

REVIEW

Research on the System of Compensation for Mental Damage in Breach of Contract under Chinese Law: Focusing on Article 996 of Chinese Civil Code

Investigación sobre el sistema de compensación por daños mentales en violación de contrato bajo la ley China: centrándose en el artículo 996 del código Civil chino

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ABSTRACT

Although the introduction of Article 996 of Chinese Civil Code has resolved the dilemma of lacking legal basis for compensation for mental damage in breach of contract and provided significant room for the development of the system of compensation for mental damages in breach of contract, this research remains unclear in terms of legal nature of the right of claim, the scope of personality rights, and the evaluation of severe mental damage. This has led to significant differences in the legal basis and outcomes of judicial decisions in practice, affecting the consistency and authority of the law. This research focuses on Article 966 of Chinese Civil Code, employing methods such as literature analysis and case method to explore the fundamental legal nature, scope of application, and objective criteria for determination under Article 996 of Chinese Civil law. Additionally, it uses comparative method to examine the systems of compensation for mental damage in breach of contract in major civil law and common law jurisdictions. Finally, the research proposes three recommendations: clarifying the independent legal nature of claim for compensation for mental damage, enumerating specific types of contracts to expand “damage to personality rights” to “damage to special emotional interests”, and establishing an objective evaluation standard for severe mental damage by comprehensively considering medical, psychological, and legal factors.

Keywords: Breach of Contract; Compensation for Mental Damage; Personality Rights; Emotional Interests.

RESUMEN

Aunque la introducción del artículo 996 del código Civil chino ha resuelto el dilema de la falta de base legal para la indemnización por daños mentales en incumplimiento de contrato y ha proporcionado un espacio significativo para el desarrollo del sistema de indemnización por daños mentales en incumplimiento de contrato, esta investigación sigue siendo poco clara en términos de la naturaleza jurídica del derecho de reclamación, el alcance de los derechos de la personalidad, y la evaluación de los daños mentales graves. Esto ha dado lugar a diferencias significativas en la base jurídica y los resultados de las decisiones judiciales en la práctica, afectando a la coherencia y la autoridad de la ley. Esta investigación se centra en el artículo 966 del código Civil chino, empleando métodos como el análisis de la literatura y el método del caso para explorar la naturaleza jurídica fundamental, el alcance de aplicación y los criterios objetivos para la determinación en virtud del artículo 996 del derecho Civil chino. Además, utiliza el método comparativo para examinar los sistemas de compensación por daños mentales en incumplimiento de contrato en las principales jurisdicciones de derecho civil y common law. Por último, la investigación propone tres recomendaciones: a

clarar la naturaleza jurídica independiente de las reclamaciones de indemnización por daños mentales, enumerar tipos específicos de contratos para ampliar el “daño a los derechos de la personalidad” al “daño a los intereses emocionales especiales”, y establecer una norma de evaluación objetiva para los daños mentales graves mediante la consideración integral de factores médicos, psicológicos y legales.

Palabras clave: Incumplimiento de Contrato; Compensación por Daños Mentales; Derechos de Personalidad; Intereses Emocionales.

INTRODUCTION

In the system of compensation for breach of contract, a highly contentious issue is whether mental damage should be compensated. Prior to the promulgation of the Civil Code of the People's Republic of China (hereinafter referred to as Chinese Civil Code), the legal basis for compensation for mental damage primarily lay in tort law. Academia and legal practitioners have engaged in long-standing debates over whether compensation for mental damage should be applicable in cases of breach of contract, forming sharply opposing viewpoints. In academia, civil law scholars such as Cui Jianyuan, Han Shiyuan, and Zhu Guangxin have advocated for the legitimacy of compensation for emotional distress in breach of contract.⁽¹⁾ However, in legal practice, the majority of court rulings have denied claims for mental damage in breach of contract cases.⁽²⁾

With the rapid development of Chinese economy and the continuous improvement of people's material living standards, there is an increasing emphasis on spiritual enjoyment and satisfaction. The importance of emotional interests in the benefits of contract performance has become increasingly evident, particularly in service-oriented contracts such as travel contracts, medical cosmetology contracts, and wedding service contracts, where the fulfillment of emotional interests is of paramount importance.⁽³⁾

In the circumstance, some scholars have called for the limited recognition of the system of compensation for mental damage in breach of contract.⁽⁴⁾ In judicial practice, there have also been rulings supporting compensation for mental damage in cases of breach of contract.⁽⁵⁾ Amid the growing calls for legislative reform regarding compensation for breach of contract, the introduction of Article 996 of Chinese Civil Code has broken through the traditional framework of remedies under tort liability, providing for the first time, a legislative basis for compensation for mental damage in breach of contract. Article 996 stipulates: “Where a party's breach of contract infringes upon the personality rights of the other party and causes severe mental damage, the aggrieved party may claim compensation for mental damages when choosing to demand liability for breach of contract, without affecting its right to claim compensation for mental damage.”

Judging from the expression of Article 996, this provision acknowledges that severe mental damage caused by a breach of contract that infringes upon the personality rights of the other party constitutes compensable damage, thereby providing a legal basis for compensation for mental damage resulting from breach of contract. However, due to the ambiguous expression of the provision, there remain exists some questions: Should such damages be remedied under the rules of compensation for breach of contract, or under the rules of tort liability? Alternatively, does Article 996 constitute an independent basis for claims with its own applicable conditions? Can emotional interests resulting from breach of contract be compensated? How should severe mental damage be determined? These issues still warrant further discussion. In light of this, this research aims to provide theoretical support for clarifying the legal application of the system of compensation for mental damage in breach of contract.

Although Article 996 of Chinese Civil Code has, to some extent, broken away from the traditional negative stance of Chinese civil law toward the system of compensation for mental damage in breach of contract, and has for the first time clarified the possibility for aggrieved party to claim compensation for mental damage in cases of breach, the ambiguous expression of Article 996, such as “choosing to demand liability for breach of contract” and “without affecting the right to claim compensation for mental damage” fails to explicitly state that the non-breaching party may request compensation for mental damages caused by the breach. Nor does it clearly define the concept of “compensation for emotional distress in breach of contract”. As a result, the legal nature of the right to claim compensation for mental damage due to breach of contract involving infringement of personality rights has sparked debates in both academic and practical circles.

Regarding the fundamental nature of Article 996 of Chinese Civil Code, there are several prevailing views in Chinese academic circles. One perspective holds that Article 996 stipulates that, in cases of breach of contract where the personality rights of the other party are infringed upon, the aggrieved party may assert a claim for compensation for mental damage, thereby creating an independent right of claim. Consequently, in situations where a breach of contract infringes upon the personality rights of the other party and causes severe mental damage, Article 996 can serve as an independent basis for claims and play a role in evaluating legal effects. It is thus considered an independent right of claim rather than a supplementary one.⁽⁶⁾

Another perspective holds that Article 996 does not function as an independent claim in evaluating the legal effects of compensation for mental damage. Instead, it serves merely as a supplementary norm, assisting other primary claims in evaluating legal effects.⁽⁷⁾ The “other primary claims” referred to here mainly pertain to the right to claim compensation for mental damage under Article 1183 of the Civil Code, which governs tort liability. In other words, the non-breaching party may file a separate tort claim in addition to the breach of contract claim, independently seeking compensation for mental damage under tort liability. However, in such cases, the tort claim for damages merely serves as a supplement to the breach of contract claim.

Additionally, there is another perspective that Article 996 of Chinese Civil Code essentially represents the aggregation of compensation for breach of contract and compensation for mental damage in tort. Under this view, the aggrieved party may simultaneously assert claims for both breach of contract damages and tort-based compensation for mental damage.⁽⁸⁾

Due to the ambiguous legislative expression of Article 996 and differences in judicial interpretation, inconsistencies in rulings are inevitable in judicial practice. In the case of *Liu Juan v. Shenyang Bafang Passenger Transport Co.*⁽⁹⁾ Liu Juan was injured while traveling on a bus operated by Shenyang Bafang Passenger Transport Co., Ltd. The court ruled that “the defendant should bear liability for breach of contract by compensating Liu Juan for reasonable economic losses. As for the Liu Juan’s claim for 5000 yuan in mental damage, this court supports it based on Article 996 of Chinese Civil Code.” This case represents the reasoning adopted by the majority of courts that support compensation for mental damage in breach of contract. Conversely, some courts have outright rejected claims for mental damage in breach of contract cases. For instance, in the case of *Wang Kun v. Beijing Nature Wood Industry Co.*⁽¹⁰⁾, the court dismissed Wang Kun’s claim for mental damage on the grounds that the case involved a contractual legal relationship and that there was no legal basis for such a claim.

In addition, in judicial practice, there are instances where courts rely on other provisions of Chinese Civil Code instead of Article 996 to support claims for mental damage in breach of contract. This can be seen from the following two cases. In the case of *Bai Zhonghui v. Yunnan International Travel Service Co.*⁽¹¹⁾, the court, based on Article 1183 of the Civil Code, determined that the travel agency was at fault for causing injury to the tourist and should bear tort liability, thereby compensating the victim for mental damage. While in the case of *Zhao Hongzhen v. Guizhou Zunyi Branch of Chongqing Qianlixing Travel Service Co.*⁽¹²⁾ the court directly supported compensation for mental damage in breach of contract under Article 577 of the Civil Code without invoking Article 996 and held that “According to Article 577 of the Civil Code of the People’s Republic of China, Qianlixing Company should bear liability for breach of contract due to its failure to fulfill its contractual obligations as agreed. Therefore, Zhao Hongzhen’s claim for compensation for damages including mental damage against Qianlixing Company is supported.”

It is evident that whether Article 996 of Chinese Civil Code creates and supports the right to claim compensation for mental damage in breach of contract is the focal point of controversy. This divergence in perspectives has led to significant differences in the legal basis and outcomes of judicial rulings, even in cases involving similar types of service contracts.

Reflections on the Application of Compensation for Breach of Contract Involving Emotional Interests

When one party breaches a contract, it may cause the other party to suffer the following three types of emotional distress. Firstly, the aggrieved party fails to obtain the spiritual satisfaction that the payment aims to provide and suffers the loss of spiritual performance benefits. Secondly, The aggrieved party experiences feelings of anger, frustration, anxiety, or a sense of being deceived as a result of the breach. Thirdly, the aggrieved party suffers mental damage due to the infringement of their inherent interests caused by the breach.⁽¹³⁾ According to the restrictive condition “damage of the personality right” of Article 996, it can only be applied if the breach of contract also leads to the damage of the personality right. Obviously, the focus of attention and application of this article is the mental pain damage caused by the damage of inherent interests caused by breach of contract.⁽¹⁴⁾ If a spiritual interest contract based on spiritual enjoyment or partial spiritual enjoyment is breached, and the non-breaching party suffers from the loss of spiritual performance or mental damage such as anger, unhappiness, anxiety and emotional deception, can it claim compensation for mental damage according to Article 966? Under the premise that Article 966 of Chinese Civil Code has not been clearly defined, this issue deserves reflection.

According to the Article 990, personality rights are rights enjoyed by civil subjects, including the right to life, bodily integrity, health, name, title, portrait, reputation, honor, privacy, and other similar rights. If the term “personality rights” in Article 996 is interpreted strictly, it would be difficult to provide remedy for damages to spiritual interests resulting from the breach of a spiritual interest contract. This also aligns with the traditional theory that spiritual damages generally arise in situations where personality rights are infringed upon.⁽¹⁵⁾ However, with the development of society and the diversification of civil legal relationships, such strict limitations effectively exclude compensation for pure pain, sorrow, or psychological harm.⁽¹⁶⁾ Especially for

contracts such as tourism service contracts and wedding service contracts, which inherently include a certain degree of spiritual enjoyment, it is often difficult to determine substantial harm to personality rights in cases of breach. However, the spiritual enjoyment that the parties anticipated when entering into the contract is not realized, leading to genuine mental damage. Despite this, the aggrieved party may find it challenging to claim compensation for such damages.

In the face of significant mental anguish caused by such breaches of contract, if the law does not provide compensation for this type of mental damage, it would clearly contradict social fairness and defy reason. Consequently, in judicial practice, some courts still uphold claims for compensation for mental damage based on Article 966 of Chinese Civil Code. For instance, in the case of Huang Xiuzhong v. Guide County Jin Shi You Yuan Wedding Shop⁽¹⁷⁾ The judge ruled that “ the wedding video footage of the newlyweds holds significant emotional value and carries a certain symbolic meaning for their personal identity. It is an irreplaceable and irreparable memento. If the defendant fails to deliver the footage, it causes substantial psychological harm to the plaintiff. In accordance with Article 996 of the Civil Code, the defendant is ordered to compensate the plaintiff with 3000 yuan for psychological consolation.”

Another example is the case of Jiang Shangjiao v. Beijing Xixi Yuanyuan Wedding Service Center⁽¹⁸⁾ the judge held that “ the wedding video and photography hold special commemorative significance for the newlyweds, the breach by Beijing Xixi Yuanyuan Wedding Service Center caused certain psychological harm to Zhi Qi and Jiang Shangjiao. In accordance with Article 996 of the Civil Code, Beijing Xixi Yuanyuan Wedding Service Center is ordered to pay a certain amount of mental damage as compensation.” These two cases clearly represent an expansive application of Article 966, which originally presupposes “infringement of personality rights” as a prerequisite for its application.

However, in judicial practice, there are also rulings in similar cases that strictly interpret “ infringement of personality rights ” and exclude the application of Article 996, instead invoking Article 1183 of Chinese Civil Code to award damages for psychological harm in tort. For example, in the case of Li Tiantong v. Liaoning Nanfang Creative Culture Media Co.⁽¹⁹⁾ the court ruled that “considering that the loss of the wedding video footage is indeed irreparable and would cause a certain degree of psychological harm to the plaintiff, this court, in accordance with Article 1183 of the Civil Code, determines that the defendant shall compensate the plaintiff with 1000 yuan.” This demonstrates that the judge in this case did not recognize the claim for mental damage arising from a breach of contract involving emotional interests.

Subjectivity in Determining “Severe Mental Damages”

The establishment of damages is based on the existence of harm, particularly in the realm of psychological damages, where the occurrence of harm is a prerequisite for making a claim.⁽²⁰⁾ However, the Article 996 sets a stringent criterion for compensable mental damages, stipulating that it must reach a “severe” degree. This implies that not all mental damages or discomfort arising from a breach of contract can be included within the scope of compensation. General mental damage resulting from a breach of contract that infringes upon personality rights is not covered under Article 996, which appears to contradict the principle of full compensation in contractual damages. Therefore, some scholars argue that as long as an individual’s psychological rights and interests are infringed upon, it constitutes mental damage, and compensation should be awarded. The severity of the damage is not the primary consideration, as even general mental damage represents an objectively existing injury.⁽²¹⁾

Indeed, the establishment of the “ severe mental damage” standard in Article 996 has specific historical reasons. The system of mental damage compensation system once revealed issues of overly broad application in practice, leading to adverse effects such as a surge in litigation and increased social costs.⁽²²⁾ Therefore, it was necessary to impose the limitation of “severity” on the degree of mental damage.

However, in judicial practice, there is no clear quantitative standard for determining “severe mental damage”, leading to the assessment of “severity” being entirely dependent on the judge’s subjective judgment. In some cases, the requirement of “severe mental damage” is even directly overlooked in the rulings.⁽²³⁾

Extraterritorial Laws on System of Compensation for Mental Damage in Breach of Contract

The construction of system of compensation for mental damage in breach of contract holds significant practical importance in modern society. Internationally, countries across different legal jurisdictions have also undergone a process from initially rejecting to eventually recognizing mental damage in breach of contract. However, from a comparative law perspective, no legal system provides remedies for all mental damages resulting from breach of contract, nor does any completely deny remedies for mental damages. In other words, the extent to which various countries accept the system of mental damages for breach of contract varies.⁽²⁴⁾ In order to better reflect the legislative value and legal significance of Article 996 of the Civil Code and to promote its uniform application in judicial practice, the following part mainly focuses on analyzing the issue under German, French and American law, with the aim of drawing on the legislative and judicial experiences of

different legal systems abroad to provide insights for improving the system of compensation for mental damages in breach of contract under Article 996 of Chinese Civil Code.

The System of Compensation for Mental Damage in Breach of Contract under German Law

German civil law has traditionally maintained a cautious stance towards compensation for psychological damages in cases of breach of contract. The original Article 253 of the German Civil Code stipulated that claims for psychological damages could only be made under specific circumstances prescribed by law. Article 847 can be regarded as one such special circumstance. According to Paragraph 2 of Article 847, monetary compensation for infringement of physical integrity, health, or deprivation of personal freedom does not require the presence of property damage as a prerequisite. However, the original Article 847 of the German Civil Code was categorized under provisions related to acts of tort. Therefore, prior to the reform of the law of obligations, the old German Civil Code only recognized the existence of compensation for mental damage within the realm of tort liability.⁽²⁵⁾

Since the 20th century, German law has also recognized the need to protect the mental interests of the non-breaching party in special service contracts such as tourism services, and has continuously broken through the constraints on mental damage compensation in judicial practice. To circumvent the limitations of the original Article 253 of the German Civil Code, German academia proposed the theory of “commercialization of non-property damages”, which has gradually been applied to special types of service contracts. For instance, in cases of mental damage resulting from breaches of tourism contracts, the theory posits that since pleasure can be “purchased” with money, these interests have already been “commercialized”. Therefore, the damage to these interests is no longer considered “non-property” damage but rather property damage. As property damage, it should be fully compensated, thereby bypassing the restrictions of the original Article 253.⁽²⁶⁾

Since the mid-20th century, German courts have gradually expanded the scope of non-property damage compensation through case law, thereby strengthening the protection of personality rights. However, the commercialization of non-property damages has not been formally incorporated into the legal system. To thoroughly address the issue of mental damage compensation for tourists in travel service contracts, Germany added a section on “travel contracts” during the 1979 revision of the German Civil Code. Article 651f stipulates: “If the trip is disrupted or significantly impaired, the traveler may also claim appropriate monetary compensation for the futile use of vacation time.” Through this provision, German law safeguards the legitimate rights and interests of tourists comprehensively.

In 2002, the reform of German contract law amended the German Civil Code, deleting the original Article 847 and adding a new paragraph to the original Article 253. This new paragraph stipulates that “in cases where compensation is required for harm caused by infringement of physical integrity, health, freedom, or sexual self-determination, fair monetary compensation may also be claimed for non-property damages.”⁽²⁷⁾ This is the core provision of the German Civil Code regarding monetary compensation for non-property damages, specifying the scope and conditions for mental damage compensation. Through this provision, German law protects the personality rights of natural persons and compensates for the mental damages and emotional harm caused by the infringement of physical integrity, health, freedom, or sexual self-determination. Since this provision is located under the general principles of the law of obligations, German civil law scholars theoretically tend to recognize psychological damage compensation based on contractual liability. However, according to the revised Article 253 of the German Civil Code, the scope of non-property damage compensation is still limited to “infringement of physical integrity, health, and deprivation of personal freedom.”

In summary, the system of compensation for mental damages in breach of contract under German Civil Code can be outlined in two aspects: On one hand, if the breach of contract infringes upon the general right of personality and causes psychological harm, the aggrieved party may claim compensation for mental damage due to the breach. On the other hand, if the breach results in mental damage but does not infringe upon the general right of personality, Only in the case of travel contracts, tourists can claim compensation for mental damages and emotional harm caused by the breach of contract.⁽²⁸⁾

The System of Compensation for Mental Damage in Breach of Contract under French Law

In contrast to German law, the French Civil Code has consistently maintained a very inclusive stance towards compensation for mental damage arising from breach of contract, with a clear legal framework and judicial practice for such damages.

In the French Civil Code, Article 1146, which pertains to liability for damages, provides the legal basis for compensation for mental damage. According to this article, if a contract is not fulfilled or is only partially fulfilled, resulting in harm to the aggrieved party, the breaching party must bear the liability for damages. This liability is not limited to economic losses but also includes emotional or mental damages caused by the breach. Such compensation for mental damage due to breach of contract is based on the principle of full compensation for breach, meaning that the law should fully compensate for all losses caused to the aggrieved party by the breach, whether material or mental.⁽²⁹⁾ Furthermore, Article 1231-1 of the French Civil Code extends the scope

of compensation for non-property damages, which includes mental suffering or emotional distress caused by a breach of contract. This possibility of compensation for non-property damages reflects the open attitude of French law towards mental damages in breach of contract.

In judicial practice, compensation for mental damages in breach of contract has also received broad support from judges in individual cases. For instance, in the case of *Porchet v. Rosa Bonheur*⁽³⁰⁾, Rosa Bonheur breached her agreement with her patron, Mr. Porchet, by failing to execute and deliver the painting as agreed. Consequently, the court ordered her to pay 4000 francs to compensate for the mental and material losses she caused to Mr. Porchet. French legal practice also demonstrates that compensation for mental damages is not limited to specific types of contracts but may apply across a wide range of contractual relationships. This broad applicability signifies that under French law, compensation for mental damage has become an integral part of the contractual remedies mechanism. It not only protects the economic interests of the parties involved but also reflects the respect and protection for their mental and emotional well-being.

Although French law is highly inclusive of compensation for mental damages, to limit judicial discretion, in France, medical evidence is typically required when awarding such compensation. When the health condition of the victim stabilizes, the court will summon medical experts, requiring them not only to describe the victim's injuries but also to quantify the extent of the damage in percentage terms. The physical or psychological suffering must be of considerable severity and persist for a long duration, and this severity and persistence must be supported by medical evidence.⁽³¹⁾ Overall, French law demonstrates its stringent requirements for the fulfillment of contractual obligations and comprehensive protection of the rights and interests of the parties involved in handling issues of mental damages arising from breach of contract. The relevant provisions of French Civil Code not only emphasize compensation for economic losses but also explicitly include compensation for mental damages, reflecting the law's respect and consideration for individuals' mental and emotional states.

The System of Compensation for Mental Damage in Breach of Contract under American Law

Traditional contract law theory and judicial practice in the US have consistently held that damages resulting from a breach of contract are generally limited to financial losses and do not extend to non-economic damages. This principle is reflected in both the Uniform Commercial Code and the Restatement of Contracts.

The Uniform Commercial Code emphasizes the principle of foreseeability in handling contract breaches, meaning that both parties should reasonably foresee the potential consequences of a breach at the time of contract formation. Mental damages, being a subjective experience, are generally difficult to foresee at the time of contract formation and are therefore typically excluded from the scope of compensation. However, if the nature of the contract makes mental damages a reasonably foreseeable consequence, such as in wedding service or medical service contracts, then such damages may be considered within the foreseeable scope of the contract and thus form the basis for compensation.⁽³²⁾

Section 353 of the Restatement of Contracts states: "Unless the breach of contract causes personal injury at the same time, or the breach of contract will lead to serious mental injury, the mental damage caused by emotional interference alone cannot be compensated." Therefore, the Restatement of Contracts generally does not recognize compensation for mental damages due to breach of contract, supporting such compensation only in exceptional cases. The first exception is existence of personal injury. Since common law typically does not strictly distinguish between the action of breach of contract and the action of tort, this situation can be resolved under tort rules. The second exception is that the breach of contract leads to great mental pain. However, there are some difficulties in how to identify major mental pain. Some scholars believe that the court should allow compensation for mental damage when the case dispute involves personal contracts rather than commercial contracts.⁽³³⁾ For example, in the case of *Lamm v. Shingleton*⁽³⁴⁾ The judge held that "when the nature of a contract is personal rather than commercial, the obligation of the contract is closely related to spiritual interests or emotions, and violation of this obligation will inevitably lead to mental pain or torture, and the parties should have foreseen this when signing the contract, so they can support compensation for mental damages."

In judicial practice, the general principle of American States in dealing with cases of compensation for breach of contract is that contract law usually does not compensate mental damages caused by breach of contract unless the essence and purpose of the contract explicitly involve mental peace. However, there are also some courts that show some flexibility in handling actual cases, and constantly expand the compensation for mental damages for breach of contract through judicial precedents, especially when the nature of the contract significantly involves or can directly affect the emotional and psychological health of the parties to the contract. For example, the breach of contracts such as wedding photography, holiday travel and medical services often directly affects the emotional state and psychological expectations of individuals. In these cases, if the breach of contract leads to obvious mental pain or emotional distress, the court may consider compensation for mental damage, which reflects the importance attached to the purpose of the contract and the expectations of the parties.

On the whole, American law emphasizes the principle of economy and predictability of contracts. Compensation for mental damages in breach of contract is usually only considered when the nature of contracts explicitly involves emotional peace or spiritual interests.

Recommendations on Improving System of Compensation for Mental Damage in Breach of Contract Under Chinese Law

From the legislative and judicial practice of Germany, France and the United States, it can be seen that there are different development paths, legislative and judicial status of the compensation system for mental damage due to breach of contract in various countries, but they all show acceptance and perfection of the system. The promulgation of Article 996 of Chinese Civil Code seems to provide a legislative basis for compensation for mental damage caused by breach of contract. However, both the theoretical circle and the judicial practice are faced with disputes over the legal nature, scope of application and determination of mental damage. Therefore, it is necessary to further improve the system based on China's actual situation and learn from the experience of other countries, so as to better protect the interests of both parties to the contract and promote substantive fairness and justice in contract performance.

To Clarify the Legal Attribute of Article 996 of the Civil Code

Independent Right of Claim

On the one hand, judging from the expression of Article 996 of the Civil Code, “the injured party's choice to request it to bear the liability for breach of contract does not affect the injured party's request for compensation for mental damages” actually involves two claims: one is the claim to request the defaulter to bear the liability for breach of contract before the concept of “without affecting”; One is the right to ask the defaulter to bear the liability for compensation for mental damage behind the concept of “no influence”. Constrained by the concept of “no influence”, the right of claim for liability for breach of contract is not the core intention of Article 996, but is used to illustrate that the right of claim for compensation for mental damage is independent of the previous right of claim for liability for breach of contract.⁽³⁵⁾

On the other hand, from the perspective of logical composition of legal norms, Article 996 of the Civil Code is divided into two parts with the boundary of “the aggrieved party chooses to request it to bear the liability for breach of contract”. Among them, the first part of this sentence stipulates the constitutive elements of claiming compensation for mental damage, which is the part of behavior mode; The latter part stipulates that you can claim compensation for mental damage after the constitutive requirements are met, which is the legal consequence part and belongs to the complete legal norm in logic composition. It can be used as the basic norm of the right to claim compensation for mental damage in the situation where the personal right of the relative person is infringed by the breach of contract, and the corresponding legal effect evaluation can be carried out. Therefore, Article 996 of the Civil Code plays a role as a basic norm of the right of claim rather than an auxiliary norm. In judicial practice, there are not a few cases in which the court uses Article 996 as the judgment basis to evaluate the legal effect. Therefore, Article 996 of the Civil Code plays a role as a basic norm of the right of claim rather than an auxiliary norm. In judicial practice, there are not a few cases in which the court uses Article 996 as the judgment basis to evaluate the legal effect.⁽³⁶⁾

It is worth noting that although Article 996 is an independent right of claim for compensation for mental damage caused by breach of contract, it still needs to meet the applicable conditions such as “breach of contract”, “damage to the other party's personality right” and “serious mental damage” in order to give relief to the parties' rights as a claim in a case, but this does not affect Article 996 itself as an independent claim basis to play a normative role.

The right to claim compensation for mental damage caused by breach of contract

In the traditional view of civil law, compensation for mental damage should be strictly limited to the scope of application of tort law, that is, such compensation is only applicable to intangible losses such as mental pain, emotional injury and personal dignity damage caused by tort. On the contrary, the category of damages for breach of contract is understood as focusing on property damage liability, that is, it only covers economic losses caused by breach of contract. Therefore, Article 186 of the Civil Code following the provisions of the Contract Law, the aggrieved party can choose to sue for breach of contract or tort. Because of this, Article 996 of the Civil Code is mistaken for only the special provision of Article 1183 of the Civil Code, and it is still a compensation for tort mental damage in essence. However, if understood in this way, in the case of mental damage caused by the breach of contract, the parties only need to claim compensation for mental damage of infringement according to Article 186 and Article 1183 of the Civil Code. Then the promulgation of Article 996 of the Civil Code will become meaningless. Moreover, in the civil law system, in the face of the same mental damage, the difference in compensation results is caused by different liability bases, that is, compensation can be obtained in tort cases, but it cannot be obtained in breach of contract cases, which obviously violates

the value of fairness and justice pursued by civil law.⁽³⁷⁾ Therefore, Article 996 of Chinese Civil Code should be understood as making up for the gap in the protection of spiritual interests in the framework of liability for breach of contract. In fact, compensation for mental damage is carefully included in the category of liability for breach of contract and should be distinguished from the system of compensation for tort mental damage.

In addition, from the perspective of extraterritorial laws, the provisions of the original article 847 of the German Civil Code on compensation for mental damage originally belonged to the tort part of the debt law, so the traditional concept that compensation for mental damage can only be put forward in tort litigation is deeply rooted. In order to establish the system of compensation for mental damage caused by breach of contract, the debt law reform in 2002 made a major adjustment, reconstructing the original 847 articles into the current 253 articles and transferring them to the general provisions of Obligation law, thus the compensation for mental damage naturally extended to the mental damage caused by breach of contract in contractual relations. In the future, Chinese Civil Code can also follow the example of the German Civil Code, and move Article 996 from the fourth part of personality rights to the fourth part of contract, so that the compensation system for breach of contract will officially shed the cloak of tort liability.

To Expand the scope of application of compensation for mental damage caused by breach of contract

Judging from the literal expression of Article 996 of Chinese Civil Code, it can only be applied when the breach of contract also causes damage to personality rights, which makes it difficult to obtain compensation for mental damage according to Article 996 for breach of contracts involving emotional interests, which seriously limits the scope of application of compensation for mental damage caused by breach of contract.

In comparative law, French law gives equal relief to property damage and non-property damage caused by breach of contract according to principle of full compensation. That is to say, the aggrieved party does not need to prove that the personality right has been damaged, but can claim the liability for mental damages for breach of contract by proving the mental pain or emotional distress caused by the breach of contract. Therefore, the contracts involving emotional interests under French law can of course be applied to the rules of compensation for moral damages for breach of contract. Article 253 of the German Civil Code also stipulates that compensation for breach of contract or infringement damages can only be claimed in cases where the self-determination of body, health, freedom and sex is infringed. Because this article cannot fully protect the general personality rights, the German Civil Code has a special chapter on travel contracts, which stipulates that passengers can also request appropriate monetary compensation for wasting their vacation time in vain, which makes up for the limitation of Article 253 of the German Civil Code. Although the United States abides by the basic principle that damages arising from contract breach are usually limited to financial losses, as a case law country, the compensation for mental damages for breach of contract has been moderately expanded through judicial precedents in judicial practice, which makes it possible to apply the compensation for mental damages for breach of contract to wedding photography, holiday travel and medical services.

Spiritual performance of interests plays an important role in promoting personality development and realizing social pluralistic development, and should be protected by the compensation system for mental damage caused by breach of contract in the Civil Code. However, this research believes that under the current legislative style and judicial practice of Article 996 of the Civil Code, it is not suitable for China to follow the example of France and admit the compensation for mental damage caused by breach of contract without restriction, but it can follow the example of Germany and the United States to expand the “personality right is damaged” to “special mental interests are damaged” by listing the types of contracts applicable to compensation for mental damage caused by breach of contract. For example, under the legislative background that Article 996 of the current Civil Code limits the compensation for mental damage caused by breach of contract to “the right of personality is damaged”, the Supreme People’s Court can apply the compensation system for mental damage caused by breach of contract to service contracts with the purpose of providing pleasure or eliminating troubles, such as travel contracts and medical service contracts, or related service contracts with such special objects as weddings and funerals, so as to broaden the scope of compensation for mental damage caused by breach of contract.

To Establish an objective criteria for “serious mental damage”

No matter what kind of breach of contract, it may bring short-term or long-term mental damage, and it is highly subjective and varies from person to person. Therefore, it is impossible and unnecessary to compensate for all mental damages. “Serious mental damage” in Article 996 of the Civil Code can not only fully protect the interests of the observant party, but also prevent excessive criticism of the defaulter. For the judgment of “severity”, this research recommends to learn from the beneficial experience of comparative law and grasp it from the following aspects:

First of all, from the provisions of Article 253 of the German Civil Code, the scope of non-property damages is limited to “infringement of body, health and deprivation of personal freedom”, that is, the protection of

material personality rights such as life rights, body rights and health rights by law has priority. In the case that the victims' rights to life, body rights and health are damaged, the law acquiesces that the parties have also suffered serious mental damage. Therefore, in China's judicial practice, in the case of infringement of physical rights and health rights, material personality interests should be judged according to the level of disability, and mental damages can be filed if they reach a certain disability standard. For mental damage that does not meet the disability standard, we can comprehensively judge whether it constitutes serious mental damage by combining the personal background, social evaluation, duration and other factors of the victim.⁽³⁸⁾

Secondly, Since the French Civil Code upholds the principle of comprehensive compensation for mental damages for breach of contract. In order to limit the discretion of judges, judges usually need medical evidence when making judgments on mental damages. This research thinks that China can follow the example of French judicial judgment and objectively judge the compensation for serious mental damage from the medical and psychological perspectives. On the one hand, psychiatrists professionally assess the victims to determine whether they have mental illness (such as depression, anxiety, post-traumatic stress reaction, etc.) and assess their severity. On the other hand, the degree of mental pain of victims can be quantified by standardized psychological testing tools. Finally, doctors can comprehensively score the victims' mental damage based on the results of professional diagnosis and standardized psychological tests, and determine whether they are in serious mental damage from a professional perspective according to the scores.

Finally, as a statutory country, although the cases are not legally binding in China, the guiding cases issued by the Supreme People's Court have important reference and guidance for lower courts. Therefore, we can follow the example of the United States and gradually improve the system of compensation for mental damages for breach of contract through judicial precedents. For example, the Supreme People's Court can issue typical cases to clarify the comprehensive evaluation factors and measurement standards of compensation for serious mental damages, and constantly promote the objectivity and unity of the evaluation standards for serious mental damages in judicial practice.

CONCLUSIONS

The system of compensation for mental damage caused by breach of contract is a controversial issue in modern civil law system, which embodies the protection of personal dignity and emotional interests by law. For a long time, Chinese civil law has always adhered to the dual relief system of breach of contract and tort liability. According to the traditional concept of civil law, mental damage should be protected by tort liability rules, and the claim for compensation for mental damage should not be supported in the lawsuit of breach of contract. However, with the advancement of times, the emergence of new contractual relationships and the increasing awareness of the people on the protection of intangible interests, the introduction of Article 996 of Chinese Civil Code combines breach of contract with compensation for mental damages for the first time, which makes the claim for compensation for mental damages in the lawsuit of breach of contract have a clear legal basis.

Although the promulgation of Article 996 of the Civil Code has solved the dilemma that compensation for mental damage due to breach of contract cannot be relied upon, it also faces many challenges. First of all, the legal nature of this article is unclear, which has caused disputes in the academic circles on the rights of independent claim, auxiliary claim, and there have also been cases in which the legal basis for applying compensation for mental damages for breach of contract is chaotic in judicial practice. Secondly, the restrictive condition of Article 996 "damaging the other party's personality right" makes it lack of applicable space to claim compensation for breach of contract in violation of contracts involving emotional interest. In contrast, there are indeed many judgments supporting compensation for spiritual damage in violation of spiritual interest contracts in judicial practice. Thirdly, the determination of "serious mental damage" in Article 996 of the Civil Code lacks clear quantitative standards, which leads to the fact that "serious or not" depends entirely on the judge's personal subjective judgment in judicial practice, and even some judgments directly ignore the applicable requirement of "serious mental damage".

In the future, with the enhancement of social awareness of the protection of personality rights and the continuous improvement of the legal system, the system of compensation for mental damage caused by breach of contract will play a more important role in protecting the spiritual interests of natural persons and maintaining the fairness of contracts, and will be more widely recognized and applied internationally. After investigating the system of compensating for mental damage caused by breach of contract in major countries of civil law and common law systems, this research puts forward to improve the system of compensating for mental damage caused by breach of contract in China from three aspects, namely, clarifying the legal attribute of Article 966 of the Civil Code, expanding the application scope of compensation for mental damage caused by breach of contract, and establishing the objective standard of "serious mental damage".

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None.

CONFLICT OF INTEREST

Authors declare that there is no conflict of interest.

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