

Research on Relief Right of Road Traffic Accidents

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Abstract—The key to the reform of China's road traffic accident relief system is to clarify and implement the victim's relief power. Starting from the basic concept of social assistance, this paper analyses the right of social assistance and the victim's right and obligation of social assistance in road traffic accident rescue, and also studies the relationship between the right of road traffic accident rescue and the relief fund as a landing system in China.

Keywords—the right of social assistance; road traffic accident relief; relief fund

I. INTRODUCTION

The main reason for the inefficiency of Chinese government's road traffic accident relief supply is the lack of the right of road traffic accident relief and the failure of information. Rebuilding the system of road traffic accident relief, reducing the harm of traffic accidents to society, improving the efficiency of traffic accident relief, and protecting citizens' right to life are the important institutional guarantee to protect people's good life. From the perspective of socialization and decentralization of loss and social assistance of road traffic accidents, it is of great practical significance to analyze the design of an effective rescue system for road traffic accidents.

II. BASIC IDEAS OF SOCIAL ASSISTANCE

Social assistance refers to a kind of institutional arrangement in which the state or society provides cash, material or spiritual assistance and support to members of society when they are in difficulties in social life or unable to extend their rights and interests due to various reasons. Social assistance includes two parts: government assistance and social mutual assistance. It is the lowest subsystem in the social security system.

American scholar Charles A. Reich's theory of "new property rights" holds that the government has begun to become the main source of wealth in modern society, and the new wealth produced by the government has become a new type of property rights. Social assistance has a significant impact on traditional property rights. Professor Alan Buchanan of the United States, based on the analysis of the general right to freedom, argues that poverty has become the cause and manifestation of hindering freedom, and that it is

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necessary to reduce inequality in the effect of rights by means of institutions.

Social assistance is a kind of quasi-public goods. The neutrality and informatization of the supply mechanism of public goods are the necessary conditions to maintain the optimization of the consumption level of public goods. Through the interaction of the government, the rule of law and civil society, the balance between public power and civil society rights is guaranteed.

The market-oriented foundation of social assistance system, the promotion of civil social rights realized by social assistance and the reform of obligatory rights to help the plight are the basic concepts of social assistance development. The establishment of socialist market economy requires the marketization of social assistance model, the insufficient legalization of social assistance requires the promotion of the right of civil society assistance, and the reference to the crisis of welfare state system requires the obligatory right of social assistance.

III. THE RIGHT TO SOCIAL ASSISTANCE AND ITS DEVELOPMENT

The economic explanation of the right to social assistance comes from Coase Theorem. In the world of orthogonal transaction cost, different ways of defining power will produce different efficiency of resource allocation. Legislators should choose an efficient legal system.

The right to social assistance is the beginning of the right to social security and the basic right in the system of social security rights. In the 16th century, the promulgation of the Poverty Relief Act became the beginning of the right to social security. The rights of the poor and the weak are not only the substantive issues of poverty, but also the key issues of distributive justice. Compared with the general civil rights, the right to social assistance has two structural characteristics: the weak subjectivity of the right subject and the unequal rights and responsibilities.

It is inevitable for social development that the right of social assistance rises from human rights to legal rights. Human rights are a kind of natural rights, whose realization can only be based on human morality and conscience. Only by affirming social assistance through law and upgrading it from natural rights to legal rights can the right of social assistance be legitimate, and the realization of the right of social assistance can be guaranteed by system and law.

Article 45 of our Constitution: "Citizens of the People's Republic of China have the right to help from the state and society when they are old, sick and incapacitated. The state develops the social insurance, social relief and medical and health services needed for these citizens to enjoy these rights." The Amendment to the Constitution stipulates that "the state establishes and improves the social security system adapted to the level of economic development" and "the state respects and guarantees human rights". From the perspective of the fundamental law of the state, it stipulates that the right of social assistance as an important part of the weight of social security is the basic human rights of citizens. The implementation of the Interim Measures for Social Assistance on May 1, 2014, further strengthens and expands the social assistance rights of Chinese citizens at the legal level.

In recent years, the development of the right to social assistance has been manifested in the following aspects: first, the right to social assistance has expanded from the protection of the right to life to the equal emphasis on the right to survival and development; second, the realization of the right to social assistance relies on the cooperation of the government and community organizations; third, the emphasis on education and medical assistance; fourth, the improvement of the system of the right to social assistance.

IV. VICTIMS' RIGHT TO RESCUE AND SOCIAL RELIEF OBLIGATIONS IN ROAD TRAFFIC ACCIDENTS

Social assistance is a kind of economic assistance given to members of society who are in trouble because of disasters, poverty and other reasons. The social assistance system for road traffic accidents conforms to the essential characteristics of social assistance and is the basic guarantee of residents' right to subsistence.

Under the traditional tort law, the basic mode of loss allocation is the victim's undertaking doctrine, and the compensation of the victim depends entirely on the property ability of the victim. Victims in road traffic accidents are in danger of endangering their lives and may not be able to obtain effective compensation for torts from the perpetrators.

If the right to rescue road traffic accidents is not clear and the channels of social assistance are not smooth, theoretically, drivers, as the economic persons who pursue the maximization of their own interests, will pursue the minimum tort liability in traffic accidents, and there will be incidents that damage the victim's right to subsistence, such as secondary crushing, causing accidents and escaping; therefore, a new mechanism of loss decentralization is required to realize the socialized decentralization of losses. The theoretical basis of loss socialization lies in distributive justice. In addition to considering the fact that the acts of the injured party cause damage itself, we should also consider the position and ability of the parties concerned, guarantee the surviving rights of the victims of traffic accidents from the system, and require the society to undertake the duty of salvation on the basis of fair distribution.

In mainland China, only the motor vehicle traffic accident relief fund can compensate for the damage caused by road traffic accidents under the public social security system. In addition, there is no other public social security system to compensate for damage caused by road traffic accidents.

The main contents of the right to social assistance include the right to apply, the right to be rescued, the right to know information, the right to supervise, the right to claim damages and the right to request legal relief. The right of rescue in road traffic accidents is the right of citizens to obtain rescue from society when they suffer personal injury in road traffic accidents. Its application authority is limited to the victims who are responsible for the accidents and can not obtain the guarantee of their own lives and health and safety.

V. RELIEF RIGHT AND FUND FOR ROAD TRAFFIC ACCIDENTS

The Road Traffic Safety Law of the People's Republic of China officially implemented on May 1, 2004 stipulates the compulsory motor vehicle insurance system, which provides a strong guarantee for timely rescue of victims of traffic accidents. However, in the absence of insurance for motor vehicles and the escape of drivers causing accidents, the victims of traffic accidents still can not get timely assistance. For this reason, the state has set up the social assistance fund for road traffic accidents while setting up the traffic compulsory insurance system. In the case that the vehicle causing a traffic accident has not been insured against compulsory third party liability insurance of the motor vehicle or the offender escapes, the social assistance fund for road traffic accident shall pay all or part of the rescue and funeral expenses of the victim, and then the social assistance fund shall recover the expenses from the compensating obligor.

According to the current law, when road traffic accidents occur, victims mainly have three ways of rescue. The first way is to bear part of the loss by compulsory traffic insurance, the second way is to obtain partial compensation through tort law, and the third way is to obtain assistance from the road traffic accident rescue fund. As an important part of the decentralization mechanism of traffic accident victims' losses, the relief fund is a supplementary system of traffic accident insurance and a part of the national social assistance system.

China's relief fund has been congenitally inadequate since its establishment, and there are a series of defects. The root of these problems lies in our lack of accurate understanding of the positioning of the road traffic accident relief system. Articles 24-26 of the Regulations on Compulsory Insurance of Motor Vehicle Traffic Accident Liability promulgated by the State Council in 2006 also roughly stipulate the source and operation of social assistance funds. However, the special legislation on relief funds has not been promulgated yet. Until the promulgation of the "Trial Measures for the Management of Social Assistance Fund for Road Traffic Accidents" on September 10, 2009, the management and operation of social assistance

fund for road traffic accidents in China had special legal basis. Then the relief fund system began to be established all over the country. Since the implementation of the relief fund system, the social security function of the relief fund has attracted the attention of local governments, but the strict compensation conditions and different operating mechanisms hinder the development of the social relief function.

As a new thing, there are some shortcomings in the establishment of management institutions, fund raising and fund application of relief funds that need to be improved urgently. From the actual implementation of various regions, although most regions have issued Implementation rules, but due to the current situation of multi-head management of the fund and the differences in the actual implementation agencies in various regions, the actual implementation effect is not ideal, the proportion of fund relief is a drop in the bucket.

The rescue fund is not only a supplementary mechanism of compulsory traffic insurance, but also an important part of the social assistance system. Its operating conditions are closely related to the implementation of the right to rescue road traffic accidents.

A. The Right to Know Information and the Establishment of a Nationwide Unified Relief Agency for Relief Funds

Our country's relief fund implements a unified policy, local fund-raising, hierarchical management and division of labor and responsibility operation system; the Ministry of Finance and other relevant central departments are only responsible for policy formulation and supervision; the provincial government should set up the fund, which needs to determine the management level of the fund's competent departments and subordinate funds; and the local government should raise, use and manage the specific fund. Relevant departments are responsible respectively. The relief fund is set up by the provinces, and it is impossible for the provinces to formulate unified rules because of various differences. Even the provinces that set up the relief fund can not guarantee that the municipalities within their jurisdiction can implement a unified relief fund system. The positioning of the supplementary system of compulsory traffic insurance and the right of the victim to be rescued as the victim of the rescue fund objectively require the unified legislation, unified management agencies, unified conditions of rescue and unified national unified system of rescue standards of the rescue fund.

B. Rescue Right and Rescue Fund's Unified Rescue Standard

The relief fund should embody social welfare and highlight the responsibilities of the government. As a member of the national social assistance system, the relief fund has obvious social security nature. It should embody social welfare and highlight the responsibilities of the government. The specific responsibilities of the relief fund are authorized to the provincial governments, and the provinces are likely to adopt different approaches in terms of the competent departments of the relief fund, the proportion

of financial subsidies to the relief fund, etc. In addition to the specific situation of unbalanced development of different provinces in China, the construction and implementation of the relief fund system in various regions are likely to show a mixed state. If the responsibility of the government is unclear, the source of funds is insufficient, and the operation and supervision is not effective, it may be difficult for the relief fund to give full play to the function of social security, to reflect the value of social welfare, and therefore the right of citizens to be rescued in road traffic accidents is difficult to achieve.

C. Legal Person Subject of Legal Relief Power and Relief Fund

Legal remedy means that citizens, legal persons or other organizations believe that their personal rights and property rights are infringed by administrative acts of administrative organs or acts of other units and individuals, and the state organs that have the right to accept them according to the legal direction tell and seek solutions to remedy the infringement, and the relevant state organs accept and make activities with legal effect. The right to relief is derived from the original right, and its purpose is to relieve the infringed original right. The conditions for the implementation of legal remedy power are directed to the administrative organs with legal person subjects. Therefore, it is of great significance for the perfection of the road traffic accident relief system to effectively complete the establishment of a unified legal person relief fund throughout the country.

VI. CONCLUSION

Through the study of the right of social assistance, the right of road traffic accident relief, the content of relief fund and their relationship, this paper draws the following conclusions:

The clarity and perfection of the right to social assistance is an important guarantee of the social assistance system.

The government-led road traffic accident relief system can be perfected on the basis of defining the right of relief clearly.

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REFERENCES

- [1] Li Wenxiang, Ouwei. Relief of Rights and Rights [J]. Journal of the Party School of the Central Committee of the Communist Party of China, 2016, 20 (05): 65-74.
- [2] Li Yunhua, Ye Lu. Comments on China's Social Assistance Legislation [J]. Theoretical Monthly, 2016 (02): 144-149.
- [3] Jiang Wuzhen, Zhan Guoqi. Legal Interpretation of Social Assistance from the Perspective of Public Goods [J]. Comparative Law Research, 2016 (01): 169-181.

- [4] Ji Huizhen. The theoretical research and policy development of the right to social assistance abroad [J]. *Journal of Shanxi Provincial Party School of the CPC*, 2015 (01): 1-7.
- [5] Jia Feng. *Research on State Obligations of the Right to Social Assistance* [D]. Southeast University, 2014.
- [6] Li Zenggang, Dong Liwa. 'Crash is better than death': Legal and economic analysis of traffic accident compensation system [J]. *Institutional Economics Research*, 2008 (03): 150-163.
- [7] Yang Lixin. Basic Situation and Evaluation of Legislation and Justice on Road Traffic Accident Liability in Mainland China [J]. *Henan Social Sciences*, 2018, 26 (03): 63-71.
- [8] Li Lihong. Design of Road Traffic Accident Relief System Based on Public-Private Cooperation Theory [J]. *Economic Issues*, 2017 (04): 41-45.
- [9] Zhao Mingxin. Research on the System Orientation of Social Assistance Fund for Road Traffic Accidents [J]. *Insurance Research*, 2014 (03): 108-115.