

Study on the System of Claims for Remuneration of Administrators Without Cause

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Abstract:

At present, China's Civil Code has no direct provisions on the right to remuneration of the administrator without cause, the judicial practice involves a large increase in the relevant cases, but the judges have no basis for decision. The right to remuneration of the administrator without cause is the equivalent value of the labour paid by the administrator without cause in the course of the administrator's helpfulness. In order to promote the noble moral quality of the manager without cause and protect the value of the labour of the manager without cause, it is necessary to build a system of remuneration claims. "Remuneration" appears many times in China's Civil Code and is defined as the equivalent value of the actor's labour, which can be interpreted in the same way as the remuneration of the uncaused administrator, thus providing a possibility for the construction of the system of the right to request remuneration of the uncaused administrator. In the construction of the system, the scope of the subject should be clearly defined, and the amount of remuneration should be determined in accordance with the local economic conditions and the industry's fee standard, and the relief measures for the interests of the administrator under special circumstances should be fully considered.

Keywords:

Causeless Management, Remuneration Claims, Judicial Practice, System of Remedies for Interests

1. Introduction

The right to request remuneration without cause involves the measurement of the value of "righteousness and benefit", there are many different views in our academic circles, the practice of different countries is also very different, but no matter which view of the academic circles, in our country have not been constructed to perfect the system for theoretical support. Since ancient times, our country has the traditional virtue of helping others, our society advocates is to form a kind of mutual help, good and charitable moral culture. But most people are realistic animals, self-interest is our instincts, the construction of the right to claim compensation for uncalled-for

management is the right to this idea, can stimulate people to participate in uncalled-for management of the enthusiasm, at the same time can be more prudent management of the affairs and make the interests of the person can be more perfect protection. The topic is based on the promulgation and implementation of the Civil Code, through the analysis of the provisions of the law, combined with the concrete evidence in judicial practice, while comparing the provisions of foreign civil codes, analysing the current difficulties in the construction of the right to claim compensation for the uncalled-for management in China, and searching for the construction of the right to claim compensation for the national conditions.

2. The Connotation of Causeless Management and the Need to Recognise the Right to Claim Remuneration for Its Administrators

2.1. Definition and functions of causeless management

2.1.1. Definition of uncaused management

Uncalled-for management and general management, agency and other civil legal acts there is a fundamental difference between its management of other people's affairs in the nature of the behaviour of neither legal obligations nor agreed obligations to interfere with the personal affairs of others, but because the manager has the intention of the interests of others, and today's society requires people to help each other and the noble moral qualities of the righteousness of the people. [1] Uncausal management is in fact an act of interference in personal affairs, which may lead to a conflict between the act and the true intention of the person being managed (referred to as the person himself), but the manager is to protect the interests of others and spontaneously manage his affairs, so that uncaused management can be established. [2]

2.1.2. Functions of causeless management

The Civil Code of the People's Republic of China (hereinafter referred to as the "Civil Code") provides for a causeless management system with the aim of promoting and encouraging people to be able to help each other and to act with courage, and the functions of causeless management are reflected in our daily life in a number of ways. Firstly, in the economic aspect, the no-cause management system is the behaviour of the manager for the benefit of others, and the management behaviour is a useful behaviour to protect the interests of others, avoiding the waste of resources, thus reducing the loss of the overall economy, and contributing to the growth of the social economy. [3] Secondly, in terms of social development, the no-cause management system is to be able to promote people to be righteous and helpful, to establish the noble moral character of citizens, to form a good social atmosphere, to carry forward the core values of socialism with Chinese characteristics, and to promote the harmonious stability and healthy development of social relations. Finally, in terms of the legal system, the causeless management system is both a provision for lawful interference in the affairs of others [4]. It is also a strong support for the promotion of the spirit of helping others in China, which can make the conflict between legal and moral requirements reach a balanced state, and is conducive to maintaining the credibility of China's laws, thus promoting the construction of China's socialist rule of law to a further extent. [5]

2.2. The need for a determination of the right to claim administrator's remuneration

There are many provisions on the obligations of the administration and the method of administration, and at the same time, the administrator should also bear the damage to his interests caused by his negligence, thus creating a situation where the administrator's rights and obligations are not equal. This is unfair to the administrator without cause who is willing to provide help to others, because he may waste a lot of his time during the administration, thus causing his own interests to suffer damage, but there is no means of redress to recover the loss. Therefore, it is necessary to recognise the right of an administrator without cause to claim remuneration. [6]

2.2.1. Economic benefits dimension

In uncaused management, the purpose of the legislation is to encourage people to help each other, to promote the people's dedication to justice and to ensure that their interests are not infringed upon. But only rely on the selfless spirit is often impractical, can not require everyone can have such a high moral standard, to give the manager of the right to request compensation can be a better incentive for people to participate in the management of no cause, help to form a good culture of mutual assistance and reciprocity, and to promote China's law and morality of the integration of coexistence. At the same time, the administrator can get the general consideration of corresponding labour in the process of exerting energy, which can make the administrator to do more management responsibility and inspire more management enthusiasm, and make his own interests to avoid being harmed, and at the same time, it can save a lot of social resources wasted by taking measures to save his own interests. Therefore, giving the administrator the right to request remuneration is an efficient decision that can benefit all three parties, not only can make the interests of the parties to the management of no cause be safeguarded, but also can promote the economic interests of the society and achieve the maximisation of interests.

2.2.2. Social development dimension

In this age of money, people have developed a utilitarian mindset and are seeking to make a profit. If we only rely on moral incentives to encourage people to participate in uncaused management without any practical measures, and hope that they will still choose to give up their own interests even though their own interests may be compromised, we have obviously neglected the reality of human beings. This makes the administrator in a dilemma, if help, their own interests can not be guaranteed, if not help, in conscience will be condemned. Gives the administrator the right to request for remuneration can give those who are willing to dedication, courageous people's own interests to provide protection, at the same time is also to enjoy the rights and obligations of the balance, set up people's rational view of righteousness and profit. The management without cause requires that the manager is based on their own dedication to implement the management of the act, if the beginning is to pay that is against the original intention of the management without cause, also does not constitute the management without cause, not to mention can have the right to claim compensation. Gives the manager the right to request remuneration does not affect our society selfless spirit of promotion, power is not mandatory, the manager to protect their own interests under the premise of the right can be given up to show their selflessness.

2.2.3. Legal construction level

The Civil Code only stipulates that the administrator without cause has the right to recover expenses from himself, but does not provide for the administrator's right to remuneration.[7] This makes the judge in our country in the trial of the case for the right to claim compensation for the lawsuit is difficult to decide, there is no specific legal basis to refer to, and even appeared in the same case of different judgement of the contradictory situation, which for the authority of our country's judicial greatly reduced. Gives the administrator the right to request remuneration is to China's causeless management system itself to think and improve the measures taken, and can be for China's righteousness and courageous people damaged compensation system and the lost and found bounty system provides a new way of thinking, and at the same time is a useful reference to the foreign advanced legislative experience, more conducive to the judiciary in the relevant law enforcement work to get a strong theoretical support.

3. Current Status and Problems of the System of Claims for Remuneration of Causeless Administrators

3.1. The current status of the system of claiming remuneration for administrators without cause in China

Our Civil Code stipulates that an administrator without cause may seek reimbursement from the administrator for expenses incurred in the course of his or her own administration, and that the administrator has the right to claim damages for loss of profit. [8] The administrator has the right to claim compensation for the loss of benefits suffered in the course of administration, but the right to claim remuneration for the administrator is not directly stipulated in the Civil Code. There are 42 references to remuneration in the Civil Code, most of which explain remuneration as the general equivalent of labour. [9] So in the management of the actual labour paid by the actor because of the management of the act, whether to get the general price of labour, that is, remuneration, this point in China's legal provisions there is still a gap. Therefore, it is not difficult to imagine that the determination of remuneration is only regarded as the professional management of professional managers can be regarded as the labour payment of remuneration, or the management of the general public can also be regarded as the labour payment of remuneration, which will make the determination of remuneration of the professional managers and the general public managers conflicting.

If we agree that the general manager enjoys the right to claim remuneration, as long as you implement the uncaused management, then you should enjoy the right to obtain remuneration, not to consider the uncaused management is the scope of the actor's occupation or not, this absolute division is obviously difficult to apply to all cases. Does not recognise the general actor to implement the act of management without cause can claim compensation, only when the actor is within the scope of his occupation of management without cause has the right to claim compensation, for the main body can claim compensation has a strict limitation, which will result in the citizens in the face of other people's difficulties in the difficult choice, to the system of management without cause to produce a greater harm. At the same time, the civil code will be the administrator because of its uncalled for management of the losses suffered to expand the interpretation of the administrator's efforts and time can be seen as a personal interest in the loss, can be based on the right to claim compensation for

damages of uncalled for management of the general price of their own labour? Can the necessary expenses in the Civil Code be interpreted more broadly? If the administrator does not engage in the act of management and can receive expenses based on his or her labour, but the perpetrator does not receive any benefit because he or she engages in the act of management, can it be regarded as the necessary expenses incurred by the administrator because of the act of management, and the blankness of the legal provisions makes it controversial whether or not the administrator has the right to receive remuneration.

3.2. Problems in China's system of requesting remuneration for managers without cause

3.2.1. The scope of subjects entitled to remuneration claims has not yet been clarified

In our country's judicial practice, there are support for uncaused management claim remuneration judgement, at the same time in the academic world also has many legal experts to recognise the uncaused management of the right to remuneration, but whether in the academic world or judicial for the right to remuneration of the subject have not yet stipulated. In this way will produce a new problem, two people respectively on the same nature of the affairs of the implementation of uncaused management, but the things belong to one of the occupational scope, he is far higher than the society of professional knowledge, the implementation of the management of the act is more scientific and can ensure that the maximisation of benefits, we should be determined in accordance with the occupation or the existence of other determination is a problem to be solved. If it is determined that as long as the general public, he is engaged in the management of the act has the right to request remuneration, for the professional knowledge, can do more reasonable to manage the affairs of the professional range of the manager is unfair? If it is determined that only the professional scope of the uncaused management personnel have the right to claim compensation, for personal health infringement, only professional people should have more effective management effect, but when the professional is not, the general public not only do not have the right to claim compensation and due to the management of the existence of negligence to be held responsible for the act, it will make it into a dilemma. Under these complex social circumstances, how to divide the boundaries of the subject of the right to claim remuneration without causing confusion in the identification of the subject is the most important, therefore, to clarify the scope of the subject of the right to claim remuneration in our country is the first condition to give the administrator the right to claim remuneration.

3.2.2. Lack of criteria for determining the amount of remuneration of an administrator without cause

If it is recognised that an administrator without cause has the right to request remuneration, but how to determine the amount of remuneration enjoyed by the administrator is also a more realistic and complex issue, after all, the economic development of different parts of the country is different, and the standard of fees between industries is also different. When an administrator to implement is within the scope of his profession management behaviour, then he enjoys the remuneration should be according to his professional fees or should be the same as the ordinary administrator enjoys the same amount of remuneration. How to determine to ensure the interests of the managed person to maximise, but also to protect the manager's

own interests, in our country at present there is no set of mature remuneration determination standard. The charges of each profession are not the same, our country for no cause of the amount of compensation should be in accordance with the charges of each profession or should be in accordance with the unified charges; At the same time, the level of economic development of our country is also a huge difference between the level of compensation for no cause of the amount of compensation for the administrator should be the national unity or depending on the level of development of the local economy? Appeals are the current causeless management system of China's vacancies in the development of compensation standards should be measured at the same time the interests of all parties and the local economic situation. If we want to recognise the right to request remuneration for the administrator in China, it is necessary to solve the problem of determining the standard of remuneration, so that the determination of the amount of remuneration can be treated fairly in regions with different levels of economic development in China.

3.2.3. Lack of a system of remedies for the interests of the uncalled-for administrator

The Civil Code provides for the recovery of expenses and losses incurred as a result of an act of uncalled-for management under the system of uncalled-for management.[10] However, it is generally understood that the sum of the benefits of reimbursement and compensation claimed by the administrator from himself/herself cannot exceed the benefits brought to him/her by the act of administration.[11] In this way, when the administrator because of its management behaviour caused by their own interests suffered great losses, just rely on the interests of the compensation of the person that is very small, the administrator's interests can not be safeguarded, which conflicts with the purpose of the development of our country's uncaused management system. Our country promotes is the individual to implement the good behaviour, but really someone so that behaviour and lead to the interests of the infringement, their own interests but not the government and social protection, resulting in helping others but can not protect their own interests of the embarrassing situation, so that a large portion of the people may implement the act of helping people to be deterred, a serious impediment to the spirit of selflessness in our country to promote the spirit of dedication, which became the implementation of the system of causality management in our country This has become the biggest obstacle to the implementation of the no-cause management system in China.

4. Improvement of the System of Claims for Remuneration of Causeless Administrators

4.1. Clearly defining the scope of causeless administrators entitled to claim remuneration

In order to constitute causeless management, it must be the management of other people's affairs, but other people's affairs are usually various, and we can divide other people's affairs into urgent affairs involving the nature of the person and general affairs of a property nature. The right to remuneration cannot be determined on the basis of the profession of the administrator, but rather on the basis of the urgency of the matter.

In urgent matters involving personal rights, the subject of the right to claim remuneration for management without cause should not be limited to professional

managers within the scope of their occupation, but should expand the scope of the subject to general managers. After all, as the nature of the person's rights are involved in the life and health of the security, these rights are the basic rights of man, only with these rights on the premise of the right of property, so the right of the person is higher than the right of property. Therefore, in the case of causeless management involving personal rights of an emergency nature, we cannot only encourage courageous behaviour by granting remuneration to professional managers, but also stimulate more people to participate by granting the right to claim remuneration to general managers, so as to better protect the personal rights of the person. For example, if there is a person injured in a car accident by the roadside, and if we only rely on people with professional medical knowledge to carry out causeless management, the injured person may lose his life because he does not have the chance to receive timely assistance. Therefore, even if I do not have professional medical knowledge, I choose to drive the injured person to the hospital, although I may be injured on the road again or not timely assistance to bear the responsibility, I have a huge risk of liability, but still insist on choosing to help others, this noble quality is the original intention of the system of causality management, to give the right to request remuneration is also reasonable.

In general matters involving property rights, causeless administration protects the property of others, and the right to remuneration granted to the administrator is also a property right, both of which are of a property nature and belong to the same rank. If the general administrator's right to remuneration is granted, it may result in my interests not being maximised, and at the same time, some people will rush to carry out the act of uncaused administration, thus increasing the contradiction between uncaused administration and the non-interference of others in personal affairs. [17] As a person, I would like my affairs to be managed by a professional administrator, because the quality of the professional administrator's management of affairs is certainly higher than that of the general administrator, and I will certainly pursue more professional management of affairs while paying the remuneration. [18] As an administrator, I implement the act of management without cause is my own professional scope, the professional knowledge of the matter will certainly be more comprehensive than the general public has the social common sense, I implement the act of management and I usually engaged in the same nature of the matter, in the case of my time and energy to get the remuneration is also engaged in the management without cause to cause a kind of compensation for the damage to their own interests. Therefore, in general matters involving property rights, granting professional administrators the right to request remuneration is beneficial to maximise the interests of all parties.

4.2. Addition of a standard rule on the amount of remuneration of the administrator without cause

The prerequisite for the construction of a system for requesting the remuneration of an administrator without cause is the existence of a set of criteria for determining the amount of the administrator's remuneration, but such criteria should be considered on the basis of various factors such as the region, the industry, the place of occurrence of the administration without cause, the time of occurrence of the administration without cause, and the judge's discretion.[19] Firstly, different regions in our country have different levels of economic development, if the whole country uses a uniform standard of the amount of compensation may lead to economically underdeveloped

regions to bear more pressure, which violates the principle of fairness in our country, the standard of the amount of compensation should be divided into different levels according to the region. Secondly, different industry charges are different, even if the same industry in the whole country in different areas of the charges are different, is in the same area of the same industry charges are different, our country does not stipulate the industry's uniform charges. [20] In the determination of the amount of uncaused management remuneration standard or should be done to achieve uniformity, since different industries have no uniform charges, the same industry also has no uniform charges, do not take into account the differences in the industry charges, and use the same remuneration determination standard. Furthermore, because the causeless management itself is a continuous behaviour, may be in the beginning of the implementation of the causeless management of the time is in this area, in the end of the causeless management of the time has gone to another area, of course, for the determination of the amount of compensation in different areas is different, we usually according to the beginning of the causeless management of the region where the calculation of the time when the management of the causeless; when the causeless management of the end of the time, may be the local economic level has increased by A level, for the calculation of remuneration in the beginning and the end of the difference also exists, we are also usually in accordance with the standard calculation of the beginning of the management without cause. In China's judicial practice, the judge in deciding the case is generally in accordance with the law, in determining the causeless administrator remuneration should limit the judge's discretion, but should be in accordance with the unified standard to determine, can not appear in the same case the amount of remuneration of different chaotic situation. To sum up, the standard for the amount of remuneration of the administrator without cause in China should be the local average social wage level in the place where the administration without cause occurs, regardless of the distinction of the industry, all in accordance with this unified standard to determine, so as to avoid the emergence of contradictory situations of different amounts of remuneration within the same occupation.

4.3. Increase in the system of targeted remedies for causeless administrators' interests

In the provisions of the Civil Code, an administrator without cause is entitled to reimbursement and compensation for the expenses and damages incurred by him or her as a result of his or her administration.[11] However, it is generally accepted that the sum of the necessary expenses incurred and the benefits of damages suffered by the administrator in the course of the administration should be less than the interests of others protected by the administration without cause. From this, it leads to a question, when in the process of management of the manager suffered a huge loss, so that the loss is far more than the management of the interests protected by the act, but also not due to the manager of intentional or gross negligence, the manager's interests how to relief has become a difficult problem. First of all, the manager to implement the management of the act is a kind of good behaviour to help people, and I did not conclude a contract between the contract, if I to bear the loss of the manager is no legal basis, I in the scope of the interests of the protection of the right to compensation for the damage to the manager, beyond the scope of the interests of the damage to the I don't bear the responsibility to pay compensation. Secondly, the administrator for its implementation of the management of the act of no cause is a kind of national strongly advocate mutual help behaviour, but their own interests in the case of serious

losses but there is no road to relief, which will hinder the development and improvement of China's no cause management system.

The original intention of the State to set up the no-cause management system is to be able to promote the spirit of helpfulness and mutual assistance, but if someone really responds to these calls and suffers a loss, there is no way of redress other than relying on the person's slight compensation. Therefore, we can not only rely on the interests of these individuals, the state and society should still shoulder its own responsibility, so that the uncaused management of non-self-caused in the management of the process of interest suffered a serious loss, the state and society as a means of relief, to maintain a healthy standard of living for the family of the administrator. The State, as an advocate, should ensure that all those who can participate in cause-free management have the courage to make contributions and pay, and that all those who pay are guaranteed.

5. Conclusions

No cause management system was established for the purpose of promoting the spirit of helping others, give the administrator remuneration can not only better promote more people to participate in the management of no cause, make no cause management system of the legislative purpose can be promoted, but also can be more reasonable to protect the interests of the administrator and can make the interests of the person can get the maximum degree of protection, to achieve the principle of maximisation of the interests of the parties, the principle of maximisation of the interests of the parties. At the same time can also save the waste of social resources, to achieve the principle of maximising social interests. The construction of the right to request remuneration system can not only solve the academic theoretical disputes in this regard, fill the blank level of the management system, but also for the judicial practice in China to provide a strong theoretical support.

Conflicts of Interest

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