

Research on Destructive Cults

Selected Papers of International Symposium

Centre for the Study of Destructive Cults, CASS

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EDITOR'S INTRODUCTION

The eighteen papers in this book are selected from three international conferences held by the academic institutions affiliated with Chinese Academy of Social Science (CASS) from 2006 to 2009. They are “International Symposium on the Legitimate Exercise of the Right to Appeal” sponsored by Institute of Law from December 11th to 12th, 2006 in Shanghai, “International Symposium on Cultic Studies” sponsored by Institute of World Religions from December 6th to 8th, 2007 in Shenzhen, and “International Symposium on Cultic Studies (Shenzhen) – Harm of Destructive Cults and Prevention” sponsored by the Center for the Study of Destructive Cults from January 9th to 11th, 2009 in Shenzhen, respectively. Dozens of scholars with different research fields such as Law, Religion, Sociology, Political Science, Philosophy, History, Psychology and Psychiatry, as well as some social workers and religious people, attended the conferences. They came from China (including Taiwan and Hongkong), U. S. A., Canada, Britain, France, Germany, Russia, Ukraine, Japan, Korea, Israel and Australia. The major topics in the conferences included how “Falun

Gong” and other destructive cults breed, develop, and endanger the whole world, in particular, the mechanism of the abuse of “free rights” such as litigation right and belief right, willfully wasted public resources, and seriously violated both public interests and civil rights.

The recognition and comprehensive control of destructive cults are the chief research subjects conducted by the Centre for the Study of Destructive Cults which was established at the foundation of “Falun Gong” Project (1999) by CASS. The situations about “cults” have also caused international interests for long term, while they are encountered by governors as difficult problems. Thus, contributions the three conferences made are extensively instructive and significant; at the same time, these conferences reveal that CASS is dominant in interdisciplinary theoretic researches and cross-sectional coordination and it plays an important role in international academic communications. In order to share the achievements that the conferees issued in interactions domestically and internationally, and to stimulate people to take their own responsibility in constructing a harmonious world, we edit this collection of papers, and authorize China Social Sciences Press to publish the book in both Chinese and English versions.

We deeply appreciate the domestic and international scholars, religious people and social workers, who attended the conferences and submitted their high quality papers, and also appreciate our staffs and the news media, who worked hard during the conferences and the translators, who carefully revised the Chinese and English editions for many times. We hope to work together with more people in relative

fields throughout the world, and start a new stage in academic research and international communication in the future.

November, 2009

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Constitutional Analysis of the Prohibition of the Abuse of Process

Li Lin^{*}, Li Yong^{**}

I. Preface

There is a saying in China that “thieves are the first to complain”. At present there are indeed some individuals who, for various reasons, including its low cost, use litigation in the pursuit of improper profit or to cause distress to others. According to *Black's Law Dictionary*, the improper use of the regular court process to accomplish improper and illegal ends that run counter to the proper object of the legal process is called the abuse of process or malicious litigation. There are precedents of abuse of process in the ancient Roman era, and systematic attempts were made to prevent and eliminate them. For instance, *Justinia's Institutions* reveals that the ancient Romans used fines and oaths to prevent the abuse of process.^①

* Li Lin, Director of Law Institute, CASS.

** Li Yong, Professor of Law School, Yangzhou University.

① *Justinia's Institutions*, The Commercial Press, 1994, p. 236.

Recently in China, there have been an increasing number of cases involving malicious litigation, and the abuse of process has become a prominent issue. Abuse of process has become a social harm that burdens the judiciary, impairs judicial efficiency, interferes with judicial order, jeopardizes the legitimate rights and interests of the people, and influences justice while undermining the authority and dignity of law. The right of process is an integral part of judicial efficiency and justice; however, the emergence of a large amount of malicious litigation has greatly reduced the efficiency of the courts in hearing cases. Because a number of cases that do not meet the legitimate conditions for filing have been filed, it has become unavoidable that certain cases that need prompt hearing have been delayed, therefore interfering with the meting out of timely and impartial justice. From the perspective of safeguarding human rights, it is a fundamental constitutional right for citizens not to be sued for illegal and groundless proceedings without due cause. Abuse of process wastes the time, money and energy of the parties sued, and also infringes on their constitutional rights; from the perspective of a litigant economy, such acts infringe on the interests of the majority and waste national judicial resources. This runs against the principle of the judicial economy, and from the perspective of social stability, "makes trouble where none existed". It is thus sure to effect the construction of a stable, orderly and harmonious society. The abuse of process is now an obstacle the judicial system faces in its efforts to promptly and impartially hear cases. It also obstructs the protection of citizens by the judiciary. As such, it is necessary to establish a mechanism to eliminate this "abuse of process". Provisions under the

Constitution regarding the protection of process and the prohibition of abuse offer the basis and foundation for the enactment of specific laws. The elimination of abuse will be a long and systematic effort that requires setting up a systematic preventive and safeguarding mechanism based on the Constitution and also further promoting and developing concepts so that citizens can defend their rights and legitimate interests.

II. Constitutional Basis for Prohibition of Abuse of Process

The right of process is the right to initiate judicial proceedings. It is also the right to bring a lawsuit to court to protect one's personal rights and property interests. The right of process as provided in the Constitution is the bridge between citizen rights and judicial protection. It is the precondition for, and the basis on which, citizens safeguard their legitimate rights and interests. It is the instrument and safeguard with which citizens realize their constitutional rights. The right of process systemically "realizes" the human rights conferred by law. Therefore the right of process as a legal remedy was "the first systematic human right in modern law-ruling society"^①. The right of process is a constitutional right of such significance that it is expressly or implicitly declared in the constitutions of most countries. It is provided in Article 8 of the Universal Declaration of Human Rights that "everyone has the right to an effective remedy by competent

① Mo Jihong, *Logical Basis of Modern Constitutions*, Law Press, 2001, p. 301.

national tribunals for acts that violate their fundamental rights as granted by constitutions or by law". Further, it is provided in Article 46 of the Federal Constitution of Russia that everyone has the right of process to protect his or her rights and freedom, and it is provided in Article 21 of the Rumanian Constitution that (i) everyone may bring a lawsuit to the judicial authority to protect his rights, freedom and legitimate rights and interests; and (ii) no law shall impair the exercise of such a right. Although there are no express provisions regarding the right of process in the constitutions of the United States and United Kingdom, this right is implicit in relevant provisions under constitutional law or in constitutional precedents.

In law, rights are the origin of power and power is a guarantee for rights. Power and rights may overlap under certain conditions. "In the sense that an obligee has the right to request others to carry out certain actions or refrain from doing so, this right is in fact a kind of 'power' in terms of its influence over others." Anybody who has power might abuse such power. This is an eternal truth which may be applied to an unrestricted right. The main purpose of constitutional law is to protect citizen rights, which means preventing any particular power (right) from becoming paramount. The system of checks and balances is a systematic instrument that effectively prevents the collusion of power and vice, and its prohibitions regarding the abuse of rights (including the right to process) comprise an important measure for containing the systematic expansion of rights.

Generally speaking, most countries stipulate provisions on the prohibition of abuse of rights (including the right of process) by citizens. They do this through provisions restricting rights that

provide the undisputable position of the right of process under constitutional law. Such provisions are very cautious, which is why they are commonly referred to as the theory of cautious restriction. That is, constitutional law requires citizens to exercise their rights in good faith and prohibits citizens from maliciously exercising their rights, while at the same time providing rights and ensuring the protection of the rights of citizens to the greatest extent as possible. For instance, it is provided in Article 29 of the Universal Declaration of Human Rights that (i) everyone has a duty to the community, only in which the free and full development of their personality is possible; (ii) in the exercise of their rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just requirements of morality, public order and general welfare in a democratic society; and (iii) these rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations. Section 3 of Article 55 under the Federal Constitution of Russia provides that federal laws may only be allowed to restrict citizen rights and freedoms to the extent necessary to safeguard basic principles and morality under the constitutional system, the health of others, the rights and legitimate interests and benefits of others, and national defense and national security. Article 49 of the Rumanian Constitution provides restrictions on the exercise of certain rights and freedoms; (i) restrictions on the exercise of certain rights shall not be allowed unless they are enacted through law and are necessary for certain conditions that include the

safeguarding of national security, order, public health, and morality, as well as citizen rights and freedoms, and through education in criminal law, the prevention of natural disasters or other calamitous consequences; and (ii) the extent of the restrictions shall be subject to fixed conditions and shall not invalidate rights and freedoms, and so forth.

III. Rationale and Standards of Constitutional Prohibitions on the Abuse of the Right of Process

In modern societies governed by law, the constitutional prohibition of the right of process and the constitutional protection of the right of process reach the same goal by different routes. On one hand, individual's freedoms and rights need to be protected sufficiently in a systematic way; on the other hand, rights are no longer taken as absolute, invariable and infinite, and a more indepth understanding of rights and limited rights is helpful for the protection of rights. "Any abuse of citizen's freedoms and rights is against constitutional law and shall be punished." This is commonly acknowledged under the constitutional laws of each country. Eliminating and preventing the abuse of the right of process is a precondition and safeguard for the majority of citizens to exercise their right of process more effectively. Preventing abuse of the right of process, however, should also avoid infringing upon the legitimate rights and benefits of citizens in their right of process, and these restrictions should be imposed cautiously, in line with the principles of legality, reasonability and necessity in terms

of the protection they offer the right of process.

i. Rationale for the Constitution to Prevent the Right of Process of Citizens

In China, because of thousands of years of history in which rights have been restrained and the desires of the people for those rights frustrated, although people have come to realize the possible severe consequence of combining human nature with unrestricted power, they have paid little attention to the possible outcomes of combining human nature with unregulated liberty. Some scholars are of the opinion that the “abuse of rights is nonsense” and that the “abuse of process is hardly established as it is a right conferred by constitutional law”. In fact, rights provided by constitutional law may also be abused. That is why constitutional law has provisions to restrict rights. In addition, the abuse of rights and abuse of the right of process often happen in reality. “The lack of balance between power and rights happens in practice, and there is not only the issue of expanding rights, which impairs the proper exercise of power, but also the issue of expanding power, which impairs the legitimate rights of citizens.”^① Each of the cases, for instance, “*Huanzhu Princess Poisonous Spirit*”, “*Pondering of Age* by Zhao Zhongxiang Infringement on Consumption Rights”, “Canadian ‘Falun Gong’ vs. Zhou Jinxing, President of the *Chinese Press*” and *Rv Bow St Stip Magistrate ex parte Cherry* (1990) 91 Cr App R 283, UK, involved instances of abuse of the right of process. The legitimate rights and interests of all the parties sued were

^① Xiao Yang, *The Spirit of Constitution*, *Legal Daily*, December 4, 2003.

jeopardized, and the judicial order was negatively affected to a certain extent in the respective countries of these cases. As a law that is strongly foreseeable, constitutional law provides protection to the right of process and restricts abuse of the same based on considerations of human nature. It strikes a balance while dealing with rights and interests.

Mr. Wang Haiming, one of China's famous ethics scholars, divided human ethical behaviors into 16 categories defined by their combination of purpose and means: absolute self-regard, altruism for self, self-harm for altruism, harming others for self-regard, self-regard for others, absolute altruism, self-sacrifice, harming others for altruism, self-regard for self-harm, self-harm for altruism, absolute self-harm, harming others for self-harm, harming others for self-regard, harming others for altruism, self-harm for harming others, and absolute harming others.^① He concludes that "self-regard is the aim that solicits all the ethical behaviors of a human being – altruism, self-regard, harming others and self-harm – therefore it is also the ultimate reason and motive for ethical behavior in man"^②. In most situations, people are self-interested. This is the basis for the proliferation of man. Humans will unavoidably keep seeking their personal rights and benefits as a natural rule; however, because of the unlimited ability to pursue personal rights, laws conferred to protect citizen rights may potentially be abused without restriction. The right of process is the fundamental right to ensure the realization of citizen rights, and it

① Wang Haiming, *Human Nature*, The Commercial Press, 2005, p. 49.

② Ibid., p. 85.

is the most commonly used right in the daily lives of citizens. Theoretically speaking, the possibility for the abuse of this right is relatively large, and it has also been proven that such a possibility is often transformed into a reality. Therefore, it is necessary to build a system that protects yet at the same time restricts the right of process for the sake of justice.

Before its reforms and opening-up to the outside world, more emphasis was placed on the standards of legal obligation in China, and the attitude towards individual rights and benefits was relatively negative. During the “Cultural Revolution”, citizen rights were “legal rights” and were seriously criticized as being something bourgeois. In the early 1990s, the legal field grappled with the concept of a “standard of rights”. This stressed the restructuring of China’s legal theory on the basis of rights in the new age and provided important theoretical support for the development of legal theories and for the protection of citizen rights. However, the excessive stress on rights caused some citizens to overlook their legal obligations, thus resulting in new legal issues and new social problems. Abuse of the right of process is one of the new social problems that appeared before such a backdrop. As mentioned by Rawls, the rationale for restricting freedom originates from freedom itself. Freedom and rights (power) are both characterized as infinitely expandable. Restrictions on the abuse of rights under constitutional law are foreseeable provisions premised on a consideration of the nature of rights themselves. Constitutional law is the fundamental law of a country; theoretically speaking, therefore, it prevails over any other laws. Such characteristics of constitutional law require great foresight when enacting it. In most countries, restrictions