

Original Paper

The Dilemma Facing the Immunity System for Civil Acts of Courage and the Countermeasures to Solve It

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Abstract

In today's society, there is less and less care and help among the public, and many negative cases of righteousness and courage are spread in the social media, leading the public to question the act of righteousness and courage, such as the "Zhao Yu case", etc. Many righteous people help others with good intentions, but their legitimate rights and interests are not protected, resulting in the phenomenon of "the righteous and brave both bleed and shed tears" is extremely detrimental to the construction of socialist rule of law. In order to solve this problem, the Civil Code proposed a civil immunity system for courageous acts of righteousness, but in the implementation process is faced with unclear subjects, unclear responsibilities, operational problems, etc., need to be optimized and improved by clarifying the responsibilities of different subjects, standardizing the way of defining negligence, and reducing the obligation of proof for the courageous.

Keywords

courageous acts, civil acts, immunity system

1. Immunity System for Civil Acts of Courage

Seeing the bravery of civil acts of immunity system mainly refers to the Civil Code, Article 184, the voluntary implementation of emergency rescue acts caused by the recipient damage, the rescuer does not bear civil liability, the establishment of the bravery of civil acts of immunity system has important significance. First, to achieve the value of the system of courageous acts of righteousness. The courageous person is in the premise of no statutory obligations, no agreed obligations, regardless of personal safety and security, to protect the interests of others to make an important move, is the embodiment of the noble character of the courageous person. In the past, only the moral restraint of the brave and the beneficiary was not sufficient to fully form a protective role, and their rights and interests were more vulnerable to damage. It is necessary to develop a civil immunity system for bravery in

accordance with the law, reflecting the pursuit of the value of justice in legislation; second, to improve the legislative specifications for bravery. In the past, China's civil immunity for righteousness and courage was mainly found in local regulations, often based on the administrative rules and regulations for righteousness and courage, which did not play a significant social effect. However, the inclusion of the civil immunity system for courageous acts into the Civil Code has improved the legal status of the civil immunity system for courageous acts; third, emphasizing the role of demonstration for courageous acts. At present, the phenomenon of stigmatization and blackmail triggered by righteousness and bravery often occurs in society, leading to a shift in the social atmosphere. In the face of disputes arising from moral issues, China needs to be filled by legislation in a timely manner, and to give "peace of mind" to those who have done righteousness by legal means.

2. The Dilemma Facing the Immunity System for Civil Acts of Courage

2.1 Unclear Subject

In general, the subject of courageous acts is a natural person, but some local documents will be incorporated into the subject of courageous acts, and due to the ambiguity of the Civil Code, the subject of courageous acts is still unclear, such as whether firefighters, police officers and other special professions belong to the subject of courageous acts, especially the part of the group outside the work time of the rescue behavior should be included in the courageous acts. The following are some examples of this. At the same time, whether acts beyond the jurisdiction of special subjects belong to acts of courage, such as police officers' participation in fire-fighting and firefighters' participation in arrests, etc., which need to be improved by the Civil Code, only when special subjects are included in the category of subjects of righteousness and courage can we discuss the immunity system and explore whether there are differences between special subjects and general subjects in terms of immunity, such as firefighters' mistakes in treating the injured, resulting in aggravating the condition of the injured. For example, if a fireman makes a mistake in treating an injured person and aggravates the condition of the injured person, is it an act of immunity?

2.2 Unclear Responsibilities

The current Civil Code is not clear on the determination of liability for bravery, and often allocates liability according to "who benefits and who infringes". However, in many cases of righteousness and bravery, the tortfeasor has escaped and cannot be caught within a short period of time, resulting in the tortfeasor not being held responsible, while the beneficiary suffers certain losses and often wants to be compensated from other aspects, so it becomes a norm to sue the righteous and brave, forming a social chaos of "not daring to help, not daring to help, not daring to save". The "social chaos. However, in judicial practice, it is difficult to determine whether there is intentional or gross negligence, and whether the implementation of the rescue act aggravates the consequences, it is difficult to form a unified responsibility determination, the beneficiary's family will often ask the courageous to compensate, and the judiciary is difficult to determine whether there is intentional or gross negligence

through a standardized process, resulting in unclear allocation of responsibility. This leads to unclear allocation of responsibility.

2.3 Not Very Operative

In general, the courageous person adhering to the justice of his heart will often accompany the beneficiary for treatment, or even advance the corresponding treatment costs, while the beneficiary is in subjective or objective reasons, in order to protect their own interests, so they will request the courageous person to bear the liability for various reasons, without considering the allocation of responsibilities of other subjects, in the absence of evidence, the courageous person may “good intentions are not rewarded” and are treated as tortfeasors by the beneficiaries and asked to bear the liability. In such cases, if the relevant evidence is insufficient, it can only be left to the discretion of the judiciary. Judges often make judgments based on common sense and are likely to rule that the person who has done righteousness and courage bears part of the responsibility for compensation, and even though the judiciary in some regions has tried to criminalize false accusations of righteousness and courage and provide evidence by the party claiming compensation, there may still be cases in which the legitimate rights and interests of the person who has done righteousness and courage are damaged, and once Such cases will cause great harm to the promotion of righteousness and bravery and the construction of socialist rule of law.

3. The Civil Act of Courage Immunity System Optimization and Improvement Strategy

3.1 Clarify the Responsibilities of Different Subjects

At present, China’s Civil Code only provides for the immunity system in principle, mentioning that the beneficiary does not need to bear civil liability for the damage caused by the rescue act, but does not make a detailed division, and does not mention whether the tortfeasor or the third party needs to bear civil liability for the damage caused. These problems are common in acts of bravery, and because the provisions of the Civil Code are not comprehensive, the judiciary is not clear when hearing such cases, and still needs to be resolved by combining other relevant laws and regulations.

First, the allocation of liability for damage caused to the beneficiary. According to Article 184 of the Civil Code, only mentioning that the rescue act causes damage to the beneficiary, the rescuer does not bear civil liability. This is to encourage acts of bravery, but to a certain extent it will violate the legitimate rights and interests of the beneficiary. A more detailed division should be made to take into account the legitimate rights and interests of the beneficiary in addition to protecting the legitimate rights and interests of the brave person. It is questionable whether a person who commits an act of bravery in a situation of gross negligence still meets the requirements of Article 184 of the Civil Code and is not subject to civil liability. For example, in the case of “Mou Jiaqiu and Liang Zhaohong, Chongqing Yunyang Branch of Sunshine Property Insurance Company Limited Motor Vehicle Traffic Accident Dispute” (2016) Gui 1202 Civil No. 391, when Liang was performing an act of courage, due to the seriousness of Mou’s injuries, Liang drove Mou to the hospital, but there was gross negligence

on the way to the car, which led to the car losing control and crashing into a street lamp, resulting in Mou's secondary accident, aggravating the original injury. In this case, Liang Moumou should be held liable for the secondary accident due to gross negligence. This move may seem to violate the provisions of Article 184 of the Civil Code, but in fact is to take into account the legitimate rights and interests of both the brave and the beneficiary, more able to reflect the fairness of the law. In this regard, the immunity system in Article 184 of the Civil Code should not include the intentional or gross negligence of the brave person, but should only cover scenarios of general negligence or the presence of other tortfeasors, such as the case, Liang Moumou driving by others collision, should not bear civil liability, by others to bear civil liability.

Second, the allocation of responsibility for the damage caused by the tortfeasor. The current Civil Code does not discuss the allocation of responsibility for damage caused by the tortfeasor, for example, the father educated his son and used minor violence to kick his son, at this time the brave man beat the father to serious injury, or even killed, it is clear that the brave man's behavior has exceeded the necessary limits, and the tortfeasor's tort is not equal, there is a disparity between the author, then the author believes that the brave man should bear part of the civil liability. However, if the father takes a violent, or even abusive way to educate his son, see the righteousness and then the father into serious injury or death, the author believes that no liability. In the process of assigning responsibility for the damage caused by the tortfeasor, the degree of harm caused by the tortfeasor's tort should be taken into account to ensure that the tortfeasor's tort and the tortfeasor's tort are basically equivalent in order to exempt the tortfeasor from civil liability for the tortfeasor, otherwise the phenomenon of the tortfeasor venting his personal anger in the name of righteousness and courage will occur. However, in different cases, it is also necessary to take into account the situation faced by the courageous person, whether the degree of harm can be judged, and should be the tort of the courageous person to reduce the penalty, so as to comply with the country's encouragement of courageous behavior, reduce the courageous person's worries.

Finally, the allocation of liability for damage caused to third parties. The allocation of responsibility for third parties is relatively complex, and it is necessary to try to divide the responsibility for the violation of the rights and interests of third parties under different situations of righteousness and courage. When the courageous person rescue behavior is not controllable will cause tort damage to third parties, and the damage results are unpredictable premise, can be characterized as an accident, then the courageous person does not need to bear civil liability, and the third party damage liability is mainly borne by the tortfeasor, the beneficiary. However, the courageous person can foresee the premise, and let such damage phenomenon, it is necessary to bear the civil behavior of third parties. For example, in the courageous person rescue drowning beneficiaries, in the rescue route to force the innocent third person to snatch down the life preserver to the beneficiary to wear, although resulting in the rescue of the beneficiary, but caused the death of the innocent third person, then the courageous person should bear civil liability for their actions.

3.2 Regulate the Way of Defining Negligence

There is a close relationship between the immunity system for civil acts of courage and the intentional, gross negligence, general negligence and inaction of the courageous. Only by defining the margins of different acts and making a careful division for the acts of courageousness can we do a good job of allocating responsibilities and also be able to provide reference for the implementation of rescue acts for the courageous, or be able to reduce the losses of the courageous. Therefore, there is a need to standardize the way negligence is defined and reasonably include some of the acts of bravery in the immunity system, so as to give more comprehensive protection to the brave.

First, the definition of intentional acts and acts of omission. Generally speaking, the subjective aspect of courage requires voluntariness, which means that inaction is difficult to appear in the act of courage. For example, the courageous person is a professional doctor, and when he sees someone fainting on the roadside and needs timely assistance, he immediately participates in the rescue to perform artificial respiration, but in the process of rescue, he is worried about the beneficiary's blackmail, so he stops the rescue. In such a state, the brave person has not acted, and let the beneficiary die. In my opinion, such behavior not only delays the beneficiary's opportunity to receive treatment from others, but also is not the socially advocated act of bravery, and requires partial civil liability. In terms of intentional behavior, the general act of courage is gratuitous, and is a moral and noble behavior, and rarely appears to intentionally aggravate the damage of others, part of the intentional damage to the tortfeasor, the beneficiary's behavior generally does not meet the elements of courage.

Second, the definition of gross negligence and general negligence. The definition of gross negligence and general negligence is difficult in judicial practice, and no detailed standards have been introduced, only in accordance with the distinction between gross negligence and general negligence in the Criminal Law, in a combination of subjective and objective way to identify. However, the civil and criminal legal acts can not be completely consistent, especially in the courageous behavior screening, the author believes that can be defined from two aspects: First, the results of the theory. When the act of bravery caused serious consequences, can be defined as gross negligence, if not caused serious consequences, the positioning of general negligence, such a definition of the same behavior will appear different results of the phenomenon, but taking into account the essence of courage, many seemingly grossly negligent situation, if there are no serious consequences, should be defined by general negligence; second is the subjective theory. Even if there is significant negligence in the implementation of the rescue, such as not knowing the correct rescue method or taking the wrong rescue method, but considering the subjective attitude and objective ability of the brave person, it is not suitable to be defined as significant negligence. If the implementation of too strict requirements for the courageous people, will inevitably reduce the courageous behavior, with the current "Civil Code" legislative spirit and social rule of law construction.

Finally, the definition of intentional and grossly negligent behavior. As mentioned above, intentional acts rarely appear in acts of courage, and acts of courage are voluntary and gratuitous. Even if the

courageous person has intentional thoughts, it is difficult to find relevant evidence to prove it, and once it is proved that he or she has intentional acts, such acts can also be excluded from acts of courage. Therefore, in general, even if the courageous person is involved in intentional behavior, he or she will be punished by gross negligence. When the outward manifestation of the courageous person is the act of rescue, even if the rescue method is incorrect and aggravates the consequences of the rescue, it is difficult to define it as intentional behavior, and it is more appropriate to define it as gross negligence and require the courageous person to bear part of the compensation responsibility, so that the legitimate rights and interests of both the courageous person and the beneficiary can be protected.

3.3 To Reduce the Burden of Proof for the Courageous

With the amendment and improvement of the Civil Code on righteousness and bravery, signals have been released to the outside world to protect the rights and interests of righteousness and bravery, actively encourage social acts of righteousness and bravery, and alleviate the pressure on the righteous and brave. However, there are still many civil disputes in judicial practice, such as disputes between the tortfeasor and the courageous person, disputes between the beneficiary and the courageous person, and disputes between the third party and the courageous person, resulting in the time and effort required for the courageous person to cope with various civil litigation actions. In order to better protect the legitimate rights and interests of the brave, the burden of proof should be reduced, so as to achieve the purpose of legislation and judicial protection of the rights of the brave.

First of all, the courageous person sues to compensate for any division of evidence. In many judicial practice disputes, the courageous person, in order to implement rescue acts, resulting in their own interests suffered losses, such as personal safety losses, property losses, etc., because the compensation for the courageous person should be based on the actual loss of the courageous person, it is necessary for the courageous person to provide evidence of actual losses, such as property invoices, medical lists, etc., these evidence can only be raised by the courageous person, so The division of the burden of proof belongs to the brave person, which is in line with the rules of proof of civil litigation in China and does not add extra burden to the brave person. At the same time, the public is generally not controversial about this burden of proof, continue to maintain this rule of proof can be.

Second, the courageous person is sued to compensate for any division of evidence. In many judicial practice disputes, there are tortfeasors, beneficiaries, third parties to initiate litigation against the courageous, that the courageous in the process of rescue, the rights and interests of their infringement, often the result of rescue aggravated injury, requiring the courageous to assume civil liability for compensation. In such cases, according to the civil rules of proof, the plaintiff should provide evidence, not only to provide evidence of the implementation of aggravated damage, but also need to prove the existence of intentional or gross negligence of the courageous person, and such intentional or gross negligence and aggravated damage between the correlation, and the courageous person need not provide the corresponding evidence. At the same time, in order to avoid the tortfeasor, beneficiary, the third person to the bravery of the phenomenon of blackmail, the need to require the plaintiff to provide

a guarantor or security, the part of the funds for the judicial authorities to find witnesses outside the case, if the plaintiff's prosecution is proved to be true, the refund of the deposit, if the plaintiff has the phenomenon of blackmail, the confiscation of the deposit, and the plaintiff to make further punishment according to law. In this state, in order to eliminate the courageous people worry, without the courageous people to bear any burden of proof.

Finally, improve the insurance system for the brave and the righteous. In some cases of courageous acts of justice, the existence of gross negligence still requires the courageous person to bear civil compensation liability, which undoubtedly increases the burden of the courageous person and leads to the public's increased ideological burden and reluctance to perform the act of courageous acts of justice. In the case of a brave person being sued for compensation, the tortfeasor, beneficiary, or third party, through evidence, proves that the brave person is intentionally or grossly negligent and needs to bear civil liability, requiring the local government and relevant social organizations to use commercial insurance to replace the brave person's responsibility to compensate, choosing to sign a "brave accident insurance policy" with commercial insurance. "This not only relieves the pressure of proof on the brave, but also encourages the public to carry out the act of bravery.

4. Conclusion

Nowadays, under the promotion of the rule of law, more and more courageous people lend a helping hand, but in exchange for civil compensation, not only did not get the praise of society, but also caused the loss of economic interests. In the long-term legal rights and interests of the premise is difficult to get protection, the courage of the righteous began to decline, and society has also appeared "dare not help, dare not help, dare not save" the pathological phenomenon. In order to reverse the current situation and restore the public's confidence in civil legislation, the Civil Code increases the protection of the rights and interests of the righteous and courageous, and tries to give more comprehensive protection to the righteous and courageous through the development of the exemption system for the righteous and courageous.

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