

Study on the Protection of the Rights of Prisoners' Minor Children in Macao and Guangdong

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Keywords: Minor children of prisoners, Rights protection, Way cooperation

Abstract: The legal construction in the Guangdong-Hong Kong-Macao Greater Bay Area has been promoted so far, and Guangdong, Hong Kong and Macao are seeking common goals and cooperation mechanisms for the rule of law. Under the common constitutional framework, Guangdong and Macao have done lots of practical work to protect the rights of juvenile children of prisoners. They have different degrees of practical experience in the control of labor remuneration, social assistance, family meeting and parental power compensation of prisoners. The two places may establish a unified standard and, by way of administrative cooperation, hope to achieve legal cooperation on the protection of the rights of minor children of prisoners.

1. Introduction

Imprisonment punishment, as a kind of penalty, to restrict the personal freedom of criminals as a means to punish illegal crimes, maintain social stability, to achieve crime prevention. But it also caused other problems due to the limited personal freedom of inmates. One of them is the lack of minor children's rights of the prisoners. Minor children of prisoners have to break away from their parents' direct upbringing and education. And it is difficult to ensure their basic rights as orphans or disabled children. And they have difficulty receiving direct assistance from the subsistence allowance. So it's the responsibility of the country and society to protect the rights of this vulnerable group, and it's also the need of social stability and development.

2. Experience of Guangdong and Macao

2.1 Guangdong: Disposal of Labor Remuneration by Prisoners

Guangdong's prison management experience is basically the same as that of most prisons in mainland China, in which prisoners participate in reform through labor. Article 72 of the Prison Law of China clearly states: "Prisoners who take part in labour shall be remunerated according to relevant regulations and the relevant provisions of the State on labour protection shall be observed". Prisoners may be remunerated according to the quality and amount of their labour. After deducting the basic expenses of living in prison, remunerations may be deposited into personal accounts.

Some prisons with advanced experience allow prisoners to transfer their savings from work to their families outside prison.

Based on this experience, the prisoners are willing to participate in labor and convert the remuneration into monetary assistance for their children outside prison. They can not only guarantee the survival and development of their children by their own behavior, improve the sense of family responsibility, effectively alleviate their sense of guilt, enhance the parent-child relationship, but also correctly guide the minor children to establish value of right and wrong.

2.2 Macao: Social Assistance

The social assistance system in Macao is perfect, mainly because there are clear functional subjects in the social assistance practice in Macao. Although Decree on Restructuring Macao Department of Social Work (Decreto-Lei n.º 24/99/M) didn't specify the prisoners' minors relief objects, but according to article 4 of the decree (the clause concerning the area of responsibility of the department of social work) section A, section B and section E. It is clear that Macao Social Work Bureau (formerly known as the Social Work Department) shall include the minor children of prisoners into the scope of the assistance objects of the Social Work Bureau, whose fundamental rights are difficult to guarantee.

The specific division of assistance is accomplished through the functional departments of the Social Work Bureau, such as the Department of Social Mutual Aid (DSS). The assistance for the minor children of prisoners depends on the Children and Youth Service Department set up by the Department of Social Mutual Assistance. The Office of Family and Community Services is responsible for collecting and updating information on the beneficiaries of the Social Work Bureau's assistance, compiling lists of needs, and studying the specific situation of the recipients of assistance, and seek appropriate solutions.

2.3 Macao: the Remedy of Parental Right

The guardianship system in Macao is different from that in mainland China. The ward of guardianship in mainland China is mainly aimed at the person without civil capacity or the person with limited civil capacity, that is, minors or people with mental disorders. Macao's guardianship system is different, treating a ward as "an orphan, an abandoned child among minors, a person whose parents are prohibited from exercising parental rights, or a person whose parents have obstructed the exercise of parental rights within a period of more than six months." The difference of the guardianship system is mainly because the civil law system of Macao separates the parental right from the guardianship, and generally brings the right and responsibility of parents to raise their minor children into the category of parental right, while guardianship is regarded as "the remedy of parental right". When parents are unable to exercise parental rights due to objective obstacles, minors can be supervised and protected through the guardianship system.

In addition, Macao has set up a corresponding reporting system for the guardianship of minors. Administrative authorities, judicial authorities or public officials responsible for civil registration have reporting obligations to avoid a failure of oversight and protection. The guardians are appointed by the parents of minors or directly appointed by the court, and "supervisory guardians" are selected from the different blood relatives of the guardians to supervise and guarantee the effective exercise of the guardianship, so as to fully safeguard the rights and interests of minors when the family affection fails.

3. Prospects for Guangdong-Macao Deepening Cooperation

3.1 A Establish Standards for Safeguarding the Rights of Minor Children of Persons Serving Sentences in Both Places

With geographical and kinship advantages, the legal cooperation between Guangdong and Macao has always been the benchmark for the development of the legal cooperation between the mainland and Macao. Once the successful pilot cooperation between Guangdong and Macao is achieved, it will help promote the in-depth development of the judicial cooperation between the two places. At present, the standard of protecting the rights of minor children of prisoners in Guangdong and Macao need to be preliminarily discussed as the basis of judicial cooperation between the two places.

The object of rights protection needs to be understood from the perspective of the meaning of protection. The reason why the rights of the minor children of the prisoners are easily lost lies in the fact that prisoners are isolated from their children for a long time, which objectively hinders the exercise of parental rights. Therefore, the objective hindrances need to be further determined.

The main mainland penalties for personal restrictions are control, detention, fixed-term imprisonment and life imprisonment. Among them, control is mainly for regular community correction, with less personal restrictions; detention is of short duration, and there is a statutory permission to return home regularly, so there is no objective fact that it is difficult for those sentenced to these two kinds of sentences to exercise their parental rights. The sentence of liberty in Macao is imprisonment, ranging from a minimum of one month to a maximum of 25 years (with exceptions up to a maximum of 30 years). Combined with the mainland sentence starting point, taking into account the objective obstruction of parental rights for six months deemed to be the basis for starting the guardianship system in Macao, object of rights can be designated under 18 years old, single parent or both parents to imprisonment for six months over the inmates of the minor children.

The content of rights protection should be identified according to the key rights of the juvenile growth of the prisoners. Combined with the relevant provisions of the Macao Family Policy Outline Law, the content of the protection of the rights of minor children of prison inmates in Guangdong and Macao should basically include the right to survival, the right to education, the right to human dignity and the right to related psychological and spiritual assistance. In the specific implementation of the protection of the authorities, due to the large differences in the institutional settings of judicial work and social work in the two places, it is difficult to directly unify the main body of responsibility, so the main requirements can be focused on the procedural division of labor. The sentence of prisoners is decided by the court, and the procuratorate reports to the court on the presence of minor children in the family of prisoners, the court initiates the parental right remedy mechanism, to determine the guardian and guardianship responsibilities, and notifies the functions of the minors is located, the administrative department links up with social groups, to carry out specific minors' rights protection work.

3.2 Smooth the Protection Mechanism between the Two Places by Means of Administrative Agreement

In Guangdong and Macao, there are many cases of sentenced persons committing crimes across districts and receiving sentences in different districts. On this premise, the protection of the rights of prisoners' minor children requires collaboration between the two regions. The main emphasis in the legal documents signed by Guangdong and Macao is on economic and trade integration. The social services are only briefly mentioned, and there are no arrangements and plans for the protection of minors' rights and the prevention of coordinated crime.

As for cooperation in safeguarding the rights of minor children of people serving inter-district

sentences, a pilot project can be conducted through an administrative agreement between the judicial and administrative organs of the two regions. The advantage is that the administrative agreement is not strictly legal and its effect is mainly on the subject of the signed agreement.

The guardianship system of parental rights remedy can be initiated by the trial court that receives the case involving the person serving the sentence; the procuratorial authorities report to the court on the situation of minor children in the family of the person serving the sentence; the court may, in accordance with the administrative agreement between the two places, communicate the guarantee opinion across the region to the civil service authorities of the place of residence of the minor. After the civil service authorities examine the authenticity and reasonableness of the guarantee opinion, they shall carry out the specific work of guaranteeing rights in cooperation with society.

In addition, both prisons and civil service authorities are required to mutually recognize prisoners' right to dispose of labor remuneration and ownership of their prison accounts. At the request of the prisoner, the remuneration in the prison account will be transferred across the border and paid to the minor children and their families through the civil service department where the minor is located, and the amount of the remuneration and how it is used will be supervised and managed.

In addition, the two regions should smooth the cross-regional meeting procedures, coordinate the performance of the prisoners' and the observation and management of their minor children by the civil service organs, provide convenient meeting procedures, and cooperate to conduct beneficial interactive family meetings.

4. Conclusion

The rule of law integration in the Greater Bay Area is an important strategy for China's regional development. The rule of law cooperation between Guangdong and Macao is a prerequisite for jointly building a regional legal community. Therefore, the experiences of the two regions should be combined to reduce regional legal barriers and seek common or shared areas. Both regions have different experiences in protecting the rights of minor children of prisoners. In order to jointly achieve the goals of “national parental rights” and social security, implement the protection of the rights of minors, implement the inmates transformation development, maintain social stability and reduce the crime and recidivism rates in both regions as a common vision, combine the existing experiences and recognize each other. This will be beneficial to the long-term development of the legal integration construction in the two regions.

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