

Осуществление прав на расторжение соглашений о добровольном опекунстве в соответствии с Гражданским кодексом Китая

Interpretation of Exercising Rights to Rescind Voluntary Guardianship Agreements under the Chinese Civil Code¹

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Abstract. The Article 33 of the Chinese Civil Code provides written voluntary guardianship agreements and the Article 11 of the newly issued Interpretation provides arbitrary rescission rights and statutory rescission rights concerning the agreements. Some aspects related to exercising the rescission rights including fiduciary relationship, time limit, legal effects and circumstances, are interpreted in detail in this paper firstly and then rescission rights by agreement stipulated in the Article 562 of the Chinese Civil Code are discussed in terms of connotation and civil subjects. There after, the two principles including the principle of best interests and the principle of protecting self-determination rights for exercising rescission rights are examined in theory and in practice. In the end, in terms of practical application of rescission rights, it is pointed out that some problems regarding possible abuse and time limit of rescission rights remain to be solved for the future interpretation of the Chinese Civil Code.

Keywords: voluntary guardianship agreement, rescission rights, Interpretation, Civil Code.

The aging and less-children society bring more worries to elders and the government in China about protecting the rights of aging people, especially those with dementia and Alzheimer's disease. How to protect those losing full or partial capacity and how to help them get proper medical treatment or deal with some personal and financial affairs, have become a focus for lawmakers in China. The Article 26 under the *Law of the People's Republic of China on the Protection of the Rights and Interests of the Elderly*, amended in April 2015, first proposed the system of voluntary guardianship in China, which focused on the guardianship of the elderly, stipulating the elderly who have full civil capacity may determine their guardians by themselves but voluntary guardians must be chosen among their close relatives or other individuals or organizations that have close relationships with them.²

Although the scope of voluntary guardians is limited under this Law, the breakthrough in the Chinese

guardianship system still attracted more attention among legal persons as well as some elders. After that, some elders signed some voluntary guardianship agreements to plan for their later lives in case they may totally or partially lose their civil capacity. The chosen voluntary guardians will also protect rights of the elderly as they expect in accordance with their voluntary guardianship agreements. Compared with traditional legal and appointed guardianship systems, the biggest feature of the voluntary guardianship system is autonomy of elders with the free will of voluntary wards. The selection of guardians and the effective conditions of voluntary guardianship, etc. are determined by the voluntary wards' own wishes, so the voluntary guardianship system takes precedence over the legal guardianship system in terms of protecting the voluntary wards' self-determination rights.

However, according to the law of the elderly in China, the elderly under Article 26 refers to people

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² Article 26, Law of the People's Republic of China on the Protection of the Rights and Interests of the Elderly.

above 60 years old. In practice, not only over-60-year-old people, but also people under 60 years old may lose full or partial capacity and need guardians. It is necessary that all adults should be granted the right to designate their own guardians on their own and voluntarily. *General Provisions of the Civil Law of the People's Republic of China*, enacted in 2017, broadened the scope of voluntary wards to all adults under the voluntary guardianship system. **Article 33 under this Law provides that** an adult with full capacity for civil conduct may, after consulting in advance with his or her close relatives or other individuals or organizations willing to act as a guardian, determine his or her guardian in writing.³

When the adult loses all or part of capacity for civil conduct, the chosen voluntary guardians determined under voluntary guardianship agreements will perform the guardianship of the adult. All adults with full capacity for civil conduct can choose and decide future voluntary guardians for themselves and ensure that they have guardians to protect their own rights according to their own wishes when they lose or partially lose their capacity for civil conduct. Later, Article 33 under the *Chinese Civil Code (the Code)* enacted in Jan, 1 2021 inherited this Article 33 with no change.

Article 33 stipulated under the *Code*, however, are too general and have many problems to be solved. Among them, who are entitled to rescind voluntary guardianship agreements, what are the rights of the voluntary wards to rescind agreements, and under what circumstances agreements could be rescinded, always haunt legal persons and adults hoping to use voluntary guardianship agreements to protect their own interests and make a future plan for possible partial and no capacity.

Article 11 under *Interpretation by the Supreme People's Court of Several Issues Concerning the Application of Book One General Provisions of the Civil Code of the People's Republic of China (Interpretation)* issued in Feb, 24, 2022 and come into effect in March, 1, 2022, provides two rights of rescinding voluntary guardianship agreements including arbitrary rescission rights and statutory rescission rights. However, it is obvious that these two rescission rights cannot cover all the rescission rights under voluntary guardianship agreements. **Article 562 of the Code provides rescission rights by agreement, whereas** Article 464 of the *Code* stipulates that Contract Book of the *Code* could be applied to agreements concerning personal relations. That is to say, Article 562 shall apply to voluntary guardianship agreements. Moreover, the established date of voluntary guardianship agreements and its effective date are different, and when a voluntary guardianship agreement is established, capacity of voluntary wards is completely different

from the capacity when the agreement comes into effect. So some issues concerning how to exercise rights to rescind agreements, who could have the right to rescind them and whether there is any condition or requirement to exercise rights to rescind them, are all to be interpreted and analyzed in detail.

1. Arbitrary rescission rights exercised under voluntary guardianship agreements

After voluntary guardianship agreements are affirmed in the *Code*, it has been argued among law-makers and legal scholars how the agreements are applied in practice, especially, if voluntary wards and voluntary guardians hope to rescind them, whether they have the right to rescind them have been the core of contentions in China. Paragraph 1, Article 11 of the *Interpretation* recently enacted provides voluntary wards or voluntary guardians with two choices to rescind voluntary guardianship agreements, one of which is arbitrary rescission rights, granting voluntary wards and voluntary guardians rights to protect their own lawful rights and interests totally by themselves. The arbitrariness of rights unveils the nature of the voluntary guardians' rights different from traditional rights of guardians. Voluntary wards or voluntary guardians have no rescission rights to rescind traditional appointed guardians and legal guardians, who could only be disqualified declared by court orders. Arbitrary rescission rights grant voluntary guardians and voluntary wards to dispose of guardianship by rescinding agreements without any cause, which could be a big breakthrough in the Chinese guardianship system.

1.1. Exercising arbitrary rescission rights based on fiduciary relationship

Voluntary guardians or voluntary wards may rescind voluntary guardianship agreements at any time before voluntary wards partially or completely lose the capacity for civil conduct in accordance with Paragraph 1, Article 11 of the *Interpretation*. From the perspective of textual interpretation, rights to arbitrarily rescind voluntary guardianship agreements give both parties to the guardianship agreements the rights to rescind them with no specific reasons. The rights to arbitrarily rescind the voluntary guardianship agreements are rights without any conditions in accordance with the *Interpretation*, and the fiduciary relationship between voluntary wards and voluntary guardians is the basis for the rights to rescind arbitrarily.⁴

Voluntary guardianship agreements can only be made when voluntary wards have trust in voluntary guardians. No matter what causes occur, voluntary

³ Article 33, *General Provisions of the Civil Law of the People's Republic of China*.

⁴ Zhang Suhua. Problems and Solutions in the Voluntary Guardianship System [J] // *Oriental Law* 2020(2):127.

wards can choose to rescind agreements provided that voluntary wards do not trust voluntary guardians any longer. In terms of voluntary wards, if voluntary guardians who voluntary wards do not trust any longer still help them deal with their own related affairs, they will inevitably feel panic and insecure. The key to voluntary guardianship agreements is neither the content of the service provided, nor whether the guardians are paid or not paid, but whether one party to the agreements entrusts its affairs to the other party based on certain trust. The establishment of voluntary guardianship agreements is based on the mutual trust between voluntary wards and voluntary guardians. Trust is the premise and basis of the establishment of voluntary guardianship agreements, which may arise from various aspects, ranging from the trust in the guardians' personality in the process of daily communication to trust in the guardians' goodwill and financial resources in business activities.⁵

During the long-term performance of voluntary guardianship agreements, if either party has doubts about the other party, the agreements could be rescinded before they become effective. At the beginning of the establishing agreements, the parties enjoy the freedom to establish, and also enjoy the freedom to rescind them, so self-determination rights of voluntary wards and voluntary guardians under voluntary guardianship agreements are also important rights. Compared with other types of agreements, the granting of the right to arbitrarily rescind the guardianship agreements indicates more self-determination expressions of the parties, namely, parties have the freedom to decide for themselves. Practical application of voluntary guardianship agreements attaches more importance to the true intention of voluntary wards and voluntary guardians in order to seek justice. Suppose that voluntary guardians or voluntary wards have no intention of continuing agreements because they may not trust each other again, but they are forced to perform agreements, the performance may be very bad beyond anyone's expectations.

The reason why voluntary guardianship agreements could be rescinded arbitrarily is that, on one hand, the choice of voluntary guardians is always dependent on fiduciary relationship between voluntary wards and voluntary guardians, on the other hand, it is based on the "human cooperation" of the entrusted guardianship relationship. The choice of voluntary guardians largely relies on the individual's character, ability and special relationship of trust, which lead to certain subjectivity and instability of the voluntary guardianship. When the trust relationship between the two parties breaks up the parties should be given the right to rescind agreements in

order to be released from agreements. Therefore, the personal dependence in voluntary guardianship agreements is the foundation of the right to rescind arbitrarily. The stipulation of arbitrary rescission rights, from the perspective of *pacta sunt servanda*, is a big breakthrough for both parties to voluntary guardianship agreements in that they breach the agreement when they rely on their unilateral intentions to rescind agreements.⁶ The arbitrary rescission rights especially protect the voluntary wards' rights to freely choose guardians, which is in line with the purpose of establishing the voluntary guardianship system, which is conducive to safeguarding the legitimate rights and interests of voluntary wards, and provides a legal approach to avoid the wrong selection of voluntary guardians.

1.2. Time limit for exercising arbitrary rescission rights

After an adult with full capacity enters into a written agreement with another person to determine the voluntary guardian, arbitrariness seem to mean there is no time limit to rescind voluntary guardianship agreements from the perspective of voluntary wards or voluntary guardians. But, according to the Article 11 of the Interpretation, the right to arbitrarily rescind agreements shall be limited to the duration between the establishment of voluntary guardianship agreements and the moment when the voluntary ward loses or partially loses his capacity for civil conduct. During the limited period, if any party of voluntary wards or voluntary guardians could request to rescind voluntary guardianship agreements, which is an act of effectively exercising rescission rights, the court should uphold it pursuant to the *Code* and terminate voluntary guardianship agreements. The time point for the termination of voluntary guardianship agreements is determined when the parties effectively exercise arbitrary rescission rights, then the rescission rights and the agreements are extinguished. After voluntary wards lose full or partial capacity, guardians determined by agreements no longer enjoys arbitrary rescission rights and arbitrary rescission rights are extinguished.

The important issue is how to judge whether voluntary wards with full capacity for civil conduct lose full or partial capacity, which is made through the appraisal of the adult's capacity in judicial practice. According to currently effective voluntary guardianship agreements made in Shanghai, it is found that voluntary guardians, in general, accompany voluntary wards to go to the local hospitals or forensic judicial expertise centers to appraise adults' capacity. In addition, in some cities, notary offices may require that the level of local hospitals must be three-As, in order

⁵ Li Jing. On Agreed Arbitrary Rescission Rights and the Principle of Good Faith [J] // Law and Society. 2017(7):16

⁶ Zhu Lamei, GaoYunlin. On the Arbitrary Borderline of Contractual Arbitrary Rescission Rights [J]. Journal of Shanxi Politics and Law Institute for Administrators. 2020(3):61.

to prove that voluntary wards have full capacity when they establish voluntary guardianship agreements.

Moreover, the current *Chinese Civil Procedural Law* has specific provisions stipulating the procedure for declaring voluntary wards without capacity, according to which if the close relatives or other interested persons of voluntary wards file petitions to the people's courts for declaring the incapacity of adults, after the courts accept the petitions, capacity of voluntary wards will usually be required to be forensically evaluated. If the evaluation results are incapacitated or partially incapacitated, voluntary wards will be declared a person without capacity or limited capacity. That is to say, if voluntary guardians or voluntary wards want to rescind the guardianship agreement unilaterally, rescission should be done before voluntary wards are identified as incapacitated or partially incapacitated, or before the court declares their incapacity or limited capacity.

Therefore, the arbitrariness of the right of arbitrary rescission cannot be unlimited, otherwise it will cause instability in the legal relationship, destroy or detract from the trust relationship between the parties to the agreements, which is not conducive to the guardian's active performance of the agreement obligations, and will also make the legal relationship unstable, which will result in the frustration of the purpose of establishing the voluntary guardianship system. The time limit for exercising arbitrary rescission rights shall be before the voluntary guardianship agreements take effect, and the effectiveness of the agreements depends on whether voluntary wards have partially or completely lost capacity, appraised by hospitals or forensic judicial expertise centers, or declared by court orders, or both.

1.3. Legal effects of exercising arbitrary rescission rights

The *Code* grants voluntary wards and voluntary guardians under voluntary guardianship agreements arbitrary rescission rights, the purpose of which is mainly to stop unqualified and irresponsible guardians from dealing with personal or financial affairs of voluntary wards in the future. In addition, in order to avoid the expansion of the losses of both parties, and protect the interests of both parties objectively at the same time, with the result of pursuing the best interest of voluntary wards after voluntary guardianship agreements are established, if voluntary guardians or voluntary wards have spent money or time in making certain preparations in order to fulfill the obligations under voluntary guardianship agreements, for example, if the guardianship agency or non-relative guardians could get paid under voluntary guardianship agreements, once any party exercises the right to rescind, the agreement will be terminated.

If it is determined that the right to arbitrarily rescind is retroactive, after the agreement is rescinded,

guardians or voluntary wards will require another party to refund or pay for the labor or remuneration in the process of performing the agreement, which will bring a burden to voluntary wards or voluntary guardians, so arbitrary rescission rights can only cancel the unfinished work in the future, that is, rescinding agreements will only cancel future rights and duties under agreements and agreements will be terminated. Moreover, arbitrary rescission rights do not come into effect immediately. When the notice of arbitrary rescission rights reaches the opposite party, the agreements cannot be immediately terminated. The opposite party should also be given a reasonable time to stop the work that has been started in an appropriate way, which is to avoid expanding losses, which can also give the opposing party more time to face the fact psychologically.

1.4. Waiving arbitrary rescission rights by mutual agreement

Although arbitrary rescission rights promote the freedom and efficiency of protecting parties under voluntary guardianship agreements, but as one coin has two sides, the existence of arbitrary rescission rights does affect the stable expectations of parties for the future and increase the uncertain risk of the performance of agreements. The urgent need for a sense of security may prompt the parties to agreements to waive arbitrary rescission rights after voluntary guardianship agreements are established. It is not uncommon in judicial practice for both parties to agree to abandon the right of arbitrary rescission, however, according to the Article 11 of the *Interpretation*, the parties should not be allowed to agree to waive arbitrary rescission rights.

Although the agreement to waiving arbitrary rescission rights embodies freedom of contract, waiving arbitrary rescission rights, is tantamount to indirectly binding the parties under voluntary guardianship agreements, which is completely contrary to the purpose of voluntary guardianship agreements respecting adults' self-determination. From the perspective of self-determination rights, the parties agreed to exclude the application of arbitrary rescission rights, which is to limit the rescission of agreements and ensure that agreements are performed as promised to obtain the expected benefits, and binds the parties to the agreements with the result that legal purpose of arbitrary rescission rights could not be reached. Waiving arbitrary rescission rights will not cancel unexpected guardians and leave voluntary wards in unsteady and insecure situations, which is also contrary to the purpose of establishing voluntary guardianship agreements. Hence, it is reasonable under Article 11 of the *Interpretation* that the agreed waiving of arbitrary rescission rights should be deemed invalid, and the party's autonomy of the will should be restricted to avoid unlimited enlargement of private rights and blasphemy of the sacred contractual spirit.

2. Statutory rescission rights exercised under voluntary guardianship agreements

Another choice for voluntary guardians to rescind the voluntary guardianship agreements provided under this recent Interpretation is statutory rescission rights, which mean, after agreements are established and take effect, in the process of performing agreements, the voluntary guardians have rights to rescind agreements under certain circumstances in accordance with provisions of the *Code* and the *Interpretation*, and the part of agreements that has been fulfilled shall be liquidated after the rescission. Statutory rescission rights arise from valid voluntary guardianship agreements which are made and come into effect. No statutory rescission rights will arise if agreements, which are not formed or not effective, are not binding upon voluntary wards and guardians.

The parties to agreements have no right to agree on the clauses for statutory rescission in advance, and can only exercise the rights of rescission to rescind the agreements when the statutory conditions are satisfied. The statutory rescission of guardianship agreements is an expressive act, and rescission will have legal effect according to the unilateral expression of voluntary guardians, which can lead to the termination of the legal relationship of agreements through its unilateral actions. Different from arbitrary rescission rights exercised under any circumstances, statutory rescission rights are only exercised under circumstances stipulated by the *Code* and the *Interpretation*.

Although Article 563 under the *Code* provides some circumstances under which the parties to a contract may rescind the contract, and voluntary guardianship agreements are also kind of contract, it has been long argued that guardians are entitled to statutory rescission rights in China. Some scholars regard voluntary guardianship agreements as kind of agent agreements, so they think rescission rights of agent agreements are used in voluntary guardianship agreements. Some scholars use general provisions of Contract Book in the *Code* to explain the rescission rights of voluntary guardianship agreements, while others believe that guardianship section in the *Code* has no provision about it, so there are no statutory rescission rights for guardians. The issuing of the *Interpretation* confirms the statutory rescission rights under voluntary guardianship agreement by stating: "... Where the guardian determined in the agreement requests rescission of the agreements without good reason after the adult has lost all or part of his or her capacity for civil conduct, the people's court shall not uphold the request."⁷

It provides clearly that the people's court could uphold that voluntary guardians could have statutory rescission rights but must have good reasons, however, as to the good reason, there are no more explanation in the *Interpretation*. In accordance with the paragraph 2 of the *Interpretation*, voluntary guardians should be disqualified to be guardians under the guardianship agreement under the circumstances of Article 36 of the *Code*. Paragraph 1 of Article 36 under the *Code* stipulates the statutory rescission rights expressly, but it implies under what circumstances guardians are not entitled to the statutory rescission rights under voluntary guardianship agreements in that it provides the circumstances under which guardians are disqualified, and the disqualification are to be declared by court orders.

2.1. Circumstances under what statutory rescission rights could be exercised

Article 563 in the *Code* provides five following circumstances for contractual parties to rescind a contract (1) It becomes impossible to achieve the purpose of contract for a force majeure. (2) Prior to the expiration of the period of performance, the other party expressly states, or indicates through its conduct, that it will not perform its main obligation. (3) The other party delays performance of its main obligation, and after such performance is demanded, still fails to perform within a reasonable period. (4) The other party delays performance of its obligations, or breaches the contract in some other manner, making it impossible to achieve the purpose of the contract. (5) other circumstance as provided by the law.⁸

Because only guardians have full capacity after the voluntary guardianship agreements come into effect, that is to say, voluntary wards have no contractual performance capacity, only under protection of guardians. The second, third, fourth circumstances under Article 563 are not applicable to the voluntary guardianship agreements in that voluntary wards, as the other party of the guardianship agreements, have no obligations, which could not be basis of the rescission rights. Force majeure under the first circumstance and the other circumstance provided by the law under the fifth circumstance may be applied to voluntary guardianship agreements. But what is the other circumstance provided by the law depends on the rules of some special laws. No special law have provisions about other circumstances of voluntary guardianship agreements in China until now.

Therefore, force majeure under the first circumstance may be the only one circumstance for voluntary guardians to exercise statutory rescission rights. Moreover, judging from the first paragraph of Article 36, guardians should be disqualified in the following

⁷ Article 11, Interpretation by the Supreme People's Court of Several Issues Concerning the Application of Book One General Provisions of the Civil Code of the People's Republic of China.

⁸ Article 563, Chinese Civil Code.

three circumstances: (1) Committing any conduct seriously detrimental to the ward's physical and mental health. (2) Being slack in performing the duty of guardianship, or being incapable of performing the duty of guardianship but refusing to delegate part or all of the duty of guardianship to another person, which causes distress of the ward. (3) Otherwise seriously infringing upon the ward's lawful rights and interests.⁹

Namely, under these circumstances, voluntary guardians should be disqualified so that voluntary guardians have no right to rescind agreements. But under second circumstances, there is one exception about disqualification of voluntary guardians which shows that voluntary guardians are allowed to delegate their obligations to others which implies that voluntary guardians could rescind their own guardianship and transfer the obligation of guardianship to others. Therefore, delegation of guardianship to others grants voluntary guardians a good reason to rescind the agreements.

2.2. Civil subjects to exercise statutory rescission rights

Are voluntary wards who are a party to voluntary guardianship agreements eligible to rescind guardianship agreements? Looking through the current *Code* and the *Interpretation*, there is no clause to answer it. The effective conditions of the voluntary guardianship agreements are that voluntary wards are completely or partially incapacitated, that is to say, voluntary wards after agreements take effect, have no ability to judge and make decisions, so they have no ability to rescind the guardianship agreements. In terms of guardians, Paragraph 1 of Article 36 under the *Code* indicates that guardianship could be delegated to a third party, which means that voluntary guardians who could exercise statutory rescission rights could delegate their rights and obligations under reasonable situations.¹⁰

However, as far as voluntary guardianship is concerned, based on the fiduciary relationships between voluntary wards and voluntary guardians, the appointment of future guardians should also be based on their trust and affection between voluntary guardians and voluntary wards whose relationship is different from general contractual relationship. Delegation breaks through the personal attributes between voluntary guardians and voluntary wards, which terminates voluntary guardianship agreements between guardians and voluntary wards. In terms of the voluntary guardianship agreements, the agreement between original guardians and voluntary wards are terminated, and the agreement between

delegated guardians and voluntary wards are formed. Original guardians rescind the original guardianship agreement, which is unilateral acts of original voluntary guardians, not agreed act between original voluntary guardians and voluntary wards, therefore, it is implied that delegated guardians are civil subject of exercising statutory rescission rights.

2.3. Legal effects of exercising statutory rescission rights

According to Article 34 of the *Code*, voluntary guardians have obligations to protect the personal rights, property rights and other legal rights of voluntary wards; guardians may act on behalf of voluntary wards to engage in civil legal acts.¹¹ From a legal point of view, the responsibilities of guardians for voluntary wards include both personal care and property care, and the specific content varies based on the type of voluntary wards. Voluntary guardians enjoys the relevant rights of guardianship and undertakes the obligations under the guardianship relationship, and guardians may have corresponding expenditures in order to fulfill the obligation of taking care of guardians. When guardianship agreements are rescinded, who could be guardians and how to find and appoint guardians to protect best interests of voluntary wards losing full or partial capacity and how to compensate the loss of guardians are all problems to be considered carefully.

2.3.1. Designation of temporary guardians or legal guardians after statutory rescission rights are exercised

After the statutory rescission rights are exercised, the voluntary guardianship agreements have been terminated, so that the voluntary wards with no capacity or limited capacity may be in unattended situations, and the legal interests of the voluntary wards are likely to be further infringed. Moreover, it may be impossible to make another guardianship agreement after the termination of a voluntary guardianship agreement in a short time, so guardians are more in urgent need for voluntary wards who have only partial capacity or no capacity than other types of voluntary wards. The *Code* adds necessary temporary guardianship measures for voluntary wards so as to protect the interests of voluntary wards more effectively under necessary circumstances. "Where a guardian falls under any of the following circumstances, the people's court shall, upon application of the relevant individual or organization, disqualify the guardian, arrange necessary provisional guardianship measures, and designate another guardian in accordance with the law under the principle of most benefiting the ward."¹² as Paragraph 1, Article 36 of the *Code* puts.

⁹ Article 36, *Chinese Civil Code*

¹⁰ Article 36, *Chinese Civil Code*.

¹¹ Article 34, *Chinese Civil Code*.

¹² Article 36, *Chinese Civil Code*.

The provision implies the temporary guardianship placed within the scope of the court's review and intervention, which seems to provide voluntary wards with the supplement and bottom line of legal guardianship. In this case, guardians are temporarily assigned by the court or legal guardians are designated, which are helpful to deal with matters of voluntary wards due to loss of guardians. Temporary guardians are designated to act as guardians to deal with provisional matters before legal guardians are designated by a court to be long-lasting guardians to protect voluntary wards, and temporary and legal guardians are chosen from the spouse of the adult, parents or children of the adult, other close relatives of the adult or other individuals or organizations willing to act as the guardian, provided that it is approved by the urban residents committee, villager's committee, or civil affairs department of the place of the adult's domicile in accordance with Article 28¹³.

Although how long is the term of temporary guardians or whether legal guardians may be opposed by the voluntary wards, if the voluntary wards do have full capacity, are still vague and controversial in the *Code*, there is no doubt that temporary or legal guardians are crucial for voluntary wards for the purpose of protecting rights and interests of wards in emergency.

2.3.2. Obligations and remedies after statutory rescission rights are exercised

Although the guardianship law section of the *Code* does not stipulate any obligations or remedies of guardians after their guardianship are disqualified, it stipulates that a guardian failing to perform the duty of guardianship or infringing upon the ward's lawful rights and interests shall assume legal liability in Paragraph 3, Article 34,¹⁴ and Contract Book of the *Code* stipulates some related clauses in detail. Voluntary guardianship agreements are also governed by Contract Book of the *Code* in accordance with Paragraph 2, Article 464 of the *Code*, in which agreements concerning personal relations such as marriage, adoption, and guardianship shall be governed by the provisions of laws on the relevant personal relations or absent such provisions, this Book may apply *mutatis mutandis* according to their nature.¹⁵

After statutory rescission rights are exercised, voluntary guardianship agreements are terminated. In accordance with Article 558 of the *Code*, after the termination of the voluntary guardianship agreements, the voluntary guardians shall observe the principles of good faith and perform obligations

such as notification, assistance, confidentiality and recycling of used things in accordance with the relevant usage of trade.¹⁶ The termination of a relation of rights and obligations under voluntary guardianship agreements shall not affect the validity of clauses that related to settlements of accounts and winding-up.¹⁷ Where guardians fail to perform their obligations under voluntary guardianship agreements, or their performance fails to satisfy the terms of the contract, guardians shall continue to perform its obligations, take remedial measures, pay damages, or be otherwise held liable for breach of agreements.¹⁸

3. Rescission rights by agreement exercised under voluntary guardianship agreements

General classification of rescission rights includes rescission rights by agreement. However, the latest *Interpretation* only provides arbitrary rescission rights and statutory rescission rights, and does not provide any interpretation about rescission rights by agreement, which seems to deny rescission rights by agreement regarding voluntary guardianship agreements. In essence, the *Code* provides rescission rights by agreement in Article 562, of the Contract Book of the *Code*. But when rescissions rights by agreement are applied to voluntary guardianship agreements, there are some problems about the overlapping part among rescission rights. Then what is the order of exercising if the rescission rights by agreement conflicts with other two rescission rights? Paragraph 2, Article 463 which belongs to Contract Book of the *Code*, states that "agreements concerning personal relations such as marriage, adoption, and guardianship shall be governed by the provisions of laws on the relevant personal relations, or absent such provisions, this Book may apply *Mutatis mutandis* according to their nature.",¹⁹ which determines that rescission rights should be exercised on the condition that the other two rescission rights could not be exercised.

3.1. Connotation of exercising rescissions rights by agreement

The Contract Book of the *Code* provides rescission rights by agreement, which indicates that the parties may rescind a contract if they reach a consensus through consultation; the parties may agree upon the cause of rescission of the contract by either party; upon the cause occurs, the party who has the right

¹³ Article 28, Chinese Civil Code.

¹⁴ Article 34, Chinese Civil Code.

¹⁵ Article 464, Chinese Civil Code.

¹⁶ Article 558, Chinese Civil Code.

¹⁷ Article 567, Chinese Civil Code.

¹⁸ Article 577, Chinese Civil Code.

¹⁹ Article 463, Chinese Civil Code.

to rescission may rescind the contract,²⁰ so voluntary guardianship agreements, a special contract between guardians and voluntary wards, could provide rescissions rights by agreement. In practice, voluntary guardianship agreements are always notarized, so some notary offices have made a sample of voluntary guardianship agreements. In the case of Shanghai notary offices, after several years of practice in notarizing voluntary guardianship agreements, they listed some situations to rescind the agreements. A voluntary guardianship agreement, for example, may stipulate that if the guardian is too old or weak due to diseases or other causes, the agreement is rescinded. That is to say, both parties of the agreements could make clauses to rescind agreements. If both parties agreed to rescind the agreements before the agreements come into effect, agreements could be rescinded.

3.2. Civil subjects of exercising rescission rights by agreement

If voluntary wards with full capacity and guardians make another agreement to rescind the voluntary guardianship agreement or they agreed upon the cause of rescission of the contract by either party, the voluntary wards with full capacity or the guardians could have rescission rights by agreement, therefore, voluntary wards with full capacity and guardians could be civil subjects of exercising rescission rights by agreement. However, in judicial practice, we may find not only voluntary wards and voluntary guardians may sign the voluntary guardianship agreements, but only guardian supervisors may sign them, which means the agreements have three parties. As to whether guardian supervisors could be a civil subject to exercise rescission rights, the *Code* and the *Interpretation* do not state expressly whether guardian supervisors have rights to rescind guardianship agreements, but Article 562 states the parties, not both parties, may rescind a contract, which means there are not only two parties under agreements, may be more parties.

In practice, for instance, the samples of voluntary guardianship agreements provided by Shanghai's notary offices include clauses of guardian supervisors appointed by voluntary wards. Guardian supervisors are the third party of the agreements to supervise the performance of guardians and are required to sign their names as well on the agreements. Additionally, most agreements include the clause that if guardians do not perform the obligations or infringe upon voluntary wards' personal or financial rights or interests, guardian supervisors are entitled to ask voluntary guardians for damages and terminate the agreements, which implies guardian supervisors are

entitled to rescind the agreement except for guardians and voluntary wards.

4. Principles of exercising rights to rescind voluntary guardianship agreements

The voluntary guardianship agreements are made by consensus of voluntary wards and voluntary guardians for the purpose of protecting rights and interests of voluntary wards when they lose full or partial capacity, embodies the true intentions of both parties. Likewise, rescission rights stipulated in the *Code* and the *Interpretation* aim at protecting rights and interests of voluntary wards. Then, how to judge the rights and interests of voluntary wards are protected and to what extent the rights and interests of voluntary wards are protected are both based on the principle of best interests and the principle of protecting self-termination rights of voluntary wards.

4.1. The principle of best interests under voluntary guardianship agreements

In accordance with Article 11 of the *Interpretation*, when either party under voluntary guardianship agreements exercise arbitrary rescission rights before voluntary wards lose all or part of their capacity, the people's court shall uphold the request, but, when guardians exercise statutory rescission rights, the people's court shall not uphold the request if guardians have no good reason.²¹

However, how the court decides the complete or partial loss of the adult's capacity and what are the good reason for the court to uphold the request are not stipulated under the *Code* and the *Interpretation*. In judicial practice, the principles will be the basis for judges to exercise their discretion when there are no specific provisions. The Articles 31 and 36 of the *Code* stipulate that the designation of guardians should be based on the principle of the best interests of voluntary wards, and Article 35 stipulates that the performance of guardianship should follow the principle of the best interests of voluntary wards. All the provisions under the *Code* related to voluntary guardianship agreements are made for the purpose of the best interests of voluntary wards, which proves that the principle of exercising rescission rights is also the principle of best interests.

It is, however, difficult to give a precise definition of 'best interests' in that the concept of 'best interests' is relatively abstract, complicated and vague. Although its concept is relatively vague and abstract, its basic connotation is relatively clear. When voluntary wards do not have full capacity for civil conduct, voluntary guardians should weigh the pros and cons

²⁰ Article 562, Chinese Civil Code.

²¹ Article 11, Interpretation by the Supreme People's Court of Several Issues Concerning the Application of Book One General Provisions of the Civil Code of the People's Republic of China.

and try their best to make decisions for voluntary wards, which should be most beneficial to voluntary wards, and minimize the possible loss to voluntary wards. Briefly, the purpose of this principle in the law is to urge voluntary guardians to bear their due responsibilities of being guardians so as to protect the rights and interests of voluntary wards and minimize possible losses of voluntary wards.

In judicial practice, the principle of best interests is used to guide voluntary guardians to choose the most acceptable and reasonable option from the possible options, which requires voluntary guardians to judge what is best for voluntary wards, ignoring all other considerations, expecting to find an optimal solution for voluntary wards; requiring voluntary guardians to focus on voluntary wards and make an reasonable and optimal choice among the many options after taking into account the various intertwined factors in life. Voluntary guardians, therefore, are required to be a sensible, rational good person to consider the rights, needs, and interests of voluntary wards, so as to preserve voluntary wards' benefits to the greatest extent possible while minimizing the option to the detriment of their interests. In practice, decisions regarding the best interests of voluntary wards are often composed of many factors and are highly individualized, so case-by-case analyses are made under voluntary guardianship agreements to judge what are best beneficial to voluntary wards.

4.1.1. Connotation of the principle of best interests under voluntary guardianship agreements

The interests can be divided into two types: the current interests and the future interests of voluntary wards. The best interests of voluntary wards are judged by a general criterion, which not only includes analyzing the current situation, but also includes predicting the future. When making a decision for voluntary wards, voluntary guardians should consider the impact of the decision on the person concerned and whether the decision will affect the future life and health of voluntary wards. When making decisions for voluntary wards, voluntary guardians should take realistic factors into account, and future interests that do not need to be considered at the moment should be excluded according to actual situations. Therefore, guardians should use the available information to assess the current and future interests of voluntary wards, and make the choice that maximizes the overall or long-term interests and minimizes the burden of voluntary wards, based on factors such as resources, responsibilities, values, life plans, and opportunities.²²

When applying the principle of best interests, guardians should fully understand specific situations

and then make a final judgment. **In accordance with Article 9 of the Interpretation**, "In designating a guardian in accordance with paragraph 2 of Article 31 and paragraph 1 of Article 36 of the *Civil Code*, the people's court shall respect the true will of the ward, and in the best interest of the ward, specifically take into account the following factors: (1) The degree of closeness of life and emotional connection with the ward. (2) The order of guardianship of the persons legally qualified for guardianship. (3) Whether there is any violation of law, crime, or other circumstance adverse to the performance of the duty of guardianship. (4) The capability of acting as a guardian, will, and character of a person legally qualified for guardianship."²³

When making a decision, in effect, guardians should take into account the expressed wishes and personal values of voluntary wards. Voluntary guardians shall act in their best interests at all times and exercise reasonable care, diligence and prudence and they should do everything possible to safeguard voluntary wards' personal and property rights; if voluntary wards can have partial capacity, the ideas of the voluntary wards should be included in the guardian's decision-making process, and voluntary wards' wishes and personal values, education, care, health and living conditions should be considered by voluntary guardians. In other words, guardians should do their best to safeguard the interests of the voluntary wards, make necessary care and efforts, and prudent choices, taking into account the values and desires of the voluntary wards to determine their best interests.

4.1.2. Judgmental criteria for the best interests in judicial practice

For the time being, there is no judicial precedent on the application of the best interests' principle in terms of voluntary guardianship agreements, but in 2016, there was a typical case in Shanghai in which the best interests were adopted for the guardianship of minors. In 2016, the Shanghai No. 1 Intermediate People's Court concluded a case of disputes over the custody of surrogate children, which made a useful attempt on the best interests of wards, and provided certain standards for guardianship cases.

In this case, the wife, was unable to conceive naturally, so the couple purchased the eggs of others, and the husband provided sperm, using in vitro fertilization combined with embryo transfer technology, to give birth to a pair of twins. After the husband died of illness in 2014, the wife lived together with the twins for three years. In the same year, the husband's parents sued the court, requesting the guardianship of the twins. The Shanghai No. 1 Intermediate People's Court held that:

²² Zhao Yinren, Chen Ranxin. On the Best Interests of Ward [J]. Shanghai Legal Research. 2020(11):153.

²³ Article 9, Interpretation by the Supreme People's Court of Several Issues Concerning the Application of Book One General Provisions of the Civil Code of the People's Republic of China.

(1) As one of the member states of the *United Nations Convention on the Rights of the Child*, the principle of the best interests of the child established in Article 3 of the *Convention* is also part of Chinese legal system. When determining the ownership of child custody, the best interests of the child ward should be protected;

(2) Comparing the age and guardianship ability of the two parties to the dispute, the wife, a young and middle-aged man, in terms of economic ability or physical energy, can take care of two children better than the elders.

(3) In terms of the stability of the living environment, intimacy with the children, and the emotions of the children, the twins have been living with the wife since they were born, who have been close to the wife and adapted to the environment, while grandparents have never lived with their children. The changes in living environment may have unpredictable impact on the twins. What's more, the wife, as a mother, has a unique position in the child's growth process;

(4) The wife was identified as the stepmother of the two children based on the parental relationship, which maintained the normal parent-child relationship and family internal structure.²⁴

Different from ordinary people, it is conducive to the formation of two children's personalities. This case reflects the current Chinese judicial standards for judging the best interests of wards. In this case, although the ward was born by surrogate and has no blood relationship with the mother, the mother, not the grandparents, the Shanghai No. 1 Intermediate People's Court believes that living with the mother is most conducive to the healthy growth of voluntary wards.

When this case happened, the *Code* has not yet been promulgated, but the people's court has clarified the criteria for judgment based on the "best interests" provisions in the *United Nations Convention on the Rights of the Child*. Subsequently, the court compared and analyzed the pros and cons of the guardianship of the two parties in dispute from the aspects of the guardian's guardianship ability, the degree of intimacy with the child, the wards' emotional needs, the stability of the living environment, and the integrity of the family structure and relationship. That is, in this case, the factors considered by the court are: (1) the guardianship of the guardian in dispute including age, wealth; (2) living environment; (3) intimacy with the child; (4) emotion of children; (5) family relationships. It can be seen that the court judged guardianship by considering the material and emotional aspects. The same judgment may be applied to protecting the best interests of voluntary wards, so the criteria may cover guardians' age, guardians' economic conditions, guardianship ability and other external conditions, the voluntary wards' psychological and emotional needs, as well as the impact of their

living environment and family structure relationships on voluntary wards.

4.1.3. Principle of best interests in the notarization of voluntary guardianship agreements

Voluntary guardianship agreements in China are almost notarized in case of future disputes since the first voluntary guardianship agreement was made in Shanghai Putuo Notary Office. According to the current notarization procedure of voluntary guardianship agreements, notary offices shall investigate some information related to the voluntary guardians and voluntary wards including conflicts of interest between voluntary guardians and voluntary wards before notarization. All information related to true wishes of voluntary wards like character, physical conditions of guardians, economic conditions of voluntary guardians and voluntary wards, the level of education or care measures, etc. shall be taken into consideration to choose voluntary guardians who are most conducive to the healthy growth or recovery of voluntary wards and are most conducive to protecting the legitimate rights and interests of voluntary wards.

The disposal of the voluntary wards' property is also within the scope of the guardians' guardianship duties, but it should be implemented on the premise that is most beneficial to the voluntary wards' interests. Disposing of property for the benefit of voluntary wards should also conform to the principle that is most beneficial to voluntary wards, which clarifies the scope of the guardians' protection of the wards' personal rights, property rights and other legitimate rights and interests. For example, when renting out a property of a voluntary ward, choosing a suitable tenant, determining the rent at the market price, and the rental income shall be taken into account for the best interest of the voluntary ward.

Regarding the performance of guardianship matters, the principle of best interests is clearly stipulated in Article 35, paragraph 1, but the *Code* and the *Interpretation* have not clearly provided the judging elements and criteria of the best interests. The best interests will be affected by changes in terms of the times, economic development, ideology and culture, and many factors need to be considered in real life. The legislation requires guardians to use the principle of what is most beneficial to voluntary wards as the criterion for performing guardianship duties. Therefore, the court will exercise discretion over the related cases, and some vague parts of the principle of best interests could be made clearer in judicial practice.

4.2. Principle of protecting self-determination rights of voluntary wards

Protecting the self-determination rights of civil subjects is implied under Article 130 of the *Code*, according to which the parties to civil legal relations shall, based on their free will, exercise civil rights in

²⁴ Shanghai No. 1 Intermediate People's Court (2015) HU1MJCF56Civil Decision.

accordance with the law without any interference,²⁵ so self-determination rights are the rights for civil subjects to decide his own affairs according to his own values or preferences, based on their own free will. Furthermore, paragraph 3 of the Article 35 under the *Civil Code* makes a more detailed provision which requests the guardians shall respect the true intention of voluntary wards to the fullest extent, safeguard and assist the ward in performing juridical acts that are commensurate with the voluntary wards' intelligence and mental health, and guardians shall not interfere with any affairs that voluntary wards are capable of handling alone".²⁶

The respect for self-determination rights implied in the article requests guardians to do their utmost to ensure the normalization of voluntary wards, so that voluntary wards, through the hands of their guardians, have the right to make independent decisions on their own basic life. Arbitrary rescission rights allow voluntary wards to cancel the voluntary guardianship agreements before the agreements are effective, which grants voluntary wards the rights to determine their own affairs on their own free will, avoid that voluntary guardians commit any conduct detrimental to the voluntary wards' physical and mental health, that voluntary guardians cause distress of voluntary wards or that any other conduct of voluntary guardians infringe upon the voluntary wards' lawful rights and interests. If voluntary wards or guardians lodge a suit about the validity of rescinding voluntary guardianship agreements, the court shall uphold it, which confirms respect for self-determination rights under the guardianship law of the *Code*.

4.2.1. Connotation of protecting self-determination rights of voluntary wards

Protecting self-determination rights is mainly based on the theory of respecting human dignity inherent in humans, not related to the appearance, character, ethnics or situations, which is the foundation of the right to make independent decisions. Self-determination rights are rights to make decisions on ones' own focusing on knowing oneself and determine oneself, emphasizing the importance of autonomy and dignity of voluntary wards, maintaining individual independence, enhancing social participation, promoting self-realization, maintaining voluntary wards' dignity and fair treatment. Protecting self-determination rights under voluntary guardianship system includes two elements: a. voluntary wards shall be allowed to fullest extent to make decisions by themselves within their capacity and they shall be allowed to make decisions on small matters in everyday life which voluntary wards might have capacity to judge

by themselves. b. if voluntary wards could not make decisions on their own, but if they could make decisions by themselves with the help of others, they shall be allowed to make decisions with other's assistance.²⁷

Furthermore, the principles based on the notion that every adult with sound mind has the right to deal with his personal and financial matters.²⁸ Voluntary wards have sound mind after they sign voluntary guardianship agreements, and before the agreements come into force, besides, they may have sound mind to deal with the matters within their capacity even after the agreement are effective provided that they may only lose partial capacity. Voluntary guardians may not know what the voluntary wards prefer and hope to do even if they try their utmost to guess the true intentions of voluntary wards or make detailed investigations to find out what are most beneficial to voluntary wards. Self-determination are always necessary for voluntary wards to protect their legitimate rights and interests because only voluntary wards themselves could know what are the best choice for themselves provided that they could have a little capacity to make judgments.

4.2.2. Approaches of protecting self-determination rights of voluntary wards in juridical practice

Although, for the time being, there is no any case about rescission rights of guardians or voluntary wards, one typical case about the change of a guardian ruled by Jing' an district court, Shanghai set a precedent for future approaches of protecting self-determination of voluntary wards. An 84-year-old father has suffered from polio and has the sequelae of physical disability. Both his parents and his wife have passed away. His adopted daughter, applied for an appraisal of her father's capacity for conduct and designated herself as his guardian. After appraised by a forensic judicial expertise center, the court ruled that her father was a person with limited capacity for civil conduct, and the adopted daughter was designated as his guardian in April, 2020. The father's niece sued for changing the guardian in that the Notary Office in Putuo District, Shanghai, notarized that the father and the niece signed a voluntary guardianship agreement in which the father agreed to appoint the niece as the voluntary guardian and Tao Moumou, his nephew, as a guardianship supervisor in December, 2020. The father's money and other personal belongings were kept and managed by the niece, who was looking after him when the case started. During the trial, the court asked the father three times about his true will during the trial and clerks in the court went to father's domicile for investigation, asking neigh-

²⁵ Article 130, Chinese Civil Code.

²⁶ Article 35, Chinese Civil Code.

²⁷ Lixia. On the Adult Guardianship System [D]. Shandong University 2007: 76.

²⁸ Wei Shufa. Theory and Lawmaking Choices of the Adult Guardianship System [J]. Journal of Fujian Normal University (Philosophy and Social Sciences Edition). 2007(3):86.

bors and clerks in urban resident's committee, which proved that the father hoped that his niece would be the voluntary guardian.

The People's Court of Jing'an District, Shanghai held that although the father was a person with limited capacity for civil conduct, he had a certain ability to understand and express himself. He repeatedly expressed his unwillingness to appoint his adopted daughter as his guardian, and he agreed expressly that his niece acted as his voluntary guardian three times. Considering the free will of the father, the adopted daughter is objectively unable to continue to perform guardianship duties, nor does she entrust part or all of the guardianship responsibilities to others. From the perspective of benefiting the father, the court ruled that guardianship of the adopted daughter was disqualified and the niece was upheld to be the voluntary guardian in accordance with the notarized voluntary guardianship agreement.²⁹

It is hoped that the niece can exercise the right of guardianship in accordance with the law from the perspective of effectively protecting the father's personal, property and other legitimate rights and interests. If the niece infringes on the interests of the voluntary ward, the adopted daughter and other individuals or organizations willing to serve as the guardian of the father may also apply to the court to change the guardian.

This case is a typical decision of a change of guardianship case where voluntary guardianship and legal guardianship conflict. The court examined the voluntary guardianship agreements and the actual living conditions of voluntary wards, respecting the true will of the ward to the greatest extent after consulting the ward many times, and pay visits to the voluntary wards' home and urban resident's committee to learn about their real life and medical conditions, and comprehensively consider all factors, and decide to change the guardian. This case, as the first case to deal with the conflict of voluntary guardianship and legal guardianship, set a precedent under Chinese guardianship law of voluntary guardianship's precedence over legal guardianship, affirming the principle that respecting self-determination rights of voluntary wards is superior to the judgment of the court in terms of the selection of guardians, which proves that protecting self-determination rights of voluntary wards is an important principle of guardianship systems.

5. Problems regarding exercising rescission rights

Although rescission rights could deal with some of the issues in terms of protecting rights and interests

of voluntary wards, abusing them will bring more problems to voluntary wards. Moreover, time limit of exercising them under the *Code* may constitute barriers to exercising them.

5.1. Possible abuse of rescission rights

Voluntary wards could, in general, protect their own legitimate rights and interests before the agreements come into effect because both arbitrary rescission rights and rescission rights by agreement grant voluntary wards or voluntary guardians the rights to rescind voluntary guardianship agreements on their own, however, voluntary wards may not be protected after agreements become effective. When guardians harms voluntary wards' rights and interest, although Article 11 of the *Interpretation* provides ten civil subjects who have the right to apply to the people's court for disqualifying guardians including the relevant individuals and organizations who are composed of any other person legally qualified for guardianship, an urban residents' committee, a villagers' committee, a school, a medical institution, a women's federation, a disabled persons' federation, an organization for the protection of minors, an organization legally formed for seniors, and a civil affairs department.³⁰

And when no civil subject applies to the court for disqualifying guardians, in this case, the *Code* provides the ultimate remedy to voluntary wards, requiring that the staff of the civil affairs departments shall apply for disqualifying guardians, which plays a role in protecting the rights and interests of the ward. That is to say, civil affairs departments are not only one of the civil subjects to exercise statutory rescission rights to rescind guardianship agreements, but also the last resort for applying to the court for rescinding guardianship. It seems that Article 11 of the *Interpretation* provides a perfect solution for protecting voluntary wards through disqualifying guardians, but lawsuit proceeding always lasts several months from start to end.

During this proceeding or before the proceeding and after the guardian harms the voluntary wards, if guardians still manage personal and financial affairs of voluntary wards, voluntary wards are vulnerable to the harm from guardians, they may die or lose all their assets within one day. Time is essence for voluntary wards to be protected when guardians infringe upon the adult ward's lawful rights and interests or are slack in performing the duty of guardianship. Although the above-mentioned 10 civil subjects could play kind of role in overseeing guardians, in practice, in order to avoid future possible injury of losses of voluntary wards from guardians, guardian supervisors are always appointed by notarized voluntary guardianship agreements.

²⁹ The People's Court of Jing'an District, Shanghai (2020) Hu0106CS209.

³⁰ Article 11, Interpretation by the Supreme People's Court of Several Issues Concerning the Application of Book One General Provisions of the Civil Code of the People's Republic of China.

In terms of Chinese current voluntary guardianship agreements, guardianship supervisors with their names on the agreements are individuals. If supervisors abuse rescission rights to rescind agreements disposing of guardians, so as to grab property of voluntary wards, especially some rich elderly among them, which is a big issue for the future interpretation to be solved because voluntary ward are insecure, fragile situation. In order to solve the problem, whether some professional guardianship organizations should be established in China to be guardian supervisors and the future interpretation will make some detailed rules about curbing guardian supervisors remains to be unknown in current China.

5.2. Time limit of rescission rights

Moreover, the Contract Book of the *Code* stipulates that rescission rights by agreements shall be exercised within one year from the day that the party who has the right to rescind knows or should have known the causes of rescission or within a reasonable period after the other party makes a demand.³¹

But one problem is that no one knows when the voluntary guardianship agreements shall be terminated when the agreements are made. The effective date of voluntary guardianship agreements, which are very indefinite, may be within one year or after many years of be in established. One year's limitation of rescission rights causes rescission rights by agreement to be extinguished within one year with the result of no rescission rights. Even if the causes for rescinding agreements occurs, neither voluntary guardians nor voluntary wards have rights to rescind them after one year of establishing agreements. Arbitrary rescission rights may solve this problem before the agreements become effective because voluntary wards and voluntary guardians could rescind the agreements without any cause, by themselves, but it is obvious that statutory rescission rights could not solve it after the agreements come into effect because statutory rescission rights and rescission right by agreements are based on different causes. Therefore, whether the time limit for rescission rights by agreements should be extended or cancelled would be an important issue

for the future interpretation of the *Civil Code* to be solved. When arbitrary rescission rights and statutory rescission rights could not be used, the time limit of one year for rescission rights by agreement will bar voluntary wards and their guardian supervisors from rescinding agreements for the purpose of protecting voluntary wards' rights and interests, especially in emergency, therefore, it is necessary to modify the provisions related to time limit of rescission rights in the future interpretation of the *Code*.

Conclusion

The *Chinese Civil Code* provides a new voluntary guardianship system to deal with the rising issue of aging society, and its latest *Interpretation* entitles voluntary wards and guardians to arbitrary rescission rights, which could be used before voluntary wards lose full or partial capacity, and entitle them to statutory rescission rights after the agreements become effective. Although both rights almost cover the possible approaches of rescinding agreements for protecting voluntary wards, rescission rights by agreements stipulated in Contract Book of the *Code* are still important to be used to protect voluntary wards when they could not be protected by the two rights provided under the *Interpretation*. For the purpose of protecting legitimate rights and interests of voluntary wards under voluntary guardianship agreements to greatest extent, the exercise of rescission rights shall be based on the principle of best interests and protecting self-determination rights of voluntary wards under the *Code* and the *Interpretation*. Although the enactment of the *Code* and the *Interpretation* have made a breakthrough in the Chinese adult guardianship system, rescission rights under voluntary agreements need to be interpreted further in the future because some problems arises from exercising rescission rights under voluntary guardianship agreements, including abuse of rescission rights, which may injure and cause losses to voluntary wards, and time limit of exercising rescission rights by agreement, which could cause some problems in practice.

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³¹ Article 564, Chinese Civil Code.