also a key method to maintain the security of mainstream ideology.

Keywords

Internet; Network Ideology; Heroic Personality and Interests; Public Interest Litigation.

1. Introduction



Fig 1. Internet users and Internet penetration

According to the 47th Statistical Report on Internet Development in China issued by China Internet Network Information Center (CNNIC) in August 2021, China's Internet users had reached 989 million, and mobile internet users had reached 986 million. The number of Internet users continued to maintain a steady growth. The Internet has been integrated into all

aspects of social life and profoundly changed people's way of life. The Internet not only enables users to achieve self-empowerment, but also provides a convenient way for them to express various values and views (Fig.1).

At present, the Internet has become the main battlefield of public opinion struggle. In this battlefield, whether we can withstand and win is directly related to the security of ideology and political power. The cyberspace provides the main battlefield for the war of ideology. In recent years, there have been many cases of infringement on the reputation and honor of heroes. Most of these cases are edited, forwarded and spread rapidly through the Internet platform. It not only weakens the spiritual value of heroes, but also impacts the security of network mainstream ideology, and damages the national interests and social public interests. Therefore, it is urgent to strengthen the protection of heroes' personality interests and maintain the security of network mainstream ideology.

2. The Relationship between the Behavior of Infringing on the Heroic Personality Interests in Internet Space and the Security of Network Ideology

The concept of ideology was first proposed by Tracy, a philosopher and economist during the French Revolution, and later developed and applied in Western European countries. It is generally believed that ideology is a political theoretical system based on a certain philosophical world outlook, a direct reflection of the economic foundation, and a sum of the world outlook and thoughts of a certain social class. The ideology mainly includes politics, economy, culture, military, information and so on. Its main function lies in the political function of serving the ruling class and the economic function of counteracting the economic foundation. The internet has eight characteristics: virtual, global, open, interactive, convenient, all-weather, efficient and low-cost. It expands the space of human activities, enriches the mode of human interaction, and brings some problems, especially the increasing importance of ideological security. In a sense, the ideology is expressed through certain information, and the Internet provides convenient conditions for the expression of ideology, which has a strong ideological function. The main body of the real world transmits and processes the ideological information in digital form through the network, and then forms the network ideology. The network ideology is a new ideological field based on the use of network information tools. It is the extension and reappearance of various elements of traditional ideology in the network information space. Under certain conditions, it reacts on the real world and has an impact on the real world. The network ideology is the reflection and expression of reality ideology in the Internet. It is a new way of communication of reality ideology. It plays a direct role in reality ideology and constitutes the basic field of modern social ideology.

A case of infringing on the personality interests of heroes and martyrs in cyberspace. on May 22, 2013, the defendant Sun Jie posted an article on Sina Weibo through the account with the user's name of "exercise book", saying: "as Qiu Shaoyun lay motionless in the fire, the diners finally refused to pay for the semi cooked meat, and they all said that Laining's barbecue was better." As a well-known Sina Weibo blogger, Sun Jie had more than 6.03 million "fans" at that time. The article was forwarded 662 times, liked 78 times and commented 884 times soon after it was published. In the early morning of May 23, 2013, the microblog was deleted.

In April 2015, in the "thank you" activity of "jiaduobao herbal tea sales win gold again in 2014" held by jiaduobao company, the company's Sina Weibo account "jiaduobao activity" blog said: "thank you, exercise book, congratulations on your equal reputation with barbecue. As an herbal tea, we strongly support you to become the CEO of the barbecue stand, opening 100000 cans of barbecue stand, saying it and doing it, thank you for your action ", and provided a picture consistent with the text. Sun Jie forwarded and responded publicly with his "exercise book"

account. The above interactive microblog was forwarded in a short time and criticized by the majority of netizens, which caused great repercussions on the Internet.

Qiu Shaohua, the brother of martyr Qiu Shaoyun, insulted and vilified martyr Qiu Shaoyun with the above-mentioned blog post of Sun Jie. Jiaduobao company belittled the martyr's image in a way contrary to social morality and used vulgar behavior for marketing, which caused extremely bad influence in the society. On the ground, he sued the people's court of Daxing District in Beijing, requesting the second defendant to immediately stop the infringement, eliminate the influence, make an apology and pay 1 yuan for mental loss.

The verdict of this case is as follows: The people's Court of Daxing District in Beijing held in the first instance that according to relevant laws and regulations, the personal interests of martyr Qiu Shaoyun were still protected by law, and Qiu Shaohua, as a close relative of Qiu Shaoyun, had the right to file a lawsuit. Sun Jie's speech compares "martyr Qiu Shaoyun died bravely in the fire" to "half cooked barbecue", which is derogatory and insulting to martyr Qiu Shaoyun's personality and belongs to intentional infringement. Moreover, the speech has been spread rapidly through the public network platform, which has caused serious social impact, hurt the national and historical feelings of the public, and damaged the public interest, it also brought spiritual harm to the relatives of martyr Qiu Shaoyun. Although the original microblog article of Sun Jie's infringing speech has been deleted and Sun Jie apologized through microblog, the speech has been reprinted in a large number through microblog and spreaded widely on the Internet, which has caused serious social impact. In the objective aspect, jiaduobao company's speech related to the case echoed with Sun Jie's infringement speech and spreaded rapidly, which had a great negative impact. Subjectively, jiaduobao company failed to fulfill its duty of care. Therefore, it should also bear the tort liability.

There are many cases of infringement on the personality interests of heroes and martyrs in the internet space, such as the "five heroes of Langya Mountain" case, the case of Qiu Shaohua v. Sun Jie, the case of general personality right dispute of jiaduobao company and so on. The common point is to deny the existence of heroes and martyrs and their deeds through Internet in the form of derogation and insult, which superficially infringes on the personality interests of heroes and martyrs, but in fact is a typical manifestation of historical nihilism, so that the majority of Internet users have doubts about the advanced deeds of heroes and martyrs to reduce their image and spiritual value. The deeds of the heroes and martyrs have become the consensus of the whole society in the history of our country. The national emotions and memories condensed by them are the important expression of the national spirit, the important content of the core values, and the due meaning of the mainstream ideology. The national spirit embodied by heroes and martyrs and their deeds has great spiritual value. To belittle heroes and martyrs and deny their heroic deeds through the internet space is to infringe on the rights and interests of heroes and martyrs, at the same time to harm national spirit, impact the mainstream ideology of the network, endanger national security and social public interests. The social public interest generally includes material public interest and spiritual public interest. The spirit of heroes and martyrs and their deeds have become an important spiritual social public interest. To some extent, under the influence of historical nihilism, derogating and insulting the personality of heroes and martyrs and denying the authenticity of heroic deeds through the Internet space, from the internal logic point of view, are threatening the security of the mainstream ideology of the network and distorting the core values. Therefore, it is an important way to protect the ideological security to strengthen the public interest litigation protection of Internet space against the personality interests of heroes and martyrs.

3. The Necessity of the Public Interest Litigation Against Infringement of Heroic Personality Interests from the Internet Space

Article 185 of the civil code of the people's Republic of China stipulates: "Anyone who infringes upon the name, portrait, reputation or honor of a hero or martyr, or damages the public interest, shall bear civil liability. "This is a special provision on the civil liability for infringement of the personality rights and interests of heroes and martyrs. It is also a legislative expression for judicial protection of the personality interests of heroes and martyrs. It provides the right of claim basis for the public interest litigation of infringement of the personality interests of heroes and martyrs in the Internet space.

Promoting the implementation of the specific provision of the civil code. Belittling and discrediting the heroes and martyrs in cyberspace not only infringes on their personality interests, but also has a bad impact on the society, especially misleading the young generation and causing ideological confusion to them. The pluralism of interests will inevitably lead to pluralism of thought, and pluralism of thought will lead to pluralistic social ideology. Therefore, in the Internet space, the behavior of infringing the heroic personality interests harms the national feelings, negates the national spirit, and endangers the mainstream ideological security and national security. But as time goes by, it is inevitable that close relatives of heroes will die. At this time, if the personality interests of heroes are infringed, there will be the absence of litigation subject. The lack of qualified subject to file tort litigation means that the personality interests of heroes cannot be effectively protected, they cannot get close to the door of justice, and the social public interests cannot be protected. The provision of the civil code provides a legal basis for solving this problem. The protection of the heroic personality interests is no longer simply the protection of the interests of their close relatives, but involves the social public interests. In this regard, the state has the obligation to safeguard the heroic personality interests, and also has the responsibility to investigate the tort liability of the infringer. It can be seen that when there is no qualified subject to file a lawsuit against the internet space infringement of heroic personality interests, the state organs can file a public interest lawsuit on behalf of the social public interests to promote the implementation of legal provision.

Means to resist the influence of historical nihilism. Historical nihilism originates from nihilism. As a negative attitude, nihilism was first philosophically discussed by the philosopher Nietzsche. In fact, nihilism in Nietzsche's works refers to the collapse of the traditional value system, and the gradual elimination of those once considered solemn, sacred and noble things in the context of secularization, modernization and enlightenment culture, and even the authenticity of itself is a problem. The reason why nihilism is nihilism lies in its negative attitude towards history. The fundamental purpose of derogating and denying heroes and their deeds in the internet space is to deny historical facts, deconstruct national memory and emotions, endanger national security and the social public interests. Through the public interest litigation to investigate the tort liability of internet infringement of heroic personality interests, we can protect the heroic personality interests, social public interests and national security, and can combat and prevent the threat and impact of historical nihilism on ideology, so as to ensure the security of the mainstream ideology of the network.

4. The Preliminary Construction of Protecting the Heroic Personality Interests through Public Interest Litigation from the Internet Space

The "Civil Code" passed on May 28, 2020 has made clear provisions on the protection of heroic personality interests: "those who infringe on the name, portrait, reputation and honor of heroic martyrs and damage the public interests shall bear civil liability. "Since the legislative purpose of the civil code is to protect the social public interests contained in the heroic personality

interests, it is necessary to clarify the specific scope of the heroic and the composition of tort liability. In this article, heroes and martyrs are stipulated in parallel, which has caused different interpretations and disputes. For example, some people think that "hero" in this article should be understood as an adjective to modify "martyr", which is the relationship between modification and being modified. Some scholars hold that heroes and martyrs are two kinds of people, that is, heroes are not modifiers of martyrs. Heroes and martyrs are not exactly the same, they belong to the relationship of column. From the literal point of view, the heroes are people who make great achievements and contributions to the protection of the overall interests of the Chinese nation, public interests, national interests, or socialist construction. Martyrs refer to those who have sacrificed for the cause of justice. They are citizens who have to be recognized as martyrs in accordance with the regulations on the commendation of martyrs and the regulations on the pension of soldiers. Therefore, it can be seen from the literal meaning that heroes and martyrs have different connotations. Article 185 of the civil code stipulates that they are two kinds of people, rather than one kind of people. The word "etc." in this article should be interpreted as people similar to heroes and martyrs by using similar interpretation rules, which is in line with the spirit of legislation and is more conducive to the protection of heroes' personality interests and social public interests. It can also be seen from this article that the scope of protection of hero and martyr clause is limited to name, portrait, reputation and honor, and the content of protection should include spiritual interests and property interests (Fig.2).

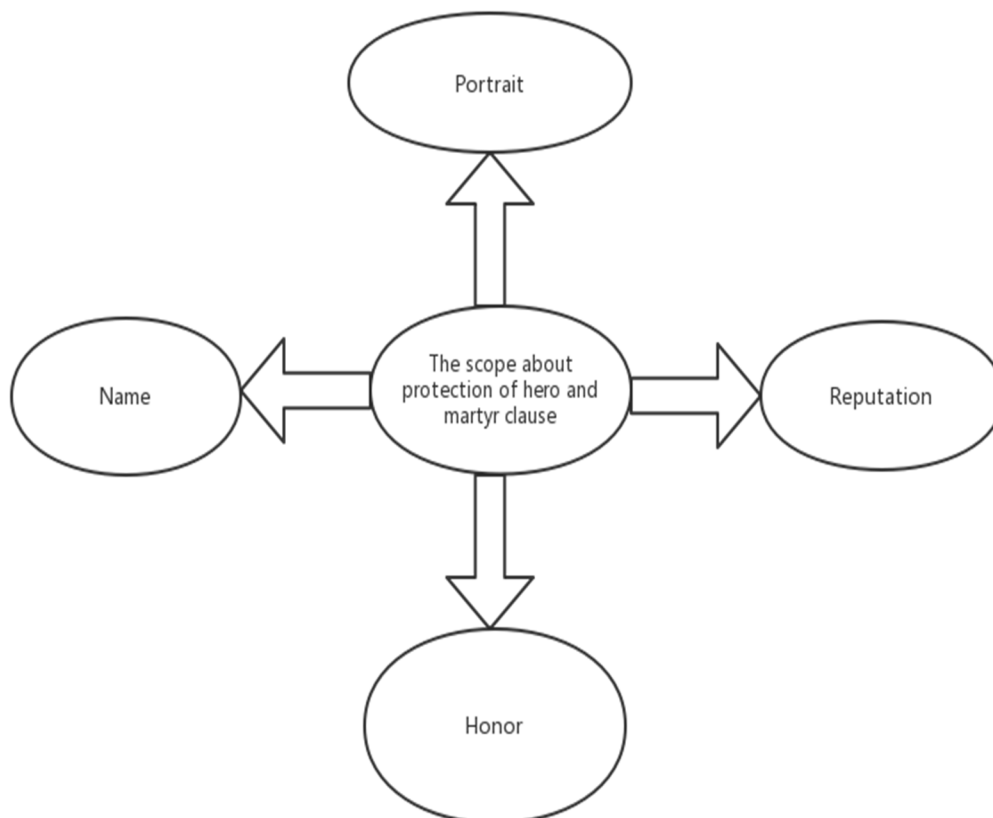


Fig 2. The scope of protection of hero and martyr clause

On the preliminary construction of civil public interest litigation protection from the internet space infringement on the personality interests of heroes and martyrs. Because the behavior of infringing on the personality interests of heroes and martyrs usually occurs in the Internet

space, this kind of behavior not only infringes on the personality interests of heroes and martyrs, but also damages the social public interests, endangers the mainstream ideological security of the network. Therefore, it is necessary to build a public interest litigation system on the basis of traditional civil litigation, in order to make up for the lack of protection of social public interests contained in the personality interests of heroes and martyrs. The civil public interest litigation is a kind of litigation, which is not to protect their own civil rights and interests, initiated by specific organs, social organizations or individuals to pursue their civil liability for the purpose of protecting social public interests. The civil public interest litigation is a new form of civil litigation, which is different from the traditional civil private interest litigation: firstly, the purpose of litigation is different. The purpose of civil public interest litigation is to maintain legal order and protect social public interests, while the purpose of private interest litigation is to safeguard private interests. Secondly, the litigation function is different. The civil public interest litigation can not only solve disputes, but also prevent infringement when the public interest is substantially damaged or there is a risk of damage, then the litigation procedure can be started. The private interest litigation is often passive afterwards, which is a legal relief after the infringement. Thirdly, the subjects of litigation are different. The plaintiff in the civil public interest litigation often has no direct legal interest relationship with the case, while the private interest litigation requires the plaintiff to have a direct legal interest relationship with the case. Therefore, when the personality interests of heroes and martyrs are infringed, the dual protection system of private interests and public interests can be implemented, but the public interest litigation can better make up for the lack of private interests' relief, and the two can jointly realize the value of maintaining social public order.

When we bring a public interest lawsuit against the behavior of infringing the personality interests of heroes and martyrs, we first need to clarify the subject scope. according to the article 55 of the civil procedure law, at present, the plaintiff who has the right to file a civil public interest lawsuit is limited to the organs prescribed by law, relevant organizations and procuratorial organ. The procuratorial organs follow the principle of judicial modesty, and only when there are no organs and organizations prescribed in the preceding paragraph or the organs and organizations prescribed in the preceding paragraph do not file a lawsuit. From the perspective of functionalism, it is natural for the state to intervene in the settlement of public interest disputes. The specific intervention of the state in the society is determined by its functions. The qualification of the state organ as a plaintiff in public interest litigation is based on its specific management functions. for most of the acts of infringing on the personality interests of heroes and martyrs from the internet space, due to the lack of administrative authorities and public welfare organizations stipulated by law, the procuratorial organ is the representative of public interests. Therefore, it is an important way for the procuratorial organ, as a qualified subject, to file a public interest lawsuit against the acts of infringing on the personality interests of heroes and martyrs. in the procedure construction, the jurisdiction of the case can refer to the published judicial interpretation and strictly apply the pre litigation announcement procedure. Only when the organs or organizations stipulated by law and the close relatives of the heroes and martyrs have not filed or are unwilling to file a lawsuit, the procuratorial organ can formally file a civil public interest lawsuit. Its claim, specific procedural rules in the court trial, and rules of proof can refer to the provisions of the civil procedure law.

5. Summary

On the surface, it is the influence of historical nihilism to belittle and insult the heroic personality interests by using Internet space, but in essence, it is the negation of values and mainstream ideology, endangering national security and social public interests. In recent years,

there have been many acts of infringing upon the personality interests of heroes and martyrs in cyberspace. Although some cases have been given judicial relief, some cases still cannot get close to the door of justice. Article 185 of the civil code provides legal relief and gives the basis of claim. Therefore, procuratorial organ should give full play to the function of public interest litigation to safeguard the social public interests, protect the personality interests of heroes and martyrs, better maintain, cultivate and carry forward the national spirit, so as to promote the whole society to form a high degree of consciousness of practicing the core values.

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