

Study on the Issue of Emergency Rescue Exemption

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Abstract:

Before the promulgation of the Civil Code, only some local regulations in China provided for an emergency rescue exemption system in specific fields, but with the continuous occurrence of extreme cases of danger and unrescue, the society urgently needs relevant provisions on emergency assistance exemption that can be applied to all fields, in this context, Article 184 of the Civil Code came into being. An emergency relief exemption system at the national level was formally established. However, since the provisions of Article 184 of the Civil Law Code are too principled, how to understand the constituent elements of emergency assistance and whether the principle of complete exemption is reasonable are all issues that China's legislation and judiciary should consider at this stage. In order to solve these problems, it is necessary to study the relevant theoretical basis of emergency aid exemption and draw on the experience of comparative law, so as to further clarify the constituent elements of emergency assistance and explore the reasonable scope of emergency rescue exemption from both legislative and judicial perspectives, so as to establish a perfect emergency rescue exemption system.

Keywords:

Article 184 of the Civil Code, Emergency Rescue Acts, The Principle of Proportionality, Exclusion of Liability

1. Introduction

On November 3, 2017, when He Zheng drove a Hamasaki brand unnumbered two-wheeled motorcycle to the "Baxian Cave" section of Longtan by the third person Tan, the vehicle rolled over, causing the motorcycle driver He Zheng and the passenger Tan to be injured. Tan and Peng were injured to varying degrees. Afterwards, He Zheng's parents filed a lawsuit with the court of first instance over the second traffic accident, requesting Peng and others to bear responsibility. Peng believes that according to Article 184 of the General Provisions of the Civil Law (now Article 184 of the Civil Code), Peng should not bear the liability for compensation for the accident in this case. In this regard, the court of first instance held that in this case, Peng not only violated the relevant provisions of the Road Traffic Safety Law, but also caused serious damage consequences, failed to achieve the purpose of saving

people in danger, and could not be exempted from liability just because of his subjective good intentions. The court of second instance upheld the court of first instance. Judging from the textual interpretation of Article 184 of the General Provisions of the Civil Law, Peng believes that it is understandable that he is not liable, but the court's view cannot be ignored. It is worth studying whether it is reasonable to exempt all liability simply because of the initial good faith, regardless of whether all faults in the rescue process are appropriate, and to what extent the emergency rescue exemption should be limited.

2. The Theoretical Basis of Emergency Rescue Act Exemption

Because it is not easy for ordinary people to distinguish between ordinary acts of helping others and acts of emergency assistance, all acts of helping others are classified under the emergency assistance exemption system, which has led to the dilemma of application of Article 184 of the Civil Code. To solve this dilemma, we must first analyze and discuss the theoretical basis of the emergency rescue behavior exemption system.

2.1. Concept and characteristics of emergency rescue behavior

Before the promulgation of the General Provisions of the Civil Law, national legislation did not use “emergency rescue acts” as a legal term to explain its connotation, and although the General Principles of Civil Law dealt with the relief rules for rescuers who were injured, they did not use the concept of emergency rescue acts. Since the end of the 20th century, local regulations and regulations have begun to deal with emergency rescue in many ways. For example, Shenzhen stipulates this from the perspective of the actor, Article 2 of the Provisions on the Protection of the Rights and Interests of Rescuers in the Shenzhen Special Economic Zone: “The rescuer referred to in these Provisions refers to a natural person who voluntarily provides assistance to a person who encounters personal injury or risk of personal injury in an emergency without legal obligations or contractual obligations.” Most provinces, including Henan Province, have also adopted the more everyday term of righteousness and courage in their provincial local regulations to refer to emergency rescue actions. Article 3 of the Regulations of Henan Province on Rewarding and Guaranteeing Personnel for Seeing Righteousness and Courage: “Seeing Righteous and Courageous Behavior” as used in these Regulations refers to standing up to protect the national interest, the public interest, or the personal or property safety of others for the purpose of protecting the national interest, the public interest, or the personal or property safety of others because of non-statutory duties, legal obligations or contractual obligations, and to stop illegal and criminal acts that are occurring or lawful acts of rescuing, rescuing or rescuing people. Professor Liang Huixing believes that the so-called voluntary implementation of emergency rescue should refer to the act of ordinary people who do not bear the obligation to rescue others, and who have not been entrusted by any organization or individual, and see that others (limited to natural persons) are in a state of emergency danger and voluntarily and voluntarily carry out rescue. [1] Combined with the views of teacher Liang Huixing and the definition of righteous and courageous behavior in local regulations and rules, the author believes that emergency rescue behavior refers to rescue and rescue acts such as life-saving and rescue and disaster relief carried out by the perpetrator without statutory or contractual obligations to protect the legitimate rights and interests of others in an emergency.

From the definition of emergency rescue behavior, it can be seen that emergency rescue behavior has at least the following characteristics:

(1) Non-specificity of the subject. First, the actors of emergency relief are ordinary members of society who do not have legal or contractual obligations, and are not limited to citizens. Second, the subject of the rescue must be a person who does not have statutory or contractual obligations.

(2) Purpose altruism. The result of rescue will be affected by a variety of factors, and good intentions may not necessarily bear good fruit, but it is precisely for this reason that emergency rescue behavior should be based on the altruism of the purpose rather than the altruism of the result, because if the altruism of the result is the requirement, it is tantamount to requiring the rescuer to always consider the influence of various factors before and during the rescue act, which is bound to be detrimental to stimulate the enthusiasm of members of society to save others.

(3) The urgency of saving the environment. As the name implies, emergency rescue is carried out under a state of urgency, and with regard to the state of emergency, the author believes that it includes the urgency of the situation and the urgency of time, which means that if the rescue is not carried out immediately, the damage will lead to the occurrence of damage results or the expansion of damage results.

2.2. Constituent elements of emergency rescue liability

The emergency rescuer does not have a contractual obligation, so the rescuer will not bear the liability for breach of contract, so discussing the tort liability of the emergency rescuer from the perspective of tort liability is the premise of discussing the emergency rescue exemption system. The infringement caused by the emergency rescue act does not fall under the circumstances under which the principle of no-fault liability is applied as prescribed by law, so the liability of the emergency rescuer needs to meet the constituent elements under the principle of fault liability.

(1) Emergency rescue acts

Since it is the responsibility of the emergency rescuer when the emergency rescue act is carried out, the actor's behavior must first be an emergency rescue act, and the issues related to the emergency rescue act have been described in detail above, and will not be repeated here.

(2) Fault

As mentioned above, one of the characteristics of emergency rescue behavior is the purpose of altruism, so if the rescuer has a deliberate state of mind in the rescue process and causes damage to the aided person, it should not be regarded as an emergency rescue act causing damage. Therefore, the fault of the emergency responder can only be fault. When dealing with the issue of emergency relief exemption, the types of fault should also be classified as general negligence and gross negligence in accordance with the general theory of civil law.

(3) Damage

If there is no damage, there is no remedy, and the premise of the aided person's request for compensation from the rescuer is that the rescue act causes the aided person to suffer damage. The special nature of the damage caused by an act of emergency relief is that it may be indistinguishable from the damage suffered by the aided person prior to receiving the assistance. In this regard, the author believes that

since the damage suffered by the aided person during the continuous state of emergency is affected by various factors, in practice, the judge of each case should make a specific judgment based on the causal force of the emergency rescue act and the general concept of society.

(4) Causation

In the theory of causation, the theory of necessary causation pursues an objective connection between things, while the equivalent causality adds value judgments, requiring only the possibility between the act and the damage. As mentioned earlier, the damage caused by the act of emergency rescue is often mixed with the original damage of the recipient and is difficult to distinguish, and if the necessary causation theory is adopted, it is necessary to distinguish between the two types of damage, which is difficult to achieve even with such advanced technology in modern society. Therefore, the causal theory is more operational in judging the causal relationship caused by emergency rescue acts.

3. Current Situation and Thinking of China's Emergency Rescue Exemption Legislation

Article 184 of the Civil Code reconstructs the emergency rescue exemption rule, no longer examines the fault of the rescuer and exempts all liability, so this clause is also known as the "good guy clause". However, the controversy over the good guy clause has never been resolved, so it is particularly important to evaluate the good guy clause on the basis of sorting out China's emergency relief exemption legislation.

3.1. *The "good guy clause" in the Civil Code Code*

Article 184 of the Civil Code, which is the original General Provisions of the Civil Code, Article 184, and the first and second draft of the General Provisions of the Civil Code did not provide for exemption from liability for damages caused by emergency assistance, but in the process of soliciting comments on the second draft of the Civil Code, the legislature paid attention to the suggestion that relevant exemption provisions should be formulated for damage caused by emergency assistance. Corresponding provisions were added to the third draft of the draft. However, during the deliberation of the third draft draft, some opinions held that gross negligence is not easy to identify, and the current provisions are not conducive to encouraging righteous and courageous actions to achieve legislative purposes. It is proposed to delete the provision excluding gross negligence. Based on this, the legislature subsequently expanded the scope of the exemption clause by adding the limitation of causing significant damage, and expressed it as "appropriate civil liability" in the consequence section to reduce the salvor's liability. Subsequently, the legislator narrowed the circumstances in which the rescuer was liable from the aspect of the burden of proof, but there were still some opinions that the proviso should be deleted, and finally the General Provisions of the Civil Law deleted 184 proviso provisions when it was promulgated, formally establishing the exemption rule for damage caused by an emergency rescue act.

3.2. *Problems with the "good guy clause"*

It can be seen from the above legislative process that the legislative purpose of encouraging members of society to actively implement emergency assistance has been running through the entire legislative process, but is it justified and reasonable to

directly and comprehensively exempt the rescuer from responsibility simply to encourage emergency rescue, thereby completely tilting the balance of interests to the side of the rescuer? The author believes that this is debatable, so this article will analyze the problems of the “good guy clause” from the aspects of the provisions themselves and the legal system in combination with the relevant systems.

(1) It impacts the unity of the current legal system.

Professor Bern Weiders argues: “The legal order should be designed as an increasingly coordinated, deliberate and non-contradictory system of legal value judgments to guide the resolution of legal adjudication problems.” [2] Therefore, the evaluation of a legal provision should be carried out from the perspective of the legal system, and the impact of the “good guy clause” on the unity of the current legal system is mainly manifested in its aspects. There are contradictions in the value standards of emergency avoidance and legitimate defense systems. When the aided person is in a dangerous situation because a third party infringes the infringement, the emergency rescuer’s implementation of the emergency rescue act may cause damage to both the infringer and the aided person, [3] and for the infringer, the rescuer may need to bear certain responsibilities and compensation because of excessive defense; As far as the aided person is concerned, because the damage suffered by the rescue act has nothing to do with the infringer, and the rescuer enjoys the privilege of exemption under the “good person clause”, the rescuer has to bear the pain that he cannot bear.

(2) Paying too much attention to the protection of rescuers violates the principle of consistency of rights and obligations.

As mentioned above, in order to highlight the legislative purpose of protecting the rights and interests of rescuers and encouraging rescue, the legislature gradually limited the circumstances in which emergency rescuers were liable on the basis of granting rescuers the right to claim compensation until they were finally completely exempted from liability. In other words, the right to claim compensation while the salvor enjoys the full freedom of relief continued by the law and is not liable for his choice, is a clear violation of the principle of compatibility of rights and obligations.

(3) The language of the provisions is vague, and there may be multiple interpretations, which can easily cause difficulties in application.

It has been six years since the introduction of the Good Guy Clause, but due to its overly principled provisions, there are many interpretations of the provisions, resulting in many controversies among the public about the exemption premise of its provisions. For example, with regard to the “voluntariness” in the voluntary implementation of emergency assistance, some people believe that voluntary should mean that the rescuer and the aided person are strangers in law, and some opinions believe that the voluntary here refers to the establishment, modification and termination of civil legal relations according to one's own will, as is the “voluntary” in the principle of voluntariness. [4]

4. Legislation on Exemption from Liability for Foreign Emergency Assistance

He is the stone of the mountain, and he can attack the jade. To learn from the experience of comparative law, it is necessary to briefly sort out and compare the legislation related to the Good Samaritans of the two legal systems.

4.1. Regulatory approaches in civil law systems

Civil law laws are generally more logical, while civil law systems generally hold that emergency relief acts are governed by causeless management. Therefore, unlike common law systems that gradually improve the relevant system through precedents, civil law systems deal with the exempt party for emergency relief acts under the no-cause management system. However, this ancient system, which originated in ancient Rome, was stretched thin to deal with the problems in the ever-changing risk society, and in order to cope with the increasingly complex practical problems, civil law countries have created an emergency causeless management system to deal with the exemption of emergency rescuers in view of the dangerous characteristics of the situation in which emergency rescuers find themselves. Under the emergency no-cause management system, there are roughly three legislative models for emergency relief exemption in civil law countries. The first legislative model is the limited exemption model, such as the provision of § 680 of the German Civil Code. Section 680 of the German Civil Code states: "If the administration of affairs is aimed at avoiding imminent danger to which he or she is exposed, the administrator shall be liable only for intent and gross negligence." Although the second legislative model can reduce the liability of the rescuer in the final result, in essence the duty of care of the rescuer in carrying out the rescue act is not reduced, but the judge can reduce it at the discretion of the judge at the trial, such as the provisions of article 1374 of the French Civil Code. Article 1374 of the French Civil Code provides: "The administrator shall give due diligence to the management of the matter. However, the judge may, however, mitigate damages arising from the fault or laxity of the administrator as appropriate in the light of the circumstances giving rise to the administrator's responsibility for the administration of the affairs." The third legislative example is based on success or failure, and Spanish legislators believe that only rescuers who have committed effective acts of relief can obtain immunity based on good results.

4.2. The regulatory path of the common law system

Common law systems deny the general obligation to rescue, and even though courts have been recognizing exceptions, the common law system still bases the no-obligation rule on the establishment of Good Samaritan law, and the United States has adhered to this principle in both restatements of tort law, and even in some regions has adopted legislation to emphasize the liability that rescuers may bear after rescue, preventing those of high moral character from bailing out strangers. Although these public opinions did not make the United States abandon its general obligation to rescue, the legislative perspective of the United States opened up by wise jurists also marked the change of the attitude of the United States to rescue behavior from passive discouragement to active protection. Since the United States has gradually changed its attitude as case law continues to develop in extreme cases, its legislation also shows the characteristics of expanding the field of immunity. From the original American Salvage Act to California's first Good Samaritan Act of 1959 and later amendments to the Good Samaritan's Act, the U.S. emergency rescue exemption rule has expanded from only applicable to the rescue of ships at sea to providing that professionals are exempt even if they cause damage to the aided person through slight negligence, and finally to all except gross negligence.

5. Suggestions for Improving the Emergency Rescue Exemption System

From the above analysis, it can be seen that the granting of full liability immunity to rescuers lacks sufficient theoretical basis from the perspective of the domestic legal system, in addition, Article 184 of the Civil Code also faces the problem of unclear constituent elements caused by the ambiguous interpretation of the terms of the provisions, and to solve these problems, the author believes that China's emergency rescue exemption system should be improved from both legislative and judicial aspects.

5.1. *Improve the path selection of the emergency aid exemption system*

Most scholars in China have little controversy about the scope of emergency rescue exemption should exclude the situation of gross negligence of the rescuer, but they have different opinions on the choice of improving the path. At present, the discussion of domestic scholars on the improvement of emergency rescue exemption mainly focuses on the two modes of legislative theory and interpretation theory. [5]

(1) Legislative theory

The so-called legislative theory refers to the regulation of emergency relief exemption at the legislative level by amending laws or adding new systems to the legal system. The author will briefly sort out and comment on several models under the legislative theory that have been discussed a lot in the academic circles. The first model is the theory of special legislation, some scholars believe that China can regulate the issue of emergency rescue exemption by specially formulating a "law on the protection of the rights and interests of personnel who see justice and courage" like the United States, the author believes that China pays attention to the internal logic and systematization of the law, in China has initially built a relatively complete civil legal system today, within the framework of the civil legal system to solve the problem of emergency rescue exemption is more appropriate than special legislation. The second legislative model advocates that the proviso is added after Article 184 of the Civil Code, or the second paragraph separately stipulates that the rescuer bears appropriate liability to the aided person when the aid suffers damage due to gross negligence, which is the simplest and most direct regulatory path. The third legislative model advocates improvement in the sub-provisions of the Civil Code. Some opinions hold that an emergency causeless management system can be established in sub-provisions of the Civil Code, and emergency causeless management can replace emergency rescue acts. Compared with the emergency no-cause management system, the author prefers to set up special provisions in the tort liability section of the sub-rules to exclude the situation of gross negligence exemption.

(2) Hermeneutics

According to the provisions of China's Legislation Law, China's judicial interpretations can only refine the legal provisions and cannot break through the legal provisions, so the interpretation theory here does not refer to the use of judicial interpretations to limit the scope of exemption, but to use interpretation methods other than a variety of textual interpretations in judicial practice to explore whether the conclusions reached by textual interpretations are justified, so as to provide a variety of possible interpretation ideas for future application of law. Based on the fact that the conclusion of complete exemption from liability reached by textual interpretation is

unreasonable, some hermeneutics scholars believe that judicial practice should make full use of methods such as system interpretation to limit the scope of exemption of the “good guy clause” to the general negligence of the rescuer. The author believes that it is a feasible method to use interpretation to narrow the scope of exemption, but it is only temporary, and the most fundamental method is still to directly stipulate that gross negligence is not exempt from liability from the legislative level.

5.2. Further clarify the constituent elements of emergency assistance

The law must be interpreted before it can be applied, and the “good guy clause” has only had an isolated principle provision for many years, and the lack of judicial interpretation to explain and refine the meaning of its terms is very easy to cause the clause to fall into a dilemma of application. Therefore, in order to avoid the dilemma of application of this provision and the failure of the legislative purpose, it is necessary for the Supreme People’s Court to issue a judicial interpretation to clarify the terms “voluntary” and “emergency”, which are controversial in the constituent elements of emergency assistance. As for the term “voluntary”, the author agrees with the view that it is understood to mean that a person who has no statutory or contractual obligation to rescue in good faith. As for the determination of a state of emergency, first of all, the author agrees with the view that the civil rights and interests pointed to by the state of emergency include property rights and are not limited to threats to life and health; Secondly, because the situation of different recipients in real life is very different, it is very difficult to require an ordinary person to objectively and accurately judge how dangerous the situation of the aided person is, so it is generally said that subjective criteria are adopted to determine the state of emergency, but the uniform application of subjective standards regardless of the situation to judge its effect may not be ideal. For example, for professionals with certain professional knowledge, it is not necessarily difficult to accurately judge the situation of the aided person, and it is advisable to use objective standards.

5.3. Introduce the principle of proportionality in judicial practice

The principle of proportionality has been recognized as a basic principle in public law to regulate and restrict the conduct of public power. However, due to the fact that private rights are not as naturally capricious as public power, it is only in recent years that scholars in the field of civil law have paid attention to the important role of the principle of proportionality and believe that the principle of proportionality can be introduced into civil law. [6] The principle of necessity in the principle of proportionality requires the actor to choose the method that does the least damage to basic rights from a variety of methods, and the judgment of this necessity mainly adopts an objective goal-oriented thinking method, specifically in the emergency rescue act, which means that the rescuer cannot make his rescue act contrary or even not conducive to the realization of the purpose of the rescue, and cause “undue damage” to the recipient. Therefore, in judicial practice, if the rescuer is not grossly negligent in carrying out the rescue act, it does not mean that the rescuer is not liable, [7]at this time, the adjudicator should judge whether the rescuer’s rescue act meets the principle of proportionality in light of the specific circumstances, and if not, the rescuer should be liable even if the rescuer is not grossly negligent.

6. Conclusions

Man is born free, but he is always in chains. It is undeniable that the “good guy clause” is actually a pioneering move in China's legal system, which has played a certain role in combating the unhealthy trend of heroes shedding blood and tears, but its complete exemption from the responsibility of rescuers not only affects the unity of the current legal system, but also breaks the balance of interests between the two parties. If the freedom of the rescuer is not restricted, the recipient is very likely to become a slave to the rescuer's freedom, which in the long run is not conducive to encouraging mutual aid and good deeds. Therefore, on the basis of clarifying the constituent elements of emergency rescue, it is particularly important to amend the good person clause from the legislative level or make special provisions in the sub-provisions of the Civil Code to make the rescuer liable for damage caused by gross negligence. In addition, in judicial practice, adjudicators should implement the separation of good faith from obsolescence and introduce the principle of proportionality in order to make appropriate judgments.

Conflicts of Interest

The author declare that there is no conflict of interest regarding the publication of this article.

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