

The System of Public Figures' Reputation

--On the Judicial Judgment

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Abstract: The study of the system of public figures' reputation is to solve the problem of disagreement in the same cases in the current judicial practice, including the particularity of public figures' reputation right and the definition of public figures. Based on the analysis of the relevant referee cases, this paper draws lessons from the "public figure theory" and the research of the reputation system in China. Public figures are "The person who have a certain social status or social awareness within a certain range, and can benefit from the community, and are closely related to social interests, the occasional cause of the exception", they should have greater tolerance, because they are more benefit from the community.

Since 2002, "Zhiyi Fan v. Xinmin Evening News" for the first time in the verdict referred to the "public figure", the adoption of "public figures" terminology and make "public figures" reputation declining claims continue to appear. China's has not yet clear legal requirements about "public figures" now, in the judicial practice, the public figures of the referee is not the same. As of May 26, 2017, in the case of the Chinese referee document network, there were 59 cases of "public figures" in the cases of civil rights in the case of reputation, 112 cases of judgments. Based on these verdicts, this paper studies the application of "public figure theory" in China's judicial field, mainly from two aspects: whether there is particularity of public reputation, how public figures determine.

Whether public figures have special rights

"Public Figure Doctrine" aims to broaden the expression of free space by weakening the "public figure" reputation, which began in the New York Times.v.Sullivan case of the Supreme Court of the United States in 1964. In the case, Judge Brennan put forward the concept of "public official" for the first time. Three years later, in the case of Butts, the court raised the concept of public figures. Chief Justice Warren defines the concept of public figures as: "Public figures refer to the extent to which citizens are involved in the views and behavior of public issues and public events, often with government officials for the same problems and events on the degree of citizens involved."

Is there a special treatment for the protection of public figures' reputation in our judicial practice? There are 4027 civil judgments in the first instance of the Chinese judiciary, involving 59 per cent of the public figures. With the advent of the Internet, the current number of public figures, the high degree of attention, reached an unprecedented level, despite the number of public figures' reputation cases can not be specific, but common sense, the number is not a decimal, The results of these data can be seen in the public application of the law, although some judges have been at the forefront, as the case of Qingdong Kong, the court's first instance verdict referred to "based on public interest considerations, The public is reasonably questionable about the behavior of the public figure, especially the misconduct, and criticizing even the harsh criticism cannot simply be that the mere questioning and criticism itself constitutes a reputation for infringing public figures, unless the speaker has a noticeable statement Malicious, to ensure that citizens and the media in the public affairs, public interest issues in the debate to enjoy full freedom of speech. Therefore, the personal interests of the people in the legal protection should be appropriate to derogate, the public figures for the media does not have malicious criticism, question should also have a certain tolerance

measure. "But many judges still maintain a cautious attitude, that is, in a large number of cases of reputation rights, the public figures reputation does not show particularity, such as the case of Xue Bai (art name Baihe Bai) and Shandong Shun Network Media Co., Ltd. and other reputation Dispute in the first instance civil judgment, for Baihe Bai such a social well-known entertainment star, Chaoyang District People's Court of Beijing first instance verdict did not identify her as a public figure, according to the general natural person to judge; in Suzhou New Media Communication Co., Ltd. and Ying Yang (Angela baby) dispute case about portrait rights, reputation rights, the Beijing Third Intermediate People's Court did not identify her as a public figure, in the verdict only mentioned "citizens".

So whether the public figures' reputation should be treated specifically? I think it is needed. As public figures, they are often able to benefit from the public, their words and deeds are closely related to the public interest. Rights and obligations are reciprocal, whether "state officials" or "celebrities", as long as they get power or more prestige from the public, there is an obligation based on public interest to meet the public's reasonable interest, bear more Tolerance obligations, greater tolerance to personal privacy exposure, greater acceptance of public criticism and questioning. Specifically, there are two reasons.

First, the public interest is higher than personal interests. "State officials" have gained power from the public, and they should be held accountable to those who have been given power. They serve the community and the people, and the people of course have the right to know and supervise, to understand them and to supervise their use of power. Of course, restrictions on the right to "state officials" are limited to public affairs and do not include malicious damage to their personal privacy. Social "celebrities" especially the entertainment stars, from the media celebrities, their work on the social support of a greater degree of dependence, so in order to improve their social awareness, they voluntarily exposed to the spotlight, become the media and the public concern, To a greater extent to open their own privacy, greater tolerance of social criticism and criticism to meet the public interest. The corresponding, the protection of its reputation is equivalent to ordinary people with unfairness. In order to meet the public's legitimate interests, to balance the freedom of speech and the protection of the right to reputation, it is necessary to limit part of the personal interests.

Second, the convenience of damage elimination. For the "public figures", the general situation of its social awareness and influence is greater than ordinary people, the degree of information exposure and degree of protection in a certain sense is proportional to it, so even if the reputation of the damage to eliminate the adverse effects with more convenient than ordinary people.

For these reasons, the reputation of public figures should be treated in particular. This is determined by the characteristics of the public figure itself, and also conducive to the expansion of our public freedom of speech.

The definition of public figures

To limit the reputation of public figures, we must first define "public figures". In the judicial practice, there are many problems in the definition of "public figures".

First, whether to explain the public figures' identification is different in practices. In the judgment of the first Intermediate People's Court of Beijing, used "Shiminn Fang and Yongyuan Cui are public figures ...", while in Yi Huang, Xuan Ye, Dongdong Xu, Qiaoqiao Jin and Fuzhou Gulou District Hua Ren medical beauty clinics reputation dispute second instance verdict, Fujian Province, Fuzhou Intermediate People's Court although defined the "public figure", only simply wrote " Yi Huang, Xuan Ye, Dongdong Xu, Qiaoqiao Jin is the actor, the public figure" Juezhao Hu and the Guangdong Provincial Cultural and Art Information Center reputation right dispute case second trial civil judgments are also just wrote " Juezhao Hu is a famous historian, public figures ", And in many of the cases mentioned below, the judge will elaborate on whether the parties are public figures.

Second, the standard of define is uncertainty. "The social well-known", "should belong to" and "high visibility and wide influence" "have a certain impact" in Jing Tan case, these words are very vague, visibility and influence to achieve how many can be regard as" certain ""The higher",

the court did not clearly define the standard, in the final decision about whether the person is "public figure", the court used "should" such subjective words.

Third, the results of the definition do not meet the public awareness. As the above-mentioned Baihe Bai case and Ying Yang case, they have large social influence, strong guidance on public opinion, as social well-known entertainment stars, but not be identified as "public figure."

The key to solving these problems is to define the definition of "public figure". Based on the theory of "public figures" in the United States, scholars of our country have interpreted the concept of "public figures". Some scholars think that the scope of public interest protection depends on the degree of personal affairs and public interest. Personal affairs and public interest are not the same degree of relevance, even the same type of public figures also should be distinguished, the scope of protection of public figures private areas can only be an only case to judge, public figures do not need to be type. "Professor Liming Wang think our public figures should be type, including two categories: one is the political public figures, mainly including government officials and other state officials; the second is the public figures, including public welfare organization leaders; literary and art circles, entertainment, sports "star" writer , Scientists, well-known scholars, labor model and other celebrities.

"Public figures" whether should be type, our current judicial practices are not uniform, combined with the above, we can find that some judges in the public figures cases , according to the star, the famous historian and other categories to confirm, and some judges are only based on the degree of "social awareness, influence" to confirm. I think that "type" and "The degree of association between personal affairs and public interest" the two evaluation criteria are not contradictory, they should be complementary. The judge of "The degree of personal affairs and the relationship between the public interest," give too much discretion to judges, and the type of "public figures" is conducive to the unity of our judicial practice.

At the same time, defining "public figures" should follow certain standards. The first criterion is to meet the characteristics that "public figures" must profit from the public, which has been mentioned above and will not be repeated. Like Professor Liming Wang, many scholars in our country do not recognize involuntary public figures, the main reason is that "involuntary public figures" do not meet this standard. They come into the public eye just because something happens occasionally, become the topic to talk about, to meet the public reasonable interest in a certain stage, and not obtain greater power and prestige in this period of time, after the event, they will return to normal human life, so they cannot be asked to accept a greater degree of social criticism. Followed by the words "public figures" and the public interest. Whether the definition of public figures in the United States, or Professor Liming Wang's classification of public figures, they both have embodied this standard. The connotation and extension of the public interest is broad. On the one hand, the duties of the public are closely related to the interests of the public. Therefore, it is necessary to satisfy the public's right to know and to supervise. On the other hand, the business involved is related to the entertainment of the public. To meet the public's reasonable interest, and the most important factor of "public figures" is the "social awareness and social influence." Because officials only in the position, their behavior will have a direct impact on the interests of the public, once not in the post, even if it has a huge reputation and influence, there no longer impact community by the behavior of job, no longer belong to the political "public figure", may become a social "public figure." For the social "public figures", their public interest related aspects are mainly reflected in the degree of social concern.

Based on this, we can make a definition of the public figures as following: "Public figures are the person who have a certain social status or social awareness within a certain range, and can benefit from the community, and are closely related to social interests, the occasional cause of the exception." They can be divided into two categories of political public figures and public figures.

In judicial system, to determine whether a person is a "public figure", according to the type to determine whether it is a political "public figure" first of all, who belong to such persons, regardless of power size, visibility and social influence, because they are profit from the community, so all

belong to the public figure, need to accept a greater degree of public criticism and question. In determining whether is the social "public figures", the first to consider is the visibility, with the Internet from the media development, judges can determine the visibility of public figures. Most of the celebrities are certified by microblogging, and have their own audience, the judge can determine by the amount of microblogging fans at first, concerning about how much attention can be identified as public figures.

Which can enhance the accuracy and fairness of the identified, and also can greatly save the cost of judicial investigation.

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