

Philosophical Thinking on the Interpretation System of the Macao Basic Law

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I. Introduction

Since the implementation of the *Basic Law of the Macao Special Administrative Region of the People's Republic of China* (hereinafter as "the Macao Basic Law"), the courts of the Macao Special Administrative Region (SAR) has been performing its statutory functions, and made successive interpretations on relevant provisions in some individual cases. In December 2011, the Standing Committee of the National People's Congress (NPC) exercised the interpretation power of the Macao Basic Law, and made interpretations on Annex I and Annex II of the Macao Basic Law, which means that the interpretation system set up in the Macao Basic Law has been fully initiated. So far, despite there are no legal cases in Macao similar to those involved in the Hong Kong Basic Law that the Hong Kong SAR submitted the law interpretations to the Standing Committee of the NPC, it does not mean that the problems between the Central Government and the Macao SAR Government concerning the interpretation of the Basic Laws has been properly arranged in the interpretation system of the Macao Basic Law. In fact, the law interpretation concept in Macao, especially the "constitution interpretation" theory, is not only different from that of the Mainland China, but also different from that of the Hong Kong SAR where the Common Law concept is adopted. Therefore, it is the basic link for understanding the interpretation system of the Macao Basic Law to carefully comb the differences of the "Two Systems" in the law interpretation between Macao and Mainland China.

II. Norms and Factual Description

The People's Republic of China (PRC) resumed the exercise of sovereignty over Macao on 20th December 1999. The NPC formulated the Macao Basic Law in accordance with the *Constitution of the People's Republic of China* (hereinafter as "the Constitution") and the *Joint Declaration of the Government of the People's Republic of China and the Government of the Republic of Portugal on the Question of Macao* (hereinafter as "the Sino-Portuguese Joint Declaration"), and confirmed the new constitutional order for the social development of Macao. The Macao Basic Law is both a national law to implement the "One Country, Two Systems" policy and a constitutional document for the development of the political and economic order in Macao.¹ Thus, as the same as all civil law regions, the Macao SAR started the systematized legal system construction system with the command of the Macao Basic Law to strive to eliminate the contradictions and conflicts among the systems and norms. Based on the purpose of the force

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guarantee of the Macao Basic Law, it is necessary to set up an effective interpretation system of the Macao Basic Law, so as to ensure the full practice of the articles of the Macao Basic Law and the governance according to the law. Definite specifications have been made on the attribution and exercise of the power of interpretation in Article 143 of the Macao Basic Law.

Firstly, the power of interpretation of the Macao Basic Law shall be vested in the Standing Committee of the NPC, which is the reflection of the centralized legislation and unification legal system of China as a unitary system country. In China, according to Clause 1 and Clause 4, Section 2, Article 67 of the Constitution in force, the power of interpretation of the Constitution and laws shall be vested in the Standing Committee of the NPC. The Macao Basic Law, as a national law, shall naturally follow this rule. In accordance with the regulations of the NPC on the *Resolutions on Strengthening the Law Interpretation* in 1981, the Standing Committee of the NPC, when it is necessary to specify the legal provision limits or make supplementary regulations, can exercise the power of interpretation of law without a specific case involving in relevant laws. Meanwhile, it is regulated that the problems of specific application laws and decrees in the court trials shall be vested in the Supreme People's Court. It is regulated in Article 42 of the *Legislation Law of the People's Republic of China* implemented on 1st July 2000 that the power of law interpretation shall be vested in the Standing Committee of the NPC. When the legal provisions need to further specify the specific meaning, new situations arising after the formulation of the law, and applicable law basis, the laws shall be vested in the Standing Committee of the NPC. Based on these regulations, the power of interpretation of the Macao Basic Law shall also be vested in Standing Committee of the NPC, so as to guarantee the nationwide unified laws, and conform to the requirements of the existing constitutional and political orders of the state.

Secondly, the Standing Committee of the NPC shall authorize the courts of the Macao SAR to interpret on their own, in adjudicating cases, the provisions of the Macao Basic Law which are within the limits of the autonomy of the SAR. Although the Macao Basic Law is a national law with nationwide legal force, its main area of application is the Macao SAR. It is unnecessary and impossible for the Standing Committee of the NPC to make interpretations on various problems of the Macao Basic Law arisen in the Macao SAR. It is an inevitable choice for local agencies to be responsible for the interpretation. However, in the legal process of Macao, the interpretation of laws shall be carried out by the courts. Therefore, the courts of the Macao SAR have been authorized to interpret the Macao Basic Law. It is remarkable that, in general, the term "the provisions within the limits of the autonomy of the Region" refers to the provisions that the Macao SAR has the power to exercise the power of administration in accordance with the provisions of the Macao Basic Law. However, as for which of the provisions are within the limits of the autonomy of the region? There is no clear stating in the Macao Basic Law. Therefore, the person concerned in the case, the courts of the Macao SAR, the Macao SAR Government and the Central Government may have different understanding, and it is possible to lead to legal and political controversy.

Thirdly, the courts of the Macao SAR may also interpret other provisions of the Macao Basic Law in adjudicating cases. Therefore, the courts of the Macao SAR may actually make interpretations on all provisions of the Macao Basic Law in the cases. As for the regulations that the courts of the Macao SAR has overall interpretations on the Macao Basic Law, the hints of Xiao Weiyun, a famous constitutional scholar in China and expert of the Basic Laws, are of instructive significance. He believes that "the Basic Law is an extremely important law instead of a purely local law. There are many contents about the relationship between the Central Government and the SARs regulated in the Basic Law. If it is completely interpreted without any limits by a local court in the cases, the interpretation will not only affect the SARs, but also affect the whole country. Therefore, the unlimited interpretation seems inappropriate."² Based on this consideration, relevant restrictions lie in the Macao Basic Law that "if the courts of the Region, in adjudicating cases, need to interpret the provisions of this Law concerning affairs which are the responsibility of the Central

People's Government, or concerning the relationship between the Central Authorities and the Region, and if such interpretation will affect the judgments in the cases, the courts of the Region shall, before making their final judgments which are not appealable, seek an interpretation of the relevant provisions from the Standing Committee of the National People's Congress through the Court of Final Appeal of the Region." (Article 143)

Fourthly, the Standing Committee of the NPC shall consult its Committee for the Basic Law of the Macao SAR before giving an interpretation of the Macao Basic Law, which is required by the procedure for the Standing Committee of the NPC to interpret the Macao Basic Law. On 31st March 1993, the proposal to establish the Committee for the Basic Law of the Macao SAR was approved at the 1st Session of the 8th NPC. The Committee for the Basic Law of the Macao Special Administrative Region is composed of five people from the Mainland China and five people from Macao appointed by the Standing Committee of the NPC, including the legal professionals with the tenure of five years. The Committee is actually the bridge connecting the Central Government and the Macao SAR, serving as a buffer between the Central Government and the Macao SAR. The uncertainty of the provisions lies in that what the impacts of the Committee for the Basic Law of the Macao SAR on the interpretations of the Standing Committee of the NPC are. That is to say, whether the opinions of the Committee for the Basic Law of the Macao SAR constitute a substantive constraint on the interpretation of the Standing Committee of the NPC?

In theory, the purpose of setting up the Committee for the Basic Law of the Macao SAR is to objectively and comprehensively reflect the actual situation in the Macao SAR, and to help reach a consensus between the Central Government and the Macao SAR. Therefore, without rigid constraints of the opinions of the Committee for the Basic Law of the Macao SAR, interpretations of the Standing Committee of the NPC shall be made on the basis of full understanding and respect of the opinions of the Committee for the Basic Law of the Macao SAR. From the current practice of view, in the several interpretation actions of the Standing Committee of the NPC, as the specific opinions of the Committee for the Basic Law of the Macao SAR were not disclosed, the judgment cannot be made on the connections of the two.

Seen from the above provisions, it is clearly specified in the Macao Basic Law that the power of interpretation shall be vested in the Standing Committee of the NPC, and meanwhile, the Standing Committee of the NPC shall authorize the courts of the Macao SAR to interpret the Macao Basic Law in adjudicating cases, thus forming a layered operation mode of the power of interpretation with differences in the interpretation content and effectiveness. It is unique and peculiar to try to maintain the original judicial power and the dignity and supremacy of the Central Authorities. However, the degree of realization of the system concept shall be tested by the practice of the system. In the following part, this paper will make a brief review on the events involving the interpretation of the Macao Basic Law since the implementation of the Macao Basic Law so as to get an overview on the abundant practice of the interpretation of the Macao Basic Law, and find out the problems and confusions arising in the practice of the interpretation of the Macao Basic Law.

Firstly, the interpretation of the courts in the Macao SAR on the practice of the Macao Basic Law is explored. At the beginning of the return, the courts of the Macao SAR have encountered the case of the interpretation of the Macao Basic Law. On 7th October 1999, the High Court of the Macao SAR accepted a claim of the Party A, namely the interpretation on Article 293 of the *Macao Criminal Procedure Code* promulgated in 1996 and Clause 1, Article 53 of the *Publication Law of Macao*, and submitted to the Constitutional Court of Portugal for specific constitutional review. On 20th December 1999, after the reunification, the courts of the Macao SAR terminated the case proceedings according to the regulations of the *Law of Judicial Organization Outline*.³ Therefore, Party A proposed to restart the appealing procedures so as to review the effectiveness of relevant laws and regulations according to the Macao Basic Law. Regarding this, the Court of Final Appeal believes that "in the old legal system of Macao, there is no appealing for violations against the

Basic Law of the Macao Special Administrative Region of applicable laws and regulations to the judicial judgment review... Even now (referring to after the reunification), there are no special appealing procedures stipulated in the laws for reviewing whether the laws and regulations violate the Basic Law... Therefore, if it is allowed to restart the appealing procedure, it means to set up a new appealing type neither stipulated in the existing laws, nor in the laws when the appeal is filed. Correspondingly, we shall not restart the appealing procedures on the ground of violations of the Basic Law to review the effectiveness of the applicable laws and regulations in the judicial judgment review.” After then, the courts of the Macao SAR made consecutive interpretations on relevant articles of the Macao Basic Law in the cases such as whether the administrative regulations violates the Macao Basic Law, and whether the *Land Law* violates the Macao Basic Law. Seen from the practice of the courts, the interpretation system of the Macao Basic Law has been further specified in the following aspects: (1) Subject: The courts at various levels of the Macao SAR have the power to interpret the Macao Basic Law. However, restricted by the action level and the independence of the judges, the problems concerning the Macao Basic Law in many cases failed to be handled by the Court of Final Appeal, resulting the unification confusions of the rule of law with the Macao Basic Law as the core; (2) Procedure: As is mentioned above, it is clearly considered by the courts of the Macao SAR that there are no special judicial procedures for the Macao Basic Law in the Macao SAR. Therefore, the Macao Basic Law does not have a special proceeding. Therefore, the person concerned has no right to take an action against the disputes of the Macao Basic Law, but can make a request on the interpretation on the Macao Basic Law in specific individual disputes such as criminal, civil or administrative proceedings. Or the judges can initiatively find out the problems about the Macao Basic Law to be interpreted in particular cases. (3) Force: The courts of the Macao SAR declare that the identified laws and regulations that breach the Macao Basic Law are not applicable only in individual cases, instead of denying its legal force in a general sense. Obviously, this kind of approach can reflect a considerable degree of judicial self-control; however, there are legal confusions on whether the provisions abandoned by the courts are still laws.

Secondly, the practice of the Standing Committee of the NPC interpreting the Macao Basic Law is investigated. By the end of 2011, the Standing Committee of the NPC made an interpretation on the Macao Basic Law for the first time. The interpretation was made under the background of the approaching of the Fifth Legislative Council Election of the Macao SAR in 2013 and the Fourth Chief Executive Election of the Macao SAR in 2014. The SAR Government put forward it as an important part for the administration in 2012 to deal with the question whether the two electoral methods will be modified. On 17th November 2012, Fernando Chui Sai On, the Chief Executive of the Macao SAR, sent a letter to Wu Bangguo, the then Chairman of the NPC, requesting the Standing Committee of the NPC to decide whether it is necessary to make interpretation on the provisions of Article 7 of Annex I and Article 3 of Annex II to the Macao Basic Law. On 31st December 2011, the Standing Committee of the NPC made interpretations on relevant provisions, combed the meaning of relevant words and phrases, clarified the specific steps for the democratic constitutional development of Macao, and put forward the *Decision of the Standing Committee of the National People’s Congress on the Methods for Forming the Legislative Council in 2013 and Selecting the Chief Executive in 2014 of the Macao Special Administrative Region* on 29th February 2012. Since then, the whole interpretation process has drawn a conclusion, pointing out the direction and path for the constitutional development of Macao in two aspects, namely procedure and entity. Generally speaking, the interpretation process of the Standing Committee of the NPC is in an order, showing the resolutions and confidences of the Central Government to jointly develop the democratic political system of Macao with the SAR Government. Seen from the interpretation process, the following characteristics were embodied in the exercise of the power of interpretation on the Macao Basic Law of the Standing Committee of

the NPC: (1) The main body participated not only includes the Standing Committee of the NPC exercising the power of interpretation, but also includes the Chief Executive of the Macao SAR submitting for interpretation and the Committee for the Basic Law of the Macao SAR responsible for consultations. (2) The objects to be interpreted are the meaning of the articles in the Annexes to the Macao Basic Law, which belong to abstract interpretation. (3) The judicial proceedings are adopted with stronger color of political consultation. (4) The interpretation effectiveness is of the significance of universality, supremacy and finality.

III. Epistemological Foundations and Limits of the Law Interpretation by the Standing Committee of the NPC

The Standing Committee of the NPC is responsible for the interpretation of the laws, which stems from the system of people's congresses and the people's sovereignty principle and democratic centralism embodied in the system of people's congresses. The background theoretical basis can be traced back to the thought of popular sovereignty and originalism law interpretation philosophy of Rousseau.

Firstly, in theory, the people's congresses system stresses that the people have national sovereignty; the law must be a manifestation of the will of the people; the laws representing the will of the people shall be interpreted by the representative organ of the people; and the legislative interpretation is justified thereof. Tracing the source, Rousseau's theory of people's sovereignty is the philosophical support for legislative interpretation. In his work *Du Contrat Social ou Principes du Droit Politique (Social Contract)*, Rousseau discusses the basic attributes of sovereignty and the great significance of taking the will of the people as the basic elements of sovereignty. He believes that the declarations with the will of the public are valid sovereign acts, the sovereignty is only the exercise of the will of the public, which can never be transferred. Moreover, the sovereignty, as a collective personality, can only be represented by the individual instead of any other people. As for the meaning of the will of the public, Rousseau told us that the will of the public is always right, and the public interest shall be set as the target for ever. The will of the public is not a simple majority, as it is different from the sum of private interests in essence. It is not resulting from the number of votes, but is the common interest of joint votes. In his opinion, the people's sovereignty is always good, but only the will of the public can formulate the laws. Therefore, laws are always right. Laws are only the records of our own will, which must be just as it is impossible for anyone to be unjust to himself or herself.⁴ Consequently, only we ourselves (the legislators) know what the law exactly means. The theory of Rousseau directly led to the strict separation of legislation and execution implemented after the French Revolution and the systematical pattern with the supreme legislature and the courts without the power to interpret the laws.⁵

Secondly, originalism law interpretation philosophy. In the history of the law interpretation theory, the originalism law interpretation has always been a school that cannot be ignored. The meaning of the originalism law interpretation is that the law interpretation shall accurately restore the subjective intensions of the original legislator. It is Karl Von Savigny that was the first to propose the interpretation intension. He believes that any expansion or shrinkage of the interpretation shall not be allowed, and any interpretation actions beyond the position of the legislator shall be illegal. It is because that the law is created by human beings, and represents the will of the legislator to create orders. Hobbes also believes that law interpretation shall be subject to the ultimate goal. Only the legislator knows what the goal is. Windscheid, the concept jurist in the 19th century, believes that there are public reasons lying in the legal concept, and have been integrated into the concepts by the legislators with scientific spirits. Therefore, the social problems can be solved once and forever, and will not change with the changes of environment.⁶ In the

United States, the originalism of the law interpretation is mainly carried out around the originalism and non-originalism in the interpretation of the *Constitution of the United States*. For the originalists, the “hermeneuein” in the ancient Greek refers to the Hermes responsible for sending messages between the human beings and the God, conveying God’s will to the human beings, and taking the responsibility of interpretation to specify the oracles and make the human beings to understand God’s words. It is clear that the initial direction of the interpretation is the original will of the subject. The interpretation is not equivalent to explanation. The task of interpretation is to point out the legal meaning in the original text, rather than construct new meanings according to the political standing or value judgment of the interpreter. But as for the meaning of the text, there are different understandings. One believes that the meaning of the text is the will of the legislators in the history, which is the typical interpretation of originalism; the other believes that the meaning of the text is meaning of rational understanding in the formulation of the text, which is not restricted to the will of the legislator and pays more attention to the applicable intension.⁷ It is obvious that the latter one has deviated from the original interpretation purpose of the traditional originalism.

In China, the political system is basically designed around the socialist democratic politics with the “the party’s leadership”, “the people’s congresses system” and “the rule of law”. Only by taking the people’s congresses system as the core can we ensure that the power of the state will be in the broadest hands of the people, therefore, the NPC is the highest organ of state power. The law interpretation power of the Standing Committee of the NPC is the reflection of the inherent power of the NPC, which is determined by the nature of the highest organ of the power and the legislature of the state. Under the people’s congresses system, there can be only one source of state power – the people. The legislative power is derived from the people, and the administrative and judicial authority must reflect the will of the people. Legislation is the will expression of the legislators. As the goal of law interpretation is to explore the will of the legislators, no one is more qualified than the legislators to interpret the laws. “The one formulates shall be responsible for the interpretation” has become the basic logic of the Chinese law interpretation system. However, the critics pointed out that “in the process of legislation, there are wide participation of various subjects with debates and compromises of different viewpoints. Therefore, although the original meaning of specific legal provisions in specified process is held by the legislator as a historical fact, it is not as clear as what the people imagine.”⁸ Some scholars even think that “it is against the general principles of the constitutionalism for the Standing Committee to interpret the Constitution, and it is unnecessary and even against the spirit of the rule of law to set the Standing Committee of the National People’s Congress with the power to interpret the laws.”⁹ From the perspective of practice, although the Standing Committee of the NPC is responsible for the interpretation of the law, it does not often exercise the power. Even to interpret, it is mainly concentrated in the field of criminal laws, and is rarely involved in the civil law and administrative law. In addition, as the Standing Committee of the NPC holds a meeting every two months, it cannot assume regular law interpretation tasks. Since 1979, the legal issues requested for the Standing Committee of the NPC to answer by all departments have been directly put forward to the Legislative Affairs Commission of the Standing Committee of the NPC. But as the Legislative Affairs Commission is only an internal working and administrative body of the Standing Committee of the NPC, it is worthy of further discussion whether its reply has official legal force.

IV. Philosophical Implications and Limitations of the Interpretation System of the Macao Basic Law

Compared with the Mainland China, there is no doubt that the concept of law in Macao is closer to the Civil Law tradition. It is not only because that the legal construction of Macao has not

experienced the systematical transformation of socialist legal system, and more importantly, since the 16th century, Macao has been constantly accepting the influences of Western law theories of Civil Law countries such as Germany and France and the legal system of the previous Portugal Kingdom, imposing on the Chinese traditional concept of officialdom, and gradually forming the legal system of today's Macao. In this sense, this paper firstly made a brief introduction to the theoretical changes of the law interpretation in the civil law system tradition, and analyzed the concept of the law interpretation system in Macao.

In modern Western legal theory, the law interpretation, whether for the civil law system or common law system, is regarded as a behavior closely related to the court decision, and is a basic premise for the applicable laws of the judicator. However, in the late 18th century, based on strict fiscal decentralization theories and distrust on the judicature, many countries, represented by France, had ever intended to resolve the issues to be interpreted in the law application through legislation. For example, France passed the law during the French Revolution, stipulating that "the court shall request the Legislative Council when it is necessary to interpret a law or formulate a new law", and set "the Court of Appeal", which is responsible for supervising various courts so as to prevent the deviation of judicature from the legal provisions and violation of legislative power. As the School of Glossators claims, the task of the law hermeneutic is nothing but logical "conceptual computing". It is hoped and believed that the judge can mechanically repeat the true meaning of the law under the condition without increasing or decreasing the intension and force of the law. Kelsen's Pure Theory of Law has developed the legal hierarchy to an extreme. He believes that all verdict bases are derived from the "fundamental norm", which is on the top of the law standard system, and the law interpretation can only draw a correct conclusion with no other choice. However, it is soon discovered that the task of the legislator is to formulate general rules of conduct. If an individual private lawsuit is involved due to the interpretation, the legislative burden will be imposed; the quality of legislation will be declined; and the litigation process will be extended. Therefore, we shall allow the judicial authority to specifically interpret the law in individual circumstances, which are unpredictable, so as to adapt to the changing social conditions.¹⁰ In Germany, as the same as traditional codification countries, law interpretation is understood as an activity of applying standardizing clauses to relevant factual behaviors, and is a normal behavior of the law application. Therefore, the law interpretation is a long-term changing discussion on the discretion of the one who applies the law. Savigny, representative of the historical school of law, believes that the primary purpose of interpretation is to consider the position of the legislator, and artificially repeat the behavior of the legislator on the stance of the legislator. The purpose of any legal interpretation of legislation norms are designed to achieve the purpose of legislation, and the judge is exactly to find the true purpose of legislation by means of literal interpretation, systematic interpretation and historical interpretation, etc. Any departure behaviors from the norm purpose of the recognized laws shall not be upheld. However, as for the constitution, both the Constitutional Court mode of France and the Federal Constitutional Court of Germany follow the centralized rules of interpretation. In other words, the judgment whether the legislative or executive acts are unconstitutional made according to the constitutional rules shall be carried out by a special judiciary. This approach has been followed by some European countries including Portugal. Based on the above concept, the law interpretation rules of Macao mainly include:

Firstly, it is clearly stipulated in Clause 2, Article 7 of the General Rules of the *Macao Civil Code* that "the court shall not refuse to give judgment on the pretext of legal provisions deficiency, ambiguous provisions or unsolvable questions on disputed facts". This provision is extremely similar to the provision of Article 4 of the *French Civil Code*¹¹, which, on one hand, reflects the confidence of the legislator on the statute law. It is impossible to be "ambiguous" or "absence" for the statute law, but shall be perfect and logically self-sufficient. The task of the judge is to find applicable legal norms rather than create their own rules. On the other hand, it also implies that, as

for any cases, the judge must apply the approach of law interpretation through his or her own wisdom to find applicable rules. It can be seen that Macao, deeply affected by the tradition of the civil law system through Portugal, implements the spirit of law that the court shall interpret the law, and makes specific legislative regulations on the specific methods for law interpretation. It is regulated in Article 8 of the *Macao Civil Code* that the law interpretation shall not be limited to the literal meaning of the law, but shall also consider the integrity, the situation when formulating the law and the special conditions for applicable laws, and get the legislative thought from relevant texts. However, the interpreter can only take the literal meaning of the law with basic words containing corresponding meaning as the legislative thought, even though the expression of those words is not perfect. In addition, when determining the legal sense and scope of coverage, the interpreter shall presume that the solutions made by the legislators are correct, and the legislator understands to express his or her thought with proper words. In other words, the judge can only consider the legislative thought and presume the intension of the legislator from the legislative texts so as to interpret relevant laws and regulations.

Secondly, in the Portuguese colonial era, the courts of Macao were always at the position of district courts without the power to initiatively review constitutional legal documents. It was regulated in the *Estatuto Orgânico de Macau (Organic Statute of Macau)* of 1976 that the power of surveillance on the compliance with basic state laws and regulations in the region and transference of any rules inconsistent with the Constitution published by any institutions of the region to relevant courts for assessment belong to the Legislative Council. If the Governor refused to sign the laws passed through the Legislative Council based on the reason that relevant rules violate the *Constitution of the Republic of Portugal* or the inviolable laws issued and enacted by the sovereign authority of Portugal in the region, he or she shall submit the law to relevant courts so as to examine and approve the rules issued by the legislative authority of the region and inconsistent with the constitution. In the *Estatuto Orgânico de Macau* reenacted in 1990 after revision, it was clearly specified that the aforementioned “relevant court” as the Constitutional Court of Portugal, and meanwhile endowed the responsibilities of mutual supervision on the constitutionality of the Governor and the Legislative Council more clearly. The Governor had the right to submit to the Constitutional Court of Portugal to examine whether any regulation issued by the Legislative Council violated the *Constitution of the Republic of Portugal* or laws; correspondingly, the Legislative Council had the right to monitor the compliance of the rules of the *Constitution of the Republic of Portugal*, the regulations of the articles of association and the laws in the region, and submit to the Constitution Court of Portugal to examine whether any regulation issued by the Governor violated the *Constitution of the Republic of Portugal* or the laws. In addition, it was also specified that the cases to be handled by the courts shall not apply to the rules violating the rules of the *Constitution of the Republic of Portugal*, the regulations of the *Estatuto Orgânico de Macau* or the regulations of the rules jointly formulated by the two. It can be seen that, before the handover, the courts of Macao were strictly brought into the judicial system lists of Portugal, bearing the legal responsibility of the local courts. In the field of constitutional review, the Constitutional Court of Portugal was responsible for dealing with the unconstitutional cases of the legislative or administrative acts in the region of Macao, and the Macao Court was only obliged for not applying the laws and regulations that violated the *Constitution of the Republic of Portugal* of the *Estatuto Orgânico de Macau* in the course of adjudicating cases. In other words, the courts of Macao only had extremely less judicial review responsibilities, namely, the responsibilities of negative and inapplicable unconstitutional rules. As for the strong forms of the constitutional force, the work to revoke the unconstitutional legislations by independent review authority with special authorization in accordance with the *Constitution of the Republic of Portugal* followed the constitutional regulations of Portugal and was specially carried out by the Constitutional Court of Portugal with its own responsibility.

Above all, the law interpretation of the courts of Macao before the handover was mainly confined to common laws, and was not entitled to the power of hearing unconstitutional cases. On one hand, after the World War II, during the process of rebuilding the constitutional system of European countries, the Kingdom of Portugal chose the constitutional review system with the mixed mode of Europe and America, which set the Constitutional Court of Portugal responsible for reviewing constitutional cases, and meanwhile prohibits ordinary courts from applying unconstitutional legal provisions. On the other hand, the courts of Macao were in the position of district courts in the Portuguese legal system, with no power to declare and revoke the unconstitutional legal provisions.

After the handover, the courts of the Macao SAR have obtained the independent judicial power, including that of final adjudication, which has changed the original law tradition in Macao to some extent. However, the courts in the Macao SAR still face confusions in the following two aspects:

Firstly, in the transverse perspective, namely, in the local political structures of Macao, although the courts in the Macao SAR have obtained an unprecedented authority of law interpretation, the courts in the Macao SAR have to face the problem of how to effectively fulfill its roles and functions. In fact, in the sense that the judicial power is simply understood as a one-dimensional horizontal review, the judicial review refers to a kind of review system between different branches of the government censorship that the court reviews the political branches. But, as a local court, the courts of the Macao SAR are always facing with difficulties hard to overcome when dealing with the problems such as the disputes between the political institutions and abstract legal reviews. It is not only because that the Central Government has been playing an indispensable leading role in the political system of the Macao SAR from the initial structure to the evolution process, and more importantly, according to the tradition of the European civil law system, the courts of the Macao SAR have no power to interpret the constitution in tradition. The judge cannot get used to exercising the quasi-political functions psychologically with the value orientation involved in judicial review, with the vocational training mainly in the technicality of the legislation rather than the policy application.¹² For example, whether it will affect the political system and achieve the purpose of protecting the government from suffering injuries due to self-respect with power by controlling the executive power for the court to involve in the disputes in the nature of administrative rules and the scope of legislation.

Secondly, from the vertical perspective, as local courts, to what extent can the courts of the Macao SAR make valid interpretations on the Macao Basic Law? According to Kelsen's theory, the legal system of a country is a rational hierarchical order that the superior authority controls the subordinate authority. Without the constraints of the constitutional norms, the highest level, it is impossible for any legal system of any country to be unified and integrated.¹³ Although the Macao Basic Law is formulated to follow the special social conditions of the SAR, it is under the chief commander of the Constitution. In other words, the national law system with the Constitution is still in operation under the legal logic of a complete unification. In the longitudinal perspective of the constitutionalism, the interpretation system of the Macao Basic Law shall firstly be a constitutional mechanism that the central government reviewing the local regions. In this sense, the power of interpreting the Macao Basic Law of the courts of the Macao SAR shall be constrained and restricted by the Central Authorities, so as to guarantee the value of unification. We shall not only notice how the law, especially the Constitution, tames the politics, but shall also notice how the politics determines the laws. Only in the value of the Macao Basic Law with a combination of "politics and laws" can we truly understand the authority and boundaries of the Macao Basic Law interpretation of the courts of the Macao SAR.

V. Conclusion

It is obvious that the interpretation system of the Macao Basic Law neither completely follows the tradition of the Continental Law system, nor completely follows the law interpretation mechanism of the Mainland China, but is an institutional arrangement that tries to meet different law interpretation concepts at the same time. With the deep-going implementation of the Macao Basic Law, the number of cases for the interpretation of the Macao Basic Law will also increase. It is not only an objective topic under the “One Country, Two Systems” theory, but also an opportunity for the growth of the interpretation of Chinese laws to effectively play the judicial interpretation role of the courts in the Macao SAR and the interpretation functions of the Standing Committee of the NPC, and jointly enrich and improve the theory and practice of the Macao Basic Law.

Notes:

- ¹ In terms of the nature of the Macao Basic Law, seen from the legislative subject and the scope of application, it is a national law formulated by the NPC with nationwide legal force; seen from the contents of the legal norms, its nature is similar to a constitutional law, regulating such contents as the basic political order, government composition and the basic rights of the residents. The changes of the Macao Basic Law seen from different perspectives increase the complexity of the Macao Basic Law to interpret the behavior nature and judgment.
- ² Hong Kong Wenhui News (Ed.) (1998), *Reference Data of the Basic Law (Draft) of Hong Kong Special Administrative Region*. Hong Kong: Hong Kong Wenhui News. 62.
- ³ It is stipulated in Item 3, Clause 2, Article 70 of the *Law of Judicial Organization Outline* (Act No. 9/1999): “The judgment of relevant courts that refuses to apply a certain norm with the basis of violating the *Constitution of the Republic of Portugal* or the pending cases appealing against the judgment made by the court applying the norms violating the Constitution during the judicial proceeding shall be terminated.”
- ⁴ Rousseau, J. (1980). *Du Contrat Social ou Principes du Droit Politique (Social Contract)*. (Chinese version translated by He Zhaowu). Beijing: The Commercial Press. 350.
- ⁵ Zhu Guobin (2010). *Jurisprudence and Politics in the Fragrant Harbor: Making Waves with the Hong Kong Basic Law*. Beijing: China Law Press. 88.
- ⁶ Kaufman, A. (2002) *Einführung in Rechtsphilosophie und Rechtstheorie der Gegenwart (Introduction to Philosophy of Law and Legal Theory of the Presence)*. (Chinese version translated by Zheng Yongliu). Beijing: China Law Press. (2002).164.
- ⁷ Wang Xu (2010). *Hermeneutic Study on Administrative Laws*. Beijing: China Legal Publishing House. 12-13.
- ⁸ Zhang Zhiming. Thinking about the Interpretation Systems of the Chinese Law. *Social Sciences in China*. Issue 2.
- ⁹ Li Feng and Mo Zhouqiang (2001). On the Legislative Interpretation System: Comment on the Provisions of the Legislation Law on the Law Interpretation System. *Tianfu Review*. 31st August 2001.
- ¹⁰ Zhang Zhiming (2012). Study on Law Interpretation. On the website of Chinese Jurisprudence: <http://www.jus.cn>. 11th April 2012.
- ¹¹ It is regulated in Article 4 in *French Civil Code* that “A judge who refuses to give judgment on the pretext of legislation being silent, obscure or insufficient, may be prosecuted for being guilty of a denial of justice.”
- ¹² Zhang Qianfan, Bao Wanchao and Wang Weiming (2008). *From Constitution to Constitutionalism: A Comparative Study on Judicial Review System*. Beijing: China Law Press. 89.
- ¹³ Kelsen, H. (1996). *General Theory of Law and State*. (Chinese version translated by Shen Zongling). Beijing: China Encyclopedia Publishing House. 31.