

Study on the Right to Economic Housing

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Abstract

The right of residence originated from the Roman easement, through the market economy and social development, the right of residence gradually developed from servitude to have a certain economic nature. China first set up a right of residence clause in the Civil Code, but China's current right of residence legislation closed content is missing, and only stay on the easement of the right of residence, for the economic properties of the right of residence is not clearly defined, and does not meet the development of society. China should improve the relevant legislation on the right of residence in the Civil Code - Property Rights, establish an open legal system for the right of residence, emphasise the economic attributes of the right of residence, optimise the rights of the right of residence in terms of inheritance, transfer and rental, etc., while at the same time combining social benefits, and establish a unified system for the right of residence.

Keywords

Right of occupancy; Servitude; Property law; Civil code.

1. THE HISTORICAL DEVELOPMENT OF THE RIGHT OF ABODE: FROM SERVITUDE TO ECONOMY

Article 366 of the Civil Code, in conjunction with article 371, defines the right of occupancy as "the right to transfer the use and ownership of a dwelling to another person by contract or by will, in order to meet the needs of that person for housing and living." The right of occupancy, although only just created in our most recent Civil Code, is in essence a very old institution, which first originated in Roman law. In the Roman law system, the right of habitation was a right created under the right of servitude. A servitude is a product of the Roman law doctrine of the separation of powers of servitude, which was intended to be a right that a person had over another person, similar to the right in rem in modern civil law countries. In the Roman law system, servitudes were divided into easements, which were rights created for the benefit of specific land, and easements, which were rights created for the benefit of specific persons, including usufruct, use and habitation.

A study of the history of Roman law reveals that, with the economic and social development of ancient Rome, the inherent family model was affected by changes in social attitudes, the development of productive forces and the emancipation of slaves, which led to a significant impact on the property system and the family structure and created a large number of socially disadvantaged groups. The ancient Roman ruling class, in order to preserve the inherent social class and to stabilise the social order and solve social problems, separated the right of ownership from the right of use and created the right of residence under the right of servitude, an institutional creation that responded to the social reality. In this context, the right of residence was given a strong servitude and was retained in the subsequent legislation on the right of residence in various countries. The most prominent of these is the gratuitous and non-transferable nature of the right of residence.

With the further development of economy and society, the productivity was improved by leaps and bounds in the two industrial revolutions, and the establishment of economics in the West, countries realized the closed and rigid scope of application of the original traditional right of occupancy system, and then adopted legislation to overcome the shortcomings of the traditional system. According to research, the legislative approaches of countries are mainly divided into two kinds: firstly, the commercialisation of usufruct rights to meet the economic demand of unspecified market players for the materialistic use of other people's houses, to compensate for the disadvantages of the inaccessibility of the right of occupancy to commercial circulation and the lack of focus on the value of benefits; secondly, the enactment of a separate law on the right of occupancy, which breaks through the limitations of the servitude and ethical nature of the right of occupancy in the civil code and establishes a new system of the right of occupancy. The former is mainly a common law system. The former is mainly in common law countries, such as the matrimonial home right established in the Marriage and Family Act in the UK to safeguard the rights of non-owners in the matrimonial home. The latter, such as the German Home Ownership and Permanent Residence Act of 1951, provides for a permanent right of residence that can be traded and moved in the market.

It is easy to see that in the historical development of the right of residence, it has gradually been freed from servitude and given certain economic attributes, and that the right of residence has developed from servitude to economy. When a right is given a new attribute, we are forced to discuss the jurisprudential basis of this new right and what social value it can give. Especially in our legal system, the question of whether and how to establish an economic right of residence has become an increasingly hot topic of discussion in academic circles.

2. JURISPRUDENTIAL ANALYSIS OF THE RIGHT TO ECONOMIC HOUSING

The main controversy over the economic attributes of the right of abode is whether the servitude of the right of abode and the consequent principle of non-transferability should be broken. The former argues that the principle of non-transferability of the easement of residence violates the core value of private autonomy in the civil law system and that this conceptual yoke must be broken. The latter, on the other hand, believes that the right of abode should be restricted by legislation in various aspects, such as transfer, for the sake of social welfare.

The author prefers the former view. First, from the definition of economics, economics is to meet the needs of all kinds of subjects in the case of scarce resources so as to achieve the greatest social justice, the integration of economics and law can instead better optimize the distribution of social resources and coordinate social interests, thus promoting social and economic development. Secondly, the legitimacy of law comes from its intrinsic value base, and China's current legislation on the right to housing is based on the implementation of the requirements of the Party Central Committee, which recognises and protects the flexible arrangements of civil subjects for housing security and satisfies the housing needs of disadvantaged groups. It can be seen that China's legislation on the right to housing has a clear public law dimension, making it deviate from the established core value of private autonomy in civil law, and thus neglecting the economic attributes of the right to housing. It is true that, as a socialist country, the public authorities are perfectly suited to providing social welfare to the disadvantaged groups by accelerating the improvement of the housing security system in China. However, as a civil legal system, the economic nature of the right to housing should be focused on the relationship between private autonomy and the use of property rights, and should not directly involve the public power of the state. The core of the economic right of abode is to provide a new form in the market of property transactions, allowing equal civil subjects of the transaction to take what they need in free competition, to transfer freely and to inherit freely, so that the right of abode can thus achieve economic efficiency and the autonomy of the parties.

The right to housing does not operate in the same way as the "housing system", nor can it be easily labelled as a public policy. As a system of civil law, the right to housing is a core value of private autonomy, rather than an overtone of public authority. Of course, the boundaries between public and private law are not clear-cut, and there are also areas where the right of abode regime overlaps with public policy. It is only with regard to the economic attributes of the right of residence, in particular, that the value base of civil law itself must be observed in the first place.

Therefore, the jurisprudential basis of the economic attributes of the right of residence lies in private autonomy, and the principle of non-transferability deduced from the human servitude attribute of the right of residence is not applicable in all areas, shifting the legislation on the right of residence from a closed to an open approach to meet the evolving needs of society.

3. ANALYSIS OF THE VALUE OF THE RIGHT TO ECONOMIC HOUSING

3.1. Diversification of Property Use

The current use of housing is mainly ownership and rental rights. Ownership places certain requirements on the financial capacity of the subject, especially in the context of China's current high property prices, and the right to rent is gradually becoming a popular choice for young people, but its instability leads to the possibility of the right being extinguished at any time. The right of residence, on the other hand, is legally located between ownership and tenancy, and it combines the advantages of both to solve people's current housing problems. The separation of the right of ownership and the right of occupancy also adds a new way of generating income for the owner's investment, enriching the way in which the owner can use his or her home as property, and achieving a win-win situation for both the owner and the non-owner. At the same time, according to data from the Civil Affairs Bureau, the marriage rate in China has generally been on the decline in the last three years, the divorce rate has generally been on the rise, and the birth rate has generally been on the decline in the last five years. This shows that the willingness of the current generation to marry and have children continues to decline, and it will become a common phenomenon for the elderly to live alone. After the economic attributes of the right of residence have been established, the elderly can set up the right of residence through the system of bequest and maintenance agreement to ensure the stability and improve the quality of life in old age.

3.2. Increasing and Encouraging Social Investment in Housing

With the "individual pooling of funds to build a house", "joint ventures to build a house" and "joint ventures to buy a house" have been accepted by society as a way of saving the cost of building or buying a house. Nowadays, with the establishment of the right of residence system in China, it is a new way of distributing the rights in a reasonable way by making the party who contributes more money the owner of the house and the party who contributes less money enjoy the right to live in the house. It meets the different needs of people for investment and residence and will become a popular choice for the investment industry.

3.3. Maintaining the Economic Order of the Market

Although China's current housing security system is becoming more and more complete, the housing security system has a limited function. For example, it is difficult to define disadvantaged groups because the range of subjects applying for public housing, low-cost housing or affordable housing is relatively narrow. At the same time, it is difficult to define disadvantaged groups, as they may occupy their homes or rent them out after their economic conditions have improved. The creation of the right to housing has broadened the scope of application of the right to housing, and its core basis of private autonomy is an effective option

for reducing speculation, avoiding the disadvantages of tenancy rights and thus reducing disputes and maintaining the economic order of our market.

Finally, although the economic right of occupancy can become purely technical in terms of its departure from the original family ethical relationship, its value of private autonomy makes it easier for the owner to exercise ownership economically and provides a more stable system for non-owners to use the property of others

4. THE REALISTIC CONSTRUCTION OF THE RIGHT TO ECONOMIC RESIDENCE: HOW TO ESTABLISH A SYSTEM OF ECONOMIC RESIDENCE IN OUR CONTEXT

4.1. Exploring the Right to Invest in Housing with A Social Dimension

The right of investment in the right of residence is based on family relations and incorporates the characteristics of the right of residence for compensation and social good. It allows for the transfer of the right of occupancy and inheritance, the rental of the right of occupancy with economic attributes and the full exercise of the rights of the non-owner occupier. It also allows the occupier to share the risks assumed by the purchase of the house with the owner, thus maintaining social stability. At the same time, the social good and the investment are to coexist in the right of occupancy, with each playing a role in a different field and different rules applying. The German Civil Code, for example, provides for the right of residence with a socially beneficial nature, followed by the right of residence with an investment nature in other laws. This article argues that China can adopt both the special provisions of the German Civil Code for the two types of right of residence, and develop a system of the right of residence with investment that is both socially beneficial, in order to protect the freedom of will in private law, but also to ensure the socially beneficial, and not to let the complete commercialisation of the right of residence destroy the original legislative intent.

4.2. Optimising the Application of the Right of Occupancy in Succession

The right of abode clause includes provisions on inheritance. It is important to note that, in the event that the testator does not specify the conditions and duration of the right of abode, the rights and obligations of the heirs and the owner of the right of abode will be clarified. At the same time, the title of property and the title of inheritance are effectively connected, and provisions are set in their respective titles, for example, the title of property is designed to "apply the provisions of the title of inheritance", and the title of inheritance is designed to "apply the provisions of the title of property", so as to build a complete system of the right of residence.

4.3. Building the Right to Live in A Home

The term "home based retirement", which originated from the Dutch "reverse mortgage", means that an elderly person applies for a loan of a certain amount from a financial institution in order to supplement his or her pension and receives a regular pension from the financial institution, secured by the home he or she owns with full equity, and enjoys the right to occupy the home until his or her death, and upon the death of the elderly person, the financial institution recovers the principal and interest by selling the real estate. The establishment of the right of residence, which makes this system possible in our country, is a good solution to the problem of old age in our increasingly ageing society, and also solves the social contradictions caused by the special situation of our country, i.e. children's old age, and allows the elderly to have a more secure old age. However, the current right of occupancy does not provide for the right of permanent occupation of the house with the right of occupancy, and there are no clear

provisions on whether the elderly have the right to transfer the house after mortgaging it. Therefore, it is necessary to refine and clarify the various rights of the right of residence of the elderly in the future judicial interpretation of the "old age home".

5. CONCLUDING REMARKS

The purpose of the right to housing in our country should be to have a secure home and to make the best use of property resources. In other words, on the basis of guaranteeing people's right to housing, it should also achieve openness and diversity in the free use of property resources. In order to achieve this purpose, China's legislation on the right to housing needs to further affirm the economic attributes of the right to housing and improve China's legislation on the right to housing on the basis of safeguarding private law autonomy and social welfare, so as to meet the diversified needs of different social subjects for the right to housing under the rapid development of China's market economy, in order to manifest the modernisation of the rule of law in China.

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