

An Explanatory Reflection on the High-altitude Parabolic Rule in Article 1254 of the Civil Code

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Abstract

The civil Code revised the rule of throwing from high altitude, which further enriched and improved it. In terms of the number and content of articles, compared with the Tort Liability Law which only uses one paragraph to regulate the throwing rule from high altitude, this article not only increases to three paragraphs, but also adds many new contents. However, there are still different opinions in the academic circles even if the civil Code expands the rules of throwing from high altitude. There is no need to stipulate "no throwing of objects from buildings"; It is necessary to stipulate the right of recourse of the potential infringer against the true infringer; The investigation procedure must be established as a pre-procedure for compensation by the potential perpetrator; The safety obligations of building managers must be imposed; It is indeed necessary to clarify the investigation obligations of the relevant authorities.

Keywords

Civil Code; High Altitude Parabolic Objects; Hermeneutics.

1. Question Raising

Since the high altitude projectile rule was incorporated into the Tort Liability Law of the People's Republic of China (hereinafter referred to as tort Liability Law), the society has been constantly debating about it, and the academic circle has been debating endlessly about its rationality and legitimacy. Therefore, when drafting the tort Liability part of the Civil Code, the legislator modified and improved it, trying to eliminate the controversy caused by the rule.

But rather than end the controversy, the revision has sparked new ones. For example, some scholars believe that "the article focuses on strengthening the relief and protection of victims, and its ideology and concept are very advanced", which only needs to be improved. However, some scholars believe that although the Civil Code of the People's Republic of China (hereinafter referred to as the Civil Code) has responded to social disputes by revising the rules for throwing objects from high altitude, these new contents have also brought other disputes. Just because of the disputes, this paper will try to analyze and demonstrate the differences between Article 1254 of civil Code and Article 87 of Tort Liability Law, in order to improve the rules of throwing from high altitude.

2. Differences between the High Altitude Projectile Rule and Previous Legislation

Article 1254 of the Civil Code states: "Throwing objects from buildings is prohibited. Where an article thrown or dropped from a building causes damage to others, the infringer shall bear tort liability according to law; Where it is difficult to determine the specific infringer after investigation, the user of the building who may have harmed the infringer shall make compensation in addition to the one who can prove that he is not the infringer. The user of the building who may have harmed the building shall have the right of recourse against the infringer after making compensation. The building manager such as the realty service

enterprise shall take necessary security measures to prevent the occurrence of the circumstances prescribed in the preceding paragraph; Those who fail to take necessary security measures shall bear tort liability for failing to perform security obligations according to law. Where any of the circumstances specified in the first paragraph of this Article occurs, the relevant authorities shall promptly investigate and identify the person responsible according to law." In terms of the complexity of the provisions, compared with the Tort Liability Law, which only uses one provision to regulate the throwing rule from high altitude, this provision uses three provisions to regulate and adds many new contents. It shows that lawmakers there are determined to improve the defects of the tort liability act.

The first paragraph of Article 1254 of the Civil Code clearly stipulates the non-act obligation of civil subjects, that is, it forbids anyone to carry out the act of throwing objects from high altitude. Then it explicitly stipulates the compensation and compensation sequence of the subject of liability, and especially emphasizes that the infringer should assume the compensation liability as far as possible. Only after the investigation can not find the specific infringer of the case, the possible harm of the building users to compensate for the loss of victims. After the non-specific infringer has given appropriate compensation, it is clearly endowed with the right of recourse, so that it can recover from the infringer.

In addition, the second paragraph of Article 1254 also imposes the safety guarantee obligation on the building manager, which explicitly stipulates the fault liability of the building manager and brings the building manager into the subject of compensation liability.

Article 1254, paragraph 3, defines for the first time the duty of investigation of relevant agencies in the rules for throwing projectiles from high altitudes.

3. A Brief Comment on the New Contents of Aerial Throwing Rule in Civil Code

3.1. There is No Need to Say "No Throwing of Objects from Buildings"

In general, legal provisions are added to make up for previous shortcomings. According to this logic, the purpose of adding the prohibitive obligation of "throwing objects from buildings" should be to make up for the deficiency of the aerial throwing rule in tort Liability Law. However, no matter from which Angle of analysis, tort Liability Law does not have such legal loopholes to be filled. First of all, from the perspective of the main body of the norms, this rule aims to disperse the loss of the infringed to the "possible harmful building users" by applying the principle of fair liability attribution, and its adjustment object is the "possible harmful building users". The "prohibition of throwing objects from the building" is a requirement for the specific infringer, not for "the user of the building who may harm the building". This is because legally, "the user of the building who may harm the building" has not committed the tort, but is only mandated by the law to compensate. Therefore, there is no need for the law to impose this prohibitive obligation here. Secondly, from the legislative technical point of view, the clause 1 of Article 1254 "throwing objects from buildings or falling objects from buildings causes damage to others" indicates that the act of throwing objects from high altitude has been negatively evaluated by the law, because the act of causing damage to people should bear tort liability according to law. Therefore, the addition of "no throwing objects from buildings" seems to be a repetition of the provisions. It is not used as a judgment but more as a declaration and a sermon.

3.2. It is Indeed Necessary to Stipulate the Right of Recourse of the Potential Infringer Against the True Infringer

First of all, the perpetrator may not have committed the tort legally. Because the law is for the purpose of "reasonable loss distribution, promote social harmony" to let the potential offender

bear the loss of the infringed, so for the potential offender, it is not the real tortfeasor, of course, has the right to recover from the real tortfeasor. Secondly, it is beneficial to give full play to the guiding function of the law to eliminate the disputes caused by the application of law, so as to unify the results of judicial adjudication.

3.3. The Investigation Procedure Must be Established as a Pre-procedure for Compensation by the Potential Perpetrator

Compared with other tort liability rules, the aerial projectile rule is special "not because of the projectile itself, but because it is difficult to find the true tortfeasor." [1] Therefore, in order to prevent the potential infringer without fault from bearing the loss caused by the real infringer's behavior, the law should find out the real infringer as much as possible through reasonable rule design. Therefore, it is necessary to add pre-investigation procedures. This is because, the compensation liability may offender, for possible offender is inherently unfair, because in the real world and there is no evidence that the offender has the subjective vicious, there is no evidence can prove that may be the offender actually implemented a tort, the law is only for share the loss reasons and make possible the offenders bear this loss. In order to make up for the unfair treatment of the possible perpetrator, the law should give it procedural protection: that is, only after sufficient investigation, the specific infringer cannot be determined, the high-altitude projectile rule can be applied.

"Civil code" only regulation, however, the investigation is difficult to determine the specific of the infringer ", for the relevant agencies shall adopt what kind of investigation means to reach the standard of "investigation", but I did not. This will easily lead to the legal practice, the relevant authorities may circumvent their due investigation obligations and responsibilities. Therefore, it is necessary to clarify the investigation measures that the investigation subject must take in the investigation procedure: first, in order to speed up the investigation progress, so that the relevant authorities have laws to follow and rules to follow, so that they can find out the real infringer in time; The second is to prevent the subject of investigation from shirking responsibility and refusing to expend efforts to find the real infringer in the process of performing their duties, leading to the pre-procedure becoming a dead letter.

3.4. Building Managers' Safety Obligations Must be Established

"Civil code" expressly provides for the building manager of the second paragraph of article 1254 of the security obligation, compared to the tort liability act, has the following positive significance: one is the building such as a realty service enterprise managers into the compensation liability subject, enlarged the scope of the victim's claims, ensure its loss to make up for better; Second, by entrusting the building manager with active obligations, they are forced to track and investigate the possible hidden dangers of flying objects in daily life, so as to reduce the occurrence of such infringement events from the source and prevent them from happening in the future. However, despite the above improvements in the Civil Code, there are still some problems:

First, from the perspective of legislative technology, the safety guarantee obligation of managers has been stipulated in Article 1254 of the Civil Code. If the tort liability of managers for failing to fulfill the safety guarantee obligation is stipulated in the aerial projectile rule, it will violate the unity and system of legislation. Therefore, in order to avoid legislative duplication, legislators should adopt quasi-applicable rules to stipulate that article 1254 of civil Code can be applied when the building manager fails to fulfill the security obligation and causes damage to others. As for the scope and amount of liability that the building manager should bear, it is up to the court to judge according to the specific circumstances of each case.

Secondly, in terms of the content of the new provisions, the ambiguity of the "necessary security measures" in the second paragraph of Article 1254 May weaken the effectiveness of the provisions, thus failing to achieve the original purpose of the legislators. Because when the judge applies this clause, it is bound to analyze and judge the content and degree of fulfilling the safety guarantee obligation of the building manager, so as to determine whether the building manager has fulfilled the safety guarantee obligation. If there is no unified and feasible standard, it is bound to cause a new round of disputes in judicial practice. However, "there is no established or socially accepted industry standard" [2] for the safety protection obligations of building managers in this article. Therefore, the law must play a certain guiding role. Legislators should summarize the best functions of building managers in judicial judgment, and on this basis, adopt the legislative method of "enumeration-summary", and list the important security obligations that building managers must perform, such as regular patrol and investigation, construction of safety isolation belt, etc. And for the security measures that are not listed, the court will make a case-by-case analysis.

3.5. It is Indeed Necessary to Clarify the Investigation Obligations of the Relevant Authorities

Generally speaking, in the field of tort law, the burden of proof rests with the parties, and public authorities do not intervene in private affairs. Some scholars believe that stipulating the obligations of public authorities in the field of private law is bound to damage the purity of private law in tort liability and even the whole civil code. [2] Compared with other infringement cases, however, the high altitude parabolic behavior on the one hand can bring serious threat to public safety, because it may not violate the legal interests of certain most people the right to life, the right to health and body weight of the personal rights and interests, namely every line passing through the structure of the per capita may suffer to the behavior of the infringement, the essence of which harm public security interests, Relevant organs actually refer to the public security organs have the obligation to intervene; On the other hand, in a practical sense, the Opinions of the Supreme People's Court on Properly Hearing Cases of Flying Objects and Falling Objects issued by the Supreme People's Court in 2019 indicated that courts should "strengthen investigation and evidence collection in accordance with their powers and strengthen communication and coordination with public security departments and grassroots organizations".

It can be seen that the judicial authorities have realized that relying on the parties to bear the burden of proof can no longer meet the needs of such cases. It is precisely "because the tort Liability Law under the current legal mode does not clarify this obligation, it is easy to shirk the responsibility in practice" [3], so it is necessary to strengthen the responsibility of investigation and evidence collection of the public authority.

However, the term "timely investigation in accordance with the law" in this article, like the term "investigation" in paragraph 1, does not specify the investigation measures and the extent of the investigation. The fuzziness of the text may become an excuse for the public authority to get out of the matter.

References

- [1] Wang liming. (2020). On the perfection of human damage liability caused by parabolic objects in high-rise buildings. *Journal of Law* (01), 1-9+17.
- [2] Jia Shaoqi. (2019). Design of tort Liability Rules for Damage caused by Throwing objects from high altitude -- A Review of Article 1030 of the Tort Liability Edition (Draft Iii). *Society under the Rule of law* (06), 59-66.
- [3] Cao, X. F. (2020). The jurisprudence of tort law and the aerial throwing rule. *Law and Social Development* (01), 48-61.