

A Suggestion of the Tenant's Right of Defence against Poverty into the Chinese Civil Code—On the Construction of the System of Right of Defense against Poverty

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Abstract: *The home rental disputes continue, in the face of the tenant's strong malicious price increase, termination, interest-driven and unexpected situation, the tenant in a vulnerable position falls into a predicament and is in constant panic, which is not only a social problem, but also a legal problem. Therefore, it is particularly necessary to justify the tenant's right of defense against poverty. The lessee's right of defense against poverty refers to the lessee's right to refuse to perform if performance is bound to affect his survival interests, based on his own poor situation. In terms of value measurement, it focuses on the protection of survival interests. It is not only supported by the reality of sample survey, but also by human rights theory, residential rights theory and extraterritorial law, which is feasible. So the right of defense against poverty should be perfected in legislation and interpreted the system in court.*

Keywords: *Home Rental; Tenant's Right Of Defense Against Poverty; Human Rights; Residential Rights and Interests; Civil Code*

1. The problem leads: the leasing dilemma

On January 4, 2019, the world's leading new economy industry data mining and analysis organization iiMedia Research authoritatively released the "2018-2019 China Online Rental Industry Special Report", which showed that the number of online short-term rental users in China in 2018 reached 147 million people, an increase of 83% over 2017, the number of users is expected to exceed 300 million in 2020. So far, housing disputes are still heating up, and more than half of the interviewed users have experienced long-term apartment rental disputes. Most leasing groups have encountered problems such as the landlord's non-refundable deposit, black intermediaries, rent increases during the lease term, rental quality problems, group rent chaos, and the landlord's disguised termination of the contract.

In this regard, there are reports that group renting is not only a legal issue, but also a social issue. On the one hand, group rental houses are gradually developing towards family hotels, which is prone to disguised tax evasion and disrupt the order of the housing rental market; on the other hand, because property management and other departments have difficulty in managing group rental houses in the community, it is likely to bring hidden dangers to community safety. Therefore, appropriate administrative and legislative interventions in group rental housing are very necessary. It should be noted that most renters suffer from multiple problems. It can be seen that there are a large number of unreasonable and illegal phenomena in the current renting market, which can also reflect that renters are facing serious rent pressure and infringement problems.

When the lessee encounters malice or is dismissed in disguise, most of them will choose to complain to the relevant department, prosecute in the court, or swallow their anger. When the landlord asks you to check out immediately after the illegal (or legal) termination of the contract, and you are very poor and temporarily unable to find another house, you usually choose to patience and pack your things and leave, while it is more difficult to choose to plead for temporary residence. few. It can be seen that when encountering survival problems, the awareness of rights protection is still not firm enough and needs to be strengthened and improved.

Therefore, in the face of the ever-developing leasing market, lessees who are in a disadvantaged position, especially in large cities like Beijing, Shanghai, Guangzhou and Shenzhen, are often ruthlessly squeezed by lessors and other entities as well as sudden changes in circumstances, causing the lessees in

poverty to panic. Not all day long, so the lessee urgently needs a right of defense against poverty to protect his own rights. For the time being, the author will call it the right of the lessee's impoverished defense, also called the lessee's right to defense in distress, and the tenant's emergency right of defense. This refers to the lessee based on his own poverty situation, if the performance is bound to affect his survival interests, he have the right to refuse performance. In terms of value measurement, it focuses on the protection of renters' survival interests.

2. Cause exploration: derailment and neglect

2.1. Reality derails from legislation and justice

My country's "Civil Code " legislation has not responded to the current real needs of the housing rental market and disputes, making it difficult to protect the rights of tenants in the judiciary, and even leading to the emptiness of citizens' rights and the derogation of the concept of fairness and justice.

In the case of " Feipeng Lin and Deqin Liu 's housing lease contract dispute," Liu Deqin emphasized in his defense that " Deqin's Liu dishonest and untrustworthy behavior by the store lessor increased Liu Deqin's operating costs and was one of the decisive factors that caused Deqin Liu to lose again. 1. Because of the high rent cost of the store, it is difficult to survive in the convenience store business that was originally operated at low profit..." Finally, the court paid rent and liquidated damages in accordance with the contract, but as far as the lessee is concerned, it fell into a poverty-stricken situation, leading to the lease. People's negative concept of fairness is likely to affect judicial credibility and social stability. Another example is in the "Appellant Moumou Sun and the appellee, Shanghai Yangpu District People's Government Wujiaochang Sub-district Office Housing Leasing Contract Appeal Case", The appeal stated that "Sun has no relatives and no houses elsewhere. To survive, he signed a contract with the Wujiaochang Sub-district Office and rented a contended house to operate catering. After renting the house, he had nearly five years of excavation in front of the road. Continuously, resulting in Moumou Sun operating at a loss. In order to fulfill the contract, Moumou Sun did not hesitate to borrow usury to pay the rent. Now the business of the small shop is gradually picking up, but Wujiaochang Street Office wants to take back the house and cut Moumou Sun's livelihood. This caused difficulties in their survival." In the end, the court considered the lease agreement and upheld the original judgment. Although Moumou Sun moved out at a reasonable time, he was faced with a serious survival dilemma. His appeal opinion also caused us to think about the system of the defense of the poor: respect and consideration of the value of survival.

Although from the perspective of judicial practice, the courts in most cases have already abided by the principle of contract compliance and ruled that the lessor should terminate the contract. However, due to the rapid development of urbanization, the requirements of substantive justice, and the trend of transforming formal justice to substantive justice, more attention should be paid recently. For contract justice, in trial practice, more attention should be paid to the facts and reasons of the tenant's existence dilemma. Otherwise, the gap between actual needs and legislation and justice will seriously damage the humanistic spirit of the post-code era.

2.2. The neglect of academic research

The full text of the article must be typeset in single column. Judging from the current research status at home and abroad, for domestic purposes, there is no domestic scholar to study the lessee's impoverished defense right after consulting relevant papers. In our country's research on the right to defense of poverty, scholars basically stay at the right of defense of the donor. It is stipulated in Article 195 of the "Contract Law": "The economic situation of the donor has deteriorated significantly, which seriously affects its production and operation or family life, you can no longer fulfill the obligation of donation." There are too many papers on this research. During this period, some scholars also began to study the right of impoverished defense of the right of residence in the marriage law. For example, Article 42 of the "Marriage Law" stipulates: "When a divorce, if one party has difficulties in life, the other party should provide appropriate assistance from his personal property such as housing. The specific method is determined by the two parties agree; if the agreement fails, the people's court shall make a judgment." And then it will be detailed in the judicial interpretation of the Marriage Law. Although many scholars dispute whether there is a right of residence in the marriage law, as far as the author is concerned, this is also a poor defense right in the field of marriage law, and should not only focus on the post-divorce, but also throughout the duration of the marriage. As far as foreign countries are concerned, German civil law

has actually been involved. In reviewing Larenz's "General Theory of German Civil Law", the author found the shadow of the impoverished right of defense of the lessee in German civil law. It is implicitly stipulated by Article 564 and Article 574 of the "German Civil Code", but it is not very obvious, and the research is not very thorough. Generally speaking, our country has not responded to the lessee's rights and poverty, let alone how to form a systematic poverty defense system, which has caused the marginal neglect of academic research.

3. Theoretical Justification: Proof of Human Rights to Extraterritorial Law

In view of the rapidity and typicality of the era in my country's leasing market, as well as the status quo of investigation and research, the author starts with the lessee's right of defense in poverty, and conducts the following theoretical investigations on the feasibility of the lessee's right to defense. Make a rough academic attempt to construct a defense system for poverty.

3.1. Human rights theory

From the early people's society to the contemporary society, we can see that the concept, system and protection mechanism of rights have undergone a gradual and long evolution. This is a general process of transition from a relatively vague, loose and homogeneous state to a clear, compact and heterogeneous state. In terms of the concept of rights, the most prominent one is through the transcendence of the theory of natural law in ancient Greece. The long-term evolution and integration of the concepts of justice, equal personality, and natural freedom, including the evolution of the meaning of the word "jus", and the evidence for "deserved" and "deserved", from the original force, blood identity, property and social hierarchy It evolved to the later citizenship, and finally evolved to the qualification of a person as a person. This is the birth and development of the concept of human rights. With the development of the concept of human rights, in modern countries, the most common manifestation of human rights is the constitutions of various countries. It is manifested as a kind of legal rights and constitutional principles. China conforms to the development of human rights theory, and the constitutional amendment passed in 2004 clearly stated that "the state respects and protects human rights."

As we all know, human rights are the rights of human beings and the right to maintain human dignity. Professor Zhang Wenxian believes that my country's human rights system regards the people's right to survival as the primary human right. As a clear concept of law, the "right to subsistence" was first seen in the "History of All Labor Rights" written in 1886 by Anton Menger, an Austrian jurist with a utopian socialist ideological tendency, which created the era of the second generation of human rights. . The right to subsistence, also known as the right to living or the right to a basic standard of living, refers to everyone's right to obtain a considerable standard of living for himself and his family, including adequate food, clothing, housing and necessary services. It is officially confirmed in modern international human rights instruments. Article 3 of the Universal Declaration of Human Rights adopted by the United Nations General Assembly on December 10, 1948 stipulates: "Everyone has the right to life, freedom and personal safety." Article 25 states: "Everyone has the right to enjoy the standard of living required to maintain the health and welfare of himself and his family, including food, clothing, housing, medical treatment and necessary social services; When widowhood, aging or losing the ability to earn a living under other uncontrollable conditions, they are entitled to protection." Many countries in the world have also made certain provisions in their constitutions to guarantee the right to subsistence.

The lessee's right to defense against poverty involves the maintenance of the lessee's own survival interests. However, when it encounters survival difficulties but should be actively protected by the country, it is difficult to enjoy the treatment of positive rights and thus encounter poverty. In this regard, the human rights theory based on the right to subsistence is a theoretical weapon for the lessee's right to defense in poverty. In the above-mentioned dilemma, the lessee can be based on its own right to subsistence under the conditions of the country's incomplete welfare benefits. It is proper to introduce the right of defense in poverty and provide the system guarantee for the rights and interests of the lessee.

3.2. Analogical considerations of residential rights

The right to subsistence is supported by the theory of human rights, and even the constitution, in an abstract sense. However, for the justification of the lessee's right of impoverished defense, it still needs the support of the theory and system in the civil law in order to carry out a feasibility analysis in a specific sense.

Based on the lessee's impoverished defense, it is governed by the leasehold system. In the theoretical disputes in my country, the nature of leasehold has the theory of formation rights, pure creditor's rights, property rights, and the theory of property rights of leasehold rights. In this regard, Professor Cui Jianyuan advocated the re-rightization of the lease right, and divided the lease right into a broad lease right and a narrow lease right. The broad lease right includes the right to request the delivery of the leased property and the usufructuary right of the leased property. The so-called right to request the delivery of the leased property is the right of the lessee to request the lessor to deliver the leased property to itself based on the lease contract. Its nature is a general claim. The usufructuary right of the leased property refers to the right to possess, use and part of the income of the leased property, which is usually the lease right in a narrow sense. In this regard, the so-called real right of lease right refers to the real right of lease right in a narrow sense. In view of my country's theoretical status, and Article 229 of the "Contract Law" "Sale does not break the lease", the author tentatively adopts the property right of lease. From the property rights of lease rights, we can at least conclude that lease rights have property rights.

But the lease right not only has the property right, but also has a more important personality identity. The personal identity of leasing is mainly reflected in the characteristics of leasing itself. For example, in the limitation of the right of first refusal in our country, the lessor sells the leased property based on a special identity, and the identity relationship needs to be considered. Congzhi Qiu scholars believe that the personality of leasing mainly reflects two points: (1) In the establishment of a lease, the qualification of the lessee is regarded as an important condition in the transaction, and the lessor has the discretion to determine the personality of the lessee. (2) Lease claims are personal and the lessor shall not change arbitrarily. Therefore, the restrictions on the assignment, sublease and sub-lending of lease rights have become an important issue in the effectiveness of the lease.

From the above-mentioned lease rights, which have two major attributes, and with the influence of the social standard trend, we can find the similarities between lease rights and residential rights. The so-called right of residence refers to the right to possess and use other people's housing and its auxiliary facilities for the purpose of residence. Both contain housing benefits and utility benefits. It is precisely based on this that in the process of enacting the Property Law, there was a big controversy over whether to stipulate the right of residence. Later, the legislature considered that the right of housing rental and other rights could meet the housing needs, and no longer stipulated the right of residence. In his own usufructuary creditor's rights system, Professor Pengsheng Sui even believes that the right of residence is a usufructuary creditor's right, that is, the creditor's right for usufructuary, which is usually made in the form of a burden-bearing gift, which is a manifestation of usufruct gift. In the event that the owner transfers the house, it is necessary to revoke the gift contract, treat the house as an unenforceable property and transfer the ownership of the house without breaking the creditor's rights, etc. In order to provide protection for the owner of the right of residence. The similarity can also be seen from the definition of the right of residence in the Roman private law. The right of residence (*habitatio*) is a kind of entitlement (other property rights) in the Roman private law, which refers to the usufructuary right or the right to use the house. Professor Chen Huabin believes that, in other words, the *ususfructus* in Roman law already contains what is now called the right of residence. It can be seen that the expansion of the connotation of the right of residence is very close to the purpose of the right of lease.

The right of abode has become a right. Since ancient Rome, it has been collectively referred to as human servitude with usufructuary rights and usage rights. Moreover, Chapter 14 of the "Divisions of the Civil Code" (draft) under consideration in my country clearly stipulates that the right of residence is before the easement. Although there are only four regulations, the protection of residential rights is indeed far-reaching. From the function of the right of residence and the right of lease, whether the right of residence can be identified in detail with reference to the right of lease. Regarding this, the author believes that the residency of the right of residence reflects that the right of residence focuses on the usefulness of real rights rather than the nature of human servitude. Based on the consideration of human servitude, the Supreme People's Court "Interpretation on Several Issues Concerning the Application of the Marriage Law (1)" Article 27, paragraph 3 stipulates that "in the case of a divorce, one party provides assistance to the person in difficulty in the form of housing in his personal property, which may be the housing right or the ownership of the housing." It can be seen that the relative law has stipulated the housing rights after the divorce. In view of the usefulness of property rights, the special article 160 of the right of residence stipulates: "The right of residence shall not be transferred or inherited. The residence involved in the right of residence shall not be rented out unless otherwise agreed by the parties." It can be seen that the creditor's rights contract can still be used. The exclusion of the form also indirectly proves that the right of residence can accommodate the right of tenancy. Professor Wang Liming also believes that although the right of residence cannot be replaced by the right of lease and is independent, he also believes that the establishment of the right of residence by property rights should not be limited to a free

way, and in principle should not include the right of lease, and exceptions can include, etc. It can be seen that it implies the reference of the right of residence to the right of tenancy.

It is the similarity between the two rights. Since the right of residence is introduced from the marriage law of our country, and in judicial practice, there are many cases that recognize it, and some scholars have summarized it into the following cases: (1) full ownership; (2) joint ownership; (3) Real right of residence; (4) Good faith acquisition; (5) Malicious collusion to damage the third party's benefit contract; (6) Public order and good customs. Since the defense of the difficulty of living in the right of residence in our country is introduced, logically speaking, the scope of the right of lease includes and is greater than the scope of the right of residence. Then the personal right of lease should also have the right to defend against poverty, not to mention that the right of lease has independent useful benefits. Therefore, as a supplement and theoretical support, the right of residence can help prove the existence of the lessee's right to defense in poverty. When the lessee is faced with the lessor's malice or illegal termination of the contract, and requests to check out, the lessee's impoverished defense is based on the consideration of residential rights and can be maintained based on the strength of real rights on the basis of no effective protection of the creditor's rights. It can also be said that it is in the civil law that the right of residence provides supplementary, support and protection for the lessee's right of defense in poverty, and the lessee's right of defense in poverty is more necessary for legislation.

3.3. "Obviously unfair" relief in the "Civil Code"

Article 151 of the 2020 Civil Code incorporates the risk of taking a person into the apparent unfairness, which states that "where one party uses the other party's distress and lacks judgment ability, etc, which results in a civil legal act that is clearly unfair when it is established. The infringing party has the right to request the people's court or arbitration institution to revoke it." In fact, the provisions of this article are based on taking advantage of people's dangers as the cause, and obviously unfair as the result. Although the system is very close to the "extraordinary profits" in Article 138 of the German Civil Code and Article 74 of the "Civil Code" in Taiwan, it is different from public order and good customs. The original intention of this clause is to protect economic The weak. Some scholars in my country believe that this provision is not a special case under the terms of public order and good customs, and the focus of value is not simply to maintain freedom of expression. Its true footing is still "obviously unfair", and its value is focused on maintaining fairness and order. "Obviously unfair" is in the General Regulations and is implemented in the civil law divisions. In terms of value measurement, it focuses on maintaining fairness and order. In a broad sense, it is also closely related to the profiteering behavior of public order and good customs. Since the entire civil law system is applicable, it is emphasized The right to withdraw from legal acts in a precarious situation is consistent with the value of the right of impoverished defense in terms of fairness and order. Therefore, when the "manifestly unfair" clause is extended, can it cover the right of defense of the poor? It is a subject worthy of consideration. The author believes that in view of the similarity of values, it is still feasible to use the "obviously unfair" plight of the poverty-stricken right of defense for the time being, and the multiplication of distress as a supplementary evidence.

3.4. Examples of Extraterritorial Law

From the perspective of extraterritorial law, there are still some countries or regions involving regulations on the lessee's right to defense against poverty, such as the following Germany, Quebec, and Portugal. From the provisions of these countries, the lessee's right to defense against poverty is still valid. Theoretical support.

Article 564 of the German Civil Code stipulates the continuation of the lease relationship with the heirs and the termination of special notice. Article 574 stipulates the tenant's objection to the notice termination, which stipulates that the tenant, his family or other persons belonging to his family's family In other words, if the lessor's notice of termination is improperly harsh, even in the case of the lessor's legitimate interests, the lessee can still defend, raise an objection, and request the continuation of the lease relationship. And from the provisions that "can not try to obtain a suitable alternative housing under reasonably expected conditions, there are also harsh"; "different agreements that make the lessee suffer from the disadvantages are not effective", etc. The vague provisions of the lessee's right to defense in poverty. In this regard, Larenz was particularly puzzled in his narration regarding the "legitimate interest" provisions of the lessor's termination of the contract based on the "legitimate interest" notice, and the restriction on termination proposed in Article 556a "the lease relationship stipulated in the contract" The termination of the lease will cause difficulties to the lessee or its family, and even if it is evaluated from the legitimate interests of the lessor, the legitimacy of the termination cannot be proved." When necessary,

appropriate changes can be made to the contract conditions, and the lessee has the right to require the lessor to continue the lease relationship. In this way, the lessor's right to terminate the contract-excluding the lessee's right to terminate the contract-is greatly affected. limit. In this regard, Larenz also emphasized that if the lessee's spouse and other family members living with the deceased in the house become the parties to the lease relationship, if the change is made, the principle of benefiting the lessee must be followed. Otherwise, it will be invalid. "Mandatory clauses". In fact, with regard to this emphasis, my country's Marriage and Family Law also clearly emphasizes the right of residence of family members living together, but in view of the similarities between the two, in fact, the lease rights in our country should be given the same protection as the lease rights in German law.

The seventh item in Chapter 4 of the Québec Civil Code deals with the "right to stay in the leased land". Article 1936 of the first article of this item stipulates: "All tenants have the right to stay in the leased land. It is not in the circumstances stipulated by the law. The lessee shall not be evicted from the leased residence." This actually strengthens the meaning of the right of residence in the lease right, and reflects the value of the residential interests. Judging from the legal provisions, the project also recognizes that the lessee has the right to defense in poverty, and the lessor shall not be expelled illegally or urgently.

The "Portuguese Civil Code" particularly emphasizes the distinction between non-residential real estate lease and residential real estate lease. Since this article focuses on renting a house for residential purposes, it will only be discussed. Article 1103 of the Civil Code stipulates "unilateral termination with reason", which obviously means the termination restriction of the "German Civil Code", but compared with that, it is more detailed. There are only eight paragraphs for the classification of types in Article 1103. In addition, Article 1104 also provides additional provisions for the confirmation of unilateral termination, which shows that it is extremely advantageous to follow the purpose of benefiting the lessee. Take the eighth paragraph as an example, which stipulates "to ensure that the lessee can obtain housing resettlement in the same city with similar conditions in the past." This paragraph can be interpreted negatively. After unilateral termination, the lessor enjoys the provision of housing resettlement. The obligation of not falling into poverty, but at the same time how the lessor does not perform it, because after the termination of the contract, it can be inferred that the lessee has the right to request a defense against poverty and not to move away. In a sense, Portugal also legally recognizes the right of the lessee to defend against poverty.

It can be seen from the above legislative examples that the lessee has the right to defense in poverty, which only focuses on one aspect or represents it in other terms, but the different forms do not affect the substantive right to defense in poverty. Based on this, the author believes that we have reason to believe that the lessee has a right to defense in poverty. However, the establishment of the right to defend against poverty does not mean the completion of the argument of this article "the introduction of the right to defend against poverty in the Civil Code", otherwise the mulberry harvest will be lost. In this regard, we will also make an academic attempt to introduce the right of defense of poverty in the following question of how to construct it.

4. On the Construction of the System of Right of Defense against Poverty

Although the justification of the lessee's right of defense is conducive to the improvement of the system of the right of defense, it is still difficult to justify the introduction of the system of the right of defense of the poor in the entire Civil Code. Due to the loose defense system of the poor in our country, the author tentatively regards the poor defense rights of the tenant and the donor poor as the defense rights of property law, and the relief defense rights such as residence after divorce as the defense rights in the field of personal law. In this regard, we can say that the right of impoverished defense crosses the fields of property law and personal status law, and can be abstracted into the entire civil code system. But for academics, it may be difficult to accept the impoverished right of defense in our Civil Code. Therefore, the author will provide two macroscopic construction ideas and provide microscopic institutional explanations below.

4.1. Construct ideas

The first option.in the lease contract, it is stipulated that the lessee has the right to defense in poverty, and the rest remain unchanged. The decentralized system is also a kind of cautious splendor. In view of the promulgation of the "Civil Code" of our country, it is not possible to build the general rules of hope in reality. In view of the fact that the right of defense system itself is a system that prevents the operation of rights, there are few general provisions in other civil codes. . Therefore, based on the stipulation of the

lessee's right of defense in the lease contract, and categorization, it also plays a positive role in saving our country's legislative costs.

Therefore, the author hopes that the lease contract in the current "Civil Code Contracts" will be improved, and it will stipulate the restrictions on the rights and interests of the lessor after the termination of the contract and the lessee's right to defense in poverty. At the same time, the author believes that in view of our country's lessee's impoverished defense right is the content of the creditor's rights law, through the functional equivalence of our country's tenancy right and the right of residence, the impoverished defense right of increasing the right of residence can be applied as a banner clause in the property law.

The second option. In the form of judicial interpretation of the "Opinions of the General Provisions", it provides a blanket provision for the right to defense of the poor. According to the provisions of judicial interpretation, when necessary, supplementing and perfecting relevant provisions has always been a common practice in my country to supplement the source of law and conduct judicial determination. Although the number of judicial interpretations exceeds the generalization of legislation, and even suggests that judicial power oversteps legislative power, and is worried about the quality of legislation, judicial interpretation is still one of the best ways to supplement the lack of legislation in our country. Through the practice of the existing "General Principles of Civil Law", the author believes that the provisions on the right of defense of the poor can still adopt a model. The provisions on the right of defense of the poor can be made in the "Comments of the General Rules" of the Civil Code, "the right of defense of the poor", Refers to the obligor based on his own poverty situation, if the performance of the obligation will inevitably affect his survival interests, he can defend the right to refuse to perform. In terms of value measurement, it focuses on the protection of the renter's survival interests. The rights and interests of this chapter can be applied. "

4.2. System explanation

After the interpretation of the above two ideas, we need to make a micro-interpretation of the poor defense system, which mainly includes the following aspects.

4.2.1. Definition and characteristics

Regarding the definition of the right of defense in poverty, the author thinks that we can first refer to the provisions of the right of defense in our country, "the right of defense,

Also known as the right to object, it refers to the right to confront the request or deny the other party's rights. "However, the "right of defense" of the right of poor defense is more breakthrough than the right of defense. The right of defense is essentially the nature of all rights such as the right to oppose dominance and the right of formation. Combined with the above situation of the lessee's poor defense right The right to defense in poverty refers to the right of an obligor to deny performance based on his own poverty situation, if the performance of the obligation will inevitably affect his survival interests. It has the following main characteristics:

One is legality. The right of defense is based on legal provisions and is determined by the antagonistic nature of the right of defense. If not stipulated by law, the abuse of the right of defense can easily lead to chaos in the transaction order.

Second, the particularity of the cause. Poverty defense rights cannot be used in any situation, and can only be invoked when they fall into poverty and endanger the interests of survival.

Third, passivity. Contrary to the usual right of defense, the impoverished right of defense can only be defended when others request it.

Fourth, the breadth of scope. Different from the usual right of defense, the right of impoverished defense can not only oppose the right of claim, but also the right of domination and formation. For example, when the creditor maliciously terminates the contract, the debtor is in poverty. At this time, the debtor can defend against the creditor's right to form the contract to terminate the contract; another example is that when the debtor is unable to pay off the debt, the security right holder can enjoy security for the collateral provided by the debtor The real right has priority to be compensated, but if the third person's survival dilemma is endangered, the third person can exercise the right of impoverished defense against the security right of the security right holder.

4.2.2. *Applicable principles and scope*

To clarify the definition and characteristics of the right to defense in poverty, it is necessary to determine the applicable principles and scope. The principle of application of the right of defense in poverty mainly has the following points: First, the principle of statutory. The scope of application and the power to exercise the right of impoverished defense shall be stipulated by law and shall not be arbitrarily created. Second, the principle of good faith. This principle originated from the concept of "general malicious defense" in Roman law and the concept of "should be in good faith and equity" in litigation procedures. Engaging in civil activities, exercising civil rights, and fulfilling civil rights should abide by their promises and be honest and not cheating. This principle requires that the party exercising the right of impoverished defense must not abuse the impoverished defense. This requires that the party exercising this right should truthfully prove that it is in poverty and must not maliciously conceal it; while the other party should provide the necessary conditions for survival and must not maliciously terminate the contract or expel it. It should be emphasized that the principle of good faith here includes the sub-principles of the exercise of divided rights, and the principle of prohibiting the abuse of rights. Third, the principle of public order and good customs. The principle of public order and good customs is the abbreviation of public order and good customs. The two respectively refer to the general order and general morality necessary for society. Regarding the relationship between the two, scholars generally believe that the scope of the two is roughly the same, and sometimes it is difficult to distinguish, but one is from the perspective of social order, the other is from the perspective of people's morality, and in general, it requires behavior to be socially appropriate. Some scholars in my country believe that the types of public order and good customs in my country can be summarized into the following types:

- (1) Acts that endanger the public order of the country;
- (2) Acts that endanger family relations;
- (3) Acts that violate sexual morality;
- (4) Acts of shooting Xin;
- (5) Acts that violate human rights and human dignity;
- (6) Acts that restrict economic freedom;
- (7) Acts that violate public competition;
- (8) Acts that violate consumer protection;
- (9) Acts that violate labor protection;
- (10) Profiteering behavior.

The author believes that in view of the theory of human rights, the right of defense against poverty should particularly emphasize the type of "human rights and human dignity behavior."

At the same time, on the basis of clarifying the above principles and in terms of scope, the right of impoverished defense not only involves the creditor's rights law, property law and other property law fields, but also involves personal rights law. It can be said that the right to defense of poverty involves the integration of civil law, including formal civil law and substantive civil law.

4.2.3. *Applicable functions*

The function of applying the right of impoverished defense lies in the respect for human dignity and the manifestation of substantive justice. On the one hand, the right to defense in poverty is related to the right to survival, and the protection of the right to survival is the basic respect for human dignity. When the obligor is expelled in a difficult survival situation, if the right holder is still treated insultingly, it will also involve the violation of the general right of personality, which is more closely related to the dignity of the person. On the other hand, in terms of the development trend of modern civil law in the West, it pays more attention to the maintenance of substantive justice. With the tremendous changes in the social and economic structure, civil law has begun to transform from an abstract person to a concrete person, and it has begun to pay attention to consumers, laborers, etc. The protection of the rights of disadvantaged groups emphasizes reasonableness and fairness, and the lessee is precisely one of the disadvantaged groups. By applying the right of defense in poverty, it is also a manifestation of the concept of substantive justice. In this regard, Professor Wang Liming believes that the concept of substantive justice also highlights the humanistic care concept of civil law. For example, the emergence of the concept of consumer contract is to achieve special protection for consumers. As a right, the impoverished right of

defense is to implement the civil law system to protect the disadvantaged group. The humanistic care concept and substantive justice it demonstrates echoes it.

4.2.4. Behavior

If the impoverished right of defense becomes one of the civil law systems, the author refers to social reality and legal research, and believes that there are mainly the following behavior patterns for reference:

(1) The impoverished right of defense in the property law. The right of impoverished defense in the property law is mainly aimed at the guarantor's impoverished defense. When the guarantor uses the secured property as a security, if the guarantor requests the execution of the secured property and the guarantor is in a survival dilemma, the guarantor can provide survival distress. The proof of the predicament is to defend the priority right of compensation of the security right holder's bona fide or malicious compulsory auction or sale. At the same time, it shall be used arbitrarily against the impoverished rights of the person with the right of residence, spouse and other close relatives against everyone.

(2) The right of impoverished defense in contract law. My country has provisions on the right of defense of the donor's poverty, but it needs to be further extended to the dual contract. In the above analysis, the right of defense of the poverty in the housing lease contract is a typical form. Of course, there are also sales, Transportation, storage and other contracts can also use the right of impoverished defense, but it should be noted that there must be obvious unfairness and risk to be measured.

(3) The right of defense against poverty in the Marriage and Family Law. In terms of marriage and family, it mainly focuses on family guardianship and marital property. As it involves status interests, it is even more necessary to protect the disadvantaged party or the infringed party without fault. On the one hand, in family guardianship, not only does the guardian have the right to defense in poverty, but if he performs his guardianship duties, he is in danger of survival and he can resign from his guardianship. On the contrary, when the guardian performs guardianship duties with the guardian, it will cause him more danger. Can apply for revocation of guardianship. On the one hand, in terms of marital property, the author should first consider the faults of both parties and the survival dilemma of the weaker party for the time being, and then take care of it. Of course, the distressed party can take the initiative to exercise the right of defense in poverty to request more points.

(4) Poverty defense rights in inheritance law. The inheritance law of our country strictly follows the statutory order, but the author believes that for the impoverished right of defense, the order principle should be temporarily avoided in the inheritance law, and the interests of the impoverished heirs should be paid first. This is the requirement of substantive justice. For this breakthrough, there are also precedents in my country's inheritance law, such as the protection of the interests of the fetus and the non-heirs who do the main care during his lifetime.

(5) The right of defense against poverty in public law. The author has always advocated the concept of private law first and public law protection. Therefore, it is necessary to explain that there is no difference between the advantages and disadvantages of the impoverished defense in public law after private law. The right of defense against poverty in public law mainly refers to the right of defense against improper expropriation and requisition and the right of defense against improper administrative law enforcement. In terms of expropriation and requisition, if the administrative agency's legal but improper expropriation and requisition have caused serious violations of citizens' property rights, resulting in serious difficulties in living and living, citizens have the right to legally confront with the right of impoverished defense. In terms of administrative law enforcement, take urban management law enforcement as an example. In the face of street vendors who are on the verge of survival, they often improperly enforce the law. They beat vendors, chased and expelled, forcibly confiscated property, etc. Leading to continuous serious social conflicts. The main reasons are One is the insufficient definition and protection of rights. Here, small stall vendors can be given the right to defend themselves against poverty, and they can guide these disadvantaged groups to safeguard their own survival interests through legal rights, which may better resolve the conflicts at the bottom of society.

4.2.5. Legal protection

Since the right of impoverished defense is essentially a right that is easy to abuse, it needs to be clearly stipulated by law. In terms of legal protection, it is even more necessary to limit the ways to protect the right of impoverished defense. In this regard, the author can use a combination of personal protection and state protection to exercise the right of defense against the poor. Personal protection refers to the rights holders taking various legal measures to protect their rights from infringement, mainly refers to

legitimate defense, emergency avoidance and self-help behavior, while state protection refers to the protection of rights through the state when their rights are infringed. Which is mainly through litigation. However, in terms of legal protection, the means of personal protection should be strictly limited, and it can be used only when necessary and in an emergency. Regarding the infringement of the right of defense of the poor, the author believes that it can be used with reference to the provisions of Article 179 of the General Provisions of the Civil Code on civil liability.

5. Conclusion

Therefore, by demonstrating the right of defense of the above-mentioned lessee's poverty, it has not only the practical support of social investigations, but also the theory of human rights, the theory of residential rights in civil law and the theory of extraterritorial law, etc. The author believes that the lessee is poor. The establishment of the right of defense has proved feasibility. However, the establishment of the lessee's right of defense against poverty is only a small step on the basis of the predecessors, and how to construct a more complete system of the defense of poverty is a big step for breaking through the predecessors. Regarding the construction of the right of defense of the poor, the author tried to make a simple academic attempt on the right of defense of the poor, and proposed two ideas: (1) The lessee's right of defense is stipulated in the lease contract, and the rest remain unchanged; (2) The civil law The judicial interpretation form of the "Opinions of the General Regulations" stipulates the right of defense in a comprehensive way. And on the basis of the superficial system interpretation at the micro level. In this regard, whether it is feasible still needs to be further tested and discussed in the future. In summary, the author provides the above thoughts and attempts for the introduction of the lessee's poverty defense right in the Civil Code and the construction of the poverty defense right system, which hopes to attract the attention of the academic community to better promote the development of civil law research.

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