

Prevention and Remedy of the Guardian's Infringement on the Minors' Cultural Rights

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Abstract

The guardian of the adult cultural rights violations directly on the physical and psychological harm to minors, indirectly affect the sustainable development of the national economy and the formation of the concept of normal cultural values. The guardian's infringement on the minors' cultural rights has the characteristics of the hidden nature of the behavior, the continuity of the harm results, and the intimacy of the main body of the infringement. The legislation of the protection of the international community is relatively mature, with the full protection of cultural rights, clear infringement responsibility, strong external supervision and so on. Our country should perfect the guardians against the cultural rights of adults without legislation, clear main responsibility for adult guardian cultural rights protection, and to guarantee responsibility guardian does not fulfill the corresponding responsibility.

Keywords

Guardian; Infringement; Cultural Rights.

1. Introduction

The cultural right is an important right to citizens of our constitution, Economic Social and Cultural Rights Convention stipulates that everyone have the right to participate in cultural life, enjoy the scientific progress and its applications of the resulting benefits, enjoy the generated on its own any scientific, literary or artistic work of the moral and material interests protected lee. Relative to the infringement of the right to health, the right to education, the guardian of the juvenile cultural rights is more subtle, but also attach little social attention. Because of the history traditional, culture concept and so on , Chinese juvenile cultural rights protection legislation is lagging behind, the guardians of minors against cultural rights provisions is almost blank, the guardian is the main guarantee of civil rights about cultural rights of minors, should strengthen the legislation of this problem.

2. On the characteristics of the guardian's infringement of the cultural rights of minors

2.1 More subtle ways to abuse

Culture rights are often referred to as the "less developed areas" in human rights. Compared with the rights of citizenship, political rights, economic rights and social rights, cultural rights are the most immature in scope and legal connotation. And infringe the personal rights of minors, guardians of minors against cultural rights consequences will not cause substantial damage to the body, in the appearance of the minors cannot be judged on their cultural rights to the guardian, more is the influence on the mental health of minors. The internal relationship between the guardian and the minor is the internal relationship of the family, the daily life of the family belongs to the privacy of others, so the guardian is often not known to outsiders.

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2.2 Tort is more frequent

The guardian has been responsible for the care and education of minors and minors responsibility in the process of life and juvenile long life together, take care of the daily life of minors. Therefore, the guardian is closely related to the life of minors, is the most able to protect the legitimate rights of minors, but also the most likely to infringe on the legitimate rights of minors. The most common social phenomenon is the parents of minors reported a lot of interest in extracurricular classes, and participate in many interest classes in order to better cope with the school or other examinations, the guardian of minors reported these extra-curricular classes in order not to let the young people lose at the starting line, but these classes have greatly occupied the juvenile time, make minors have no time to do what you want to do. Because the guardian in a relatively strong position in the family, minors is generally not contrary to the wishes of the guardian in the family, so lead to a minor infringement of its cultural rights in the face of the guardian of the arrangement of helpless, can only listen to the arrangements.

2.3 There is a special interest relationship between the subject of tort

In the case of general infringement of cultural rights, the infringement of the rights of the people is often the infringement of the infringement. But the guardian and the minor differences between them is the relationship between family members, the two sides have parentage, almost no conflicting interests between each other, so the guardian is usually in order to do their regulatory responsibility for minors to minors and the implementation of cultural right infringement. Because of the need to take care of guardians of minors and the daily life of its regulation, and violations of cultural rights behavior if not for minors physical damage or bring serious economic losses to the case of minors, even minors have awareness of the law to protect their cultural rights, also because of the guardian and the minor paternity may give up rights to. Minors has always been to "filial piety" and the concept of education, for their guardians can be said with respect to the name, if the infringement of their cultural rights will be the guardian report, may feel the behavior that the guardian's reputation, minors will therefore be critical of others and back filial "charges. In general, the two sides of the infringement, the two sides are in order to safeguard their legitimate interests, and there is almost no other worries.

2.4 The harm of tort has far-reaching influence

Minors are in the growth stage, need different cultural life to enrich their spiritual world. Guardians of minors who infringe upon the rights of minors will give their bodies damage, but the physical damage will gradually heal over time, but the lack of the spiritual world is difficult to fill. Now, the society calls for "let students decompression", the sounds never interrupted, it is because of the further study pressure lead to students at home not to participate in the cultural life, and there are many reasons for the guardian. As an individual, minors have the right to choose their own want to participate in the cultural life, and should not have these guardians of minors limits everywhere, because of cultural rights have been violated and the guardian rarely come into contact with other cultural life, living a single boring knowledge is limited in the textbook. In one of the most easy to accept foreign things as guardian of the infringement stage cannot come into contact with a lot of excellent culture, the development of a person needs a different culture to fill in the juvenile stage of culture was often the guardian right infringement, will make a person's knowledge is limited, which is detrimental to a person growth.

3. The international experience of the protection of minors' Cultural Rights

3.1 The full content of the cultural rights of minors

UNESCO's cultural rights is a broad concept, including education and access to information, cultural identity, participation in cultural life, the protection of cultural property and cultural inheritance, the creation of the right, benefit from the progress of science and benefit from the protection of cultural and artistic products in the moral and material wealth, international culture cooperation and other aspects of the right. The international community and even taking into account the special minors, and in the Convention on the rights of specific culture, "Convention on The Rights of Children" the thirtieth stipulation: in the presence of those ethnic groups, religious language belongs to a few people or persons of indigenous origin of the state, shall not be deprived of other members of the minority belong to children. Or of indigenous origin and the collective enjoyment of their own culture, their religious and religious ceremonies, or to use their own language rights.

3.2 Guardian of minors cultural rights infringement liability system is more perfect.

In foreign countries, a lot of countries or regions on violations of the rights of minors to adopt a zero tolerance attitude, they often give more serious violations of the punishment. In the United States, the guardian if a violation of the spiritual rights of minors, minors may bring a lawsuit to the court, the court can make several decisions according to the guardian infringes the rights of minors, such as the government will allow minors from the guardian side; the conditions allow minors to continue living in the guardian Guardian termination side; support the rights of minors, by adoption. Because the mind is in the development stage of minors, more vulnerable than adults, even the guardian must be severely punished. The government in order to protect minors from the guardian of the infringement, the name to protect minors from the guardians against minors away, or regular supervision of the family, the more serious can be regarded as the guardian maltreat minors, and thus subject to the law of trial.

3.3 Guardian of minors infringement of the rights of supervision in place

In order to maximize the protection of the legitimate rights and interests of minors, members of the community have the obligation to conduct supervision and report on the behavior of the guardian. No matter who is a teacher, social worker or a neighbor, as long as the guardian of minors found that the implementation of the cultural rights of minors or found a violation of the rights of minors in the culture of suspicious circumstances, can report to the police station. For minors rights infringement behavior, countries outside the government departments attach great importance to the police, even personally to survey. In the growth process of minors, the teacher will be very early will educate minors what behavior is the violation of legal rights, cultivate their consciousness of protecting their own interests, so that minors themselves can distinguish what is harmful to their own behavior, thus can more easily find relief.

4. Guardian of the cause of juvenile cultural rights violations

4.1 The influence of the traditional idea

Our country has a long history and cultural traditions, in thousands of years by the influence of Confucian culture of the society has formed a children's parents "private property" concept, the concept of parents, minors must obey their own arrangements, and this is ingrained. Listen to the guardian of minors in the family life for learning and life, even if it is not what the inadequacies in people's view, because almost all the people in the society is to do so, and cultural rights behavior guardians against minors are also allow minors to do or not to do something therefore, in others or their own opinion, are in line with the traditional concept and should not be a violation of the legitimate rights and interests of minors. Only on the health of minors infringement is a misunderstanding against the guardians of the rights of minors and society in the traditional concept, in many remote areas of poverty, many guardians believed that the minors' food and clothing, is to protect the basic rights of minors, so the guardian to

make family life much easier but, let minors drop out, let it help the family of migrant workers or migrant workers, though without any physical harm to minors, guarantee minors but not violated the basic necessities of life, culture and rights of adults, but the guardian opinionated to protect the rights of minors, in fact. While in the city, most of the basic rights of minors have been guaranteed, to further pursue spiritual and cultural rights, because many guardians think that reading is the right path or in order to protect the guardian think what kind of behavior will be very easy to abuse of minors and minors should be deprived of the concept of culture right of or, without the consent of the minors and impose their cultural activities in the community, such a case meet the eye everywhere, such as the third grade students in Guangzhou, the mother of cocoa, the layout of calligraphy, preview the second semester of learning tasks in the winter vacation, and only let the cocoa play two days before the holiday, she that this is done in order to reduce the burden of children next semester. The holiday was an important period of minors' physical and mental relaxation, and the guardian is to cut their participation in the cultural life of the time, they say to minors, but actually they are the traditional viewpoint, deprived of minors to participate in the cultural life of the right choice.

4.2 Defects in laws and regulations

At present, the special protection of the rights and interests of Minors Law "Law of the People's Republic of China on the Protection of the Minors ", but the mention of minor cultural rights only a few, such as the right to education, enjoy the intellectual achievements of the rights, the rights of harassment from poor culture. These cultural rights for social people is well known, in addition to this, there is no law of cultural rights can be said that very few people understand. The guardian and the minor in law did not receive professional education, because of the legal gaps, they will make the right to cultural content cannot completely understand, the guardian cannot completely realize what their behavior is a violation of the rights of minors culture, do not know what they should belong to the activities of minors enjoy the cultural rights, so they naturally in the cultural connotation of the right is a blank. But the laws and regulations of guardians against the cultural rights of adults without punishment is too light, not a warning role for the guardian, the guardian is not violated since the implementation of cultural rights adult behavior has not been punished with considerable responsibility, will let the guardian believe that their behavior did not violate the law, and continue to limit, deprived of minors choose to participate in cultural activities or enjoy the right of rest and recreation time. These are not because of China's laws on cultural rights provisions of the adults caused by imperfect legal guardian, because the gap caused by understanding the rights of minors is not thorough, so that their actions overstepped the bounds of the law, and the state not to punish its behavior, leading to the guardian against minors behavior continue to occur.

4.3 Cultural infrastructure is not perfect

China's current cultural atmosphere is not strong enough, a large part of the reason is the lack of cultural infrastructure, the government does not pay attention to the construction of this area. Different cultural rights and social and economic rights, the rights of people few take the initiative to ask for the government to culture the realization of the right to appeal, the government does not take the initiative to the construction of cultural facilities, it is difficult to cause the guardian and the minor of the cultural activities involved in the appeal. Minors and the guardian did not participate in the cultural life of the habit in daily life, the cultural rights is not strong, so the cultural rights in the guardian and the concept of minors is not so important social and economic rights. Minors for their cultural rights is not so seriously, will not be concerned with whether to realize their cultural rights, guardian of minors to choose the importance of cultural activities, doubt, and in accordance with their own ideas to arrange for minors, cultural life. The construction of cultural facilities is lagging behind, which seriously affects the progress of citizens' demands for cultural rights, and it is also harmful to the concept of the protection of their cultural rights.

5. Protection of minors from the guardian of the cultural rights of the mechanism

The protection of minors' cultural rights is still in its infancy, minors and even do not pay attention to their own cultural rights, but these are because the cultural rights as a fundamental right cannot be popular. In order to protect the cultural rights of minors more effectively, it is necessary to establish a series of reasonable and effective mechanism.

5.1 Establish cultural right propaganda mechanism

The importance of minors and guardians will need to understand the cultural rights, publicity is an important way to the connotation of cultural rights widely spread, and the proper subject of publicity for minors and their guardians to minors is more effective.

First, the government as the main publicity and cultural rights. The Central Committee of the Communist Party of China on deepening the reform of culture in the sixth Plenary Session of the 17th CPC Central Committee. To promote the great development of socialist culture and prosperity of several major issues in the decision to put forward the "speed up the cultural legislation, improve the level of cultural construction of the rule of law," the slogan. The cultural construction has become one of the focus of the work of the government, government departments should strengthen the cultural construction of the right of financial investment, through newspapers, radio, television, Internet propaganda and cultural rights on these platforms set up a cultural right plate, the right to cultural contents and its importance to the survival and development of the people are elaborated. People also read about the cultural rights of government information popularization in daily browse information, deepen the understanding of the masses in the drip from the right culture connotation, gradually develop legal awareness of citizens to respect cultural right.

Second, the school for the students to do the publicity of cultural rights. Minors in school education time and the life in the family almost can even say that not much difference between minors, learning in school time occupied more. The teacher taught the students a lot of scientific knowledge, but also to teach the role of the life experience of minors. In the school, the minors most likely to follow the teacher's instructions, and let the teacher right in the minor importance of teaching culture in their study and life in the school, can let minors the right to cultural understanding more directly. At the same time if minors know their own cultural rights are the guardians of the infringement, also can report their situation to the school, let the teacher and guardian of communication, understand the situation, the guardian said he might think of minors against their cultural rights is absurd, but for the teacher, the guardian will be more respected, more likely to listen to their views get rid of his abuse of minors behavior. This is not an adult, it is the protection of their cultural rights umbrella.

Third, let the community become an important place for the dissemination of cultural rights. The community is the guardian of life together with minor places, minors to participate in cultural activities in the community is many, here is the guardian of minors and the community gathering place, regular propaganda can be concentrated to the guardian and the minor content also learned the right, but also to know what their guardian against minors cultural rights. For minors, community publicity can let minors to safeguard their right place, have a more in-depth understanding of the guardians against their own cultural rights behavior, and can find more methods to protect their cultural rights conveniently and quickly.

5.2 Strengthening social public supervision mechanism

Protection of minors is not only the guardian of the obligation, but also the community, the country's responsibility. The guardian is conscious or intentional abuse of minors and minors cultural rights initiative to protect their cultural rights are the legal consciousness of performance, in a period of time is difficult to efficiently enhance their legal awareness, and strengthen public supervision is to make up for this defect.

First, to strengthen the social members of the cultural rights of minors. Minors are still in the stage of mental immaturity, knowledge reserves are not rich enough, it is difficult to have a profound

understanding of cultural rights, do not know what the cultural rights for their own significance. The public have the right to participate in the cultural life, they understand the pros and cons of cultural activities in cultural life, in order to evaluate minors to participate in cultural activities, supervision of minors involved in inferior cultural activities, while the guardian of underage ginseng and outstanding cultural activities are to be discouraged or report. The minor to cognitive cultural activities to bring their own benefits in the process, but also can learn the inherent hazards of poor quality cultural activities, to actively safeguard their rights but also by the guardian of the threat in their own culture right.

Second, to strengthen the supervision of the government's functional departments on the cultural rights of minors. The government should increase the cultural quality education of minors and their guardians, to maintain their own conscious form or not to infringe the right concept of culture, cultural activities and expand the scope of supervision, that is not suitable for minors away from their physical and mental development of cultural activities. Government departments should also be based on the characteristics of minors, continue to strengthen the cultural rights of education, improve the minors suffered cultural rights against the demands of expression consciousness, to understand their rights. At the same time, the protection of minors to the protection of cultural rights of the Department, the cultural rights of minors to the demands of a clear, focused on the treatment, so as to the government's policy on the cultural rights of minors. Nowadays, more urgent need for the government to intervene in the culture right of minors.

5.3 Strengthen the responsibility mechanism of the guardian

At present, China's laws and regulations to protect the rights of minors, provisions for guardians against minors are numbered, and for their infringement of the rights of Minors Act only to minors causing serious injury will be more severe punishment. Copyright infringement in the laws and regulations do not belong to the legitimate rights and interests of minors caused serious damage to the tort, so the punishment of the infringement of minors' cultural rights is extremely minor. It is more effective to prevent the occurrence of such infringement by strengthening the responsibility mechanism of the guardian's infringement of the rights of minors.

First, the infringement of the rights of minors in the acts of serious violations of the legitimate rights of minors within the scope of. Violation of the rights of minors behavior is not the guardian of attention, a large part of the reason is that the punishment of violations is too small, not enough to cause the attention of the guardian. Current laws and regulations for violations of the rights of minors in general behavior can only stop the behavior of the guardian, in an emergency situation can be taken away from the guardian of the guardian. However, in the general social concept, some guardians of minors against cultural rights violations, such as restriction or deprivation of minors rest and recreation and the right to participate in cultural activities, and did not infringe the rights of minors, or even that it is beneficial to minors, so for this kind of behavior is rarely reported, stop. The scope of the abuse of minors and cultural rights acts included in the serious violations of the legitimate rights of minors, can increase the punishment of the behavior, seriously take guardianship, can reduce or even eliminate the guardian of minors against cultural rights behavior.

Second, the guardian of the juvenile cultural rights violations written to the criminal law. There are few guardians for their own interests of minors can sacrifice cultural rights of minors, can even be careless with. For such a guardian, only the legitimate rights and interests of minors will be written into the criminal law, and the provisions will bear criminal responsibility, in order to have the effect of punishment. The implementation of a serious abuse of minors and cultural rights behavior of a certain number of guardians sentenced to a fine, even can be sentenced to criminal detention, control or even imprisonment. The introduction of criminal responsibility to protect minors cultural right system, is warning guardians need a means to pay attention to their own what kind of behavior would be damaging to the minors, but also do not want to burden the guardianship of the guardian of one of the most effective punishment, can also provide another basis for the protection of cultural rights without adults.

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6. Epilogue

In recent years, China's emergence of a large number of research results about the protection of cultural right, but these articles are mostly about the protection of cultural right from the aspects of policy and national construction, there are few and for the protection of cultural right of individual social groups, the social disadvantaged groups, to explore the protection of the minors cultural rights, infringement of minors in life is closely related to the guardian to talk about cultural rights, looking for similarities and differences between the guardian of the minor general tort and infringement of cultural rights, special cultural analysis of sexual abuse of minors rights law in the. Under the rapid economic development and cultural prosperity in the background, the development of China's current legal protection of cultural right for minors is obviously lagging behind in social, now the law on the protection of minors is not enough to cover the modern society of minors shall enjoy legal rights. This paper is through exploring the guardians against the cultural rights of adults and no adverse effects on characteristics, not against the cultural rights brought by adults, for our existing on the guardians against the cultural rights of adults did not provide a solution to the phenomenon.

References

- [1] Wei Qi. Vigorously develop public cultural undertakings, safeguard the people's basic cultural rights and interests of. [J] communication and copyright, 2014 (10)
- [2] Huang Xiaoyan. Consideration and discrimination of cultural rights in the perspective of international human rights law.[J] political and legal forum, 2013 (03)
- [3] Liao Xiaoping: on adult culture and minor culture.[J] Tianjin social science, 2011 (04)
- [4] Pan Haoyu. On the cultural rights of citizens the right to protection -- from the perspective of category [J] Jiangnan forum, 2015 (01)
- [5] Mo Jihong. Legal Forum on Constitutional Protection of cultural rights, [J] 2012 (01)
- [6] Qiao Jing. The protection of cultural right of Chinese citizens [J] Jiannan literature, (10) 2011
- [7] Chen Qunhui. Difficulties and solutions for the realization of the cultural rights of the rural people with disabilities, [J] Journal of China University of Geosciences, 2013 (S1)
- [8] Li Huacheng, Ye Bei. The causes and Countermeasures of the realization of the rural people with disabilities' cultural rights [J] Journal of Yangtze University, 2013 (11)
- [9] Li Huacheng, Xu Qianquan, Ye Bei. The plight of rural left-behind children culture and the realization of the right and Its Countermeasures -- Based on the research of [J] B village of L County in Hubei province of Guangxi social science, 2014 (06)
- [10] Xu Jialin. Human development and cultural rights [J] Journal of Shanghai Normal University, 2007 (05)
- [11] Elise Huffer, Cultural Rights in the Pacific-What they mean for Children, 2006
- [12] Lyndel. V.Proot, Cultural Rights as People's Rights in International law, Bull.austl. soc. leg. phil, 1986
- [13] Sonja C. Grover, Potential Obstacles Under OP3-CRC to Redress for Violation of Indigenous Children's Social and Cultural Rights, Springer Berlin Heidelberg, 2015:251-298