

Analysis on the Legitimacy and Rationality of Shelter Education System

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Abstract—The system of reception and education is an administrative compulsory measure especially for those who engage in prostitution and whoring. It refers to the special measures taken by the public security organs to conduct legal and moral compulsory education and organize production and labor for prostitutes who have not been investigated by the court. However, with the gradual progress of the society, the construction of the legal society and the deepening of the democratic concept, people have a dispute on its legitimacy and rationality. Whether it will be improved or go on the road of abolition has become a research focus by experts and scholars. This paper analyzes its legitimacy and rationality from two aspects: form and substance, and gives the author's point of view.

Keywords—Shelter Education System; Administrative Compulsory; Measures; Legitimacy; Rationality

I. ANALYSIS OF THE LEGITIMACY OF THE SHELTER EDUCATION SYSTEM

Formal legitimacy refers to whether the relevant provisions of the asylum education system are based on substantive laws and regulations [1]. There is also a great dispute about the formal legitimacy of the asylum education system. Some scholars believe that the shelter education system plays a positive role in the long-term practice of social management, and therefore has legitimacy, while some scholars think it is contrary to relevant legal provisions.

A. Asylum and education system and constitution

Many scholars believe that the institutionalized education system is contrary to the constitution, because the institutionalized education system restricts the personal freedom of those who engage in prostitution to a certain extent, that is, they can be institutionalized for 6 months to 2 years. For their longer holding time and practice education substantially more strict than some of the minor criminal offences, for those involved in the deprivation of personal freedom and the constitution of the People's Republic of China on the requirement of the principle of "respect and safeguard human rights", also violated the "unlawful detention and other illegal way to deprive or limit citizens' personal freedom". [2]I don't entirely agree with these claims. The detention and education system is a system for those who engage in prostitution and whoring. I don't think it is a problem to punish those who engage in prostitution. It is not that punishing them violates the provisions of the constitution on "respecting and protecting human rights". It is only said that the punishment

method is 6 months to 2 years of compulsory education, compulsory labor is suspected of deprivation of personal freedom. Because if two years of detention and education is really more severe than a minor criminal offense. This is a problem, but it is not unconstitutional.

The constitution stipulates that citizens enjoy personal freedom, but personal freedom is not an absolute right. If an individual ACTS illegally or conflicts with national interests, personal freedom will be deprived or restricted to some extent by the organs exercising public power on behalf of the state. Of course, there are corresponding restrictions on deprivation and restriction, which need to follow four principles: first, the subject of implementation must be eligible. The common practice of various countries is to restrict or deprive citizens' freedom by public security organs with a temporary nature for a short time, and to restrict or deprive citizens' personal freedom by judicial organs with a long-term punishment nature. Applicable subject of foster education system in China is the public security organ, the entire process without the participation of the judicial organs, judicial organs or strictly speaking, only in the other party can bring administrative litigation under the premise of certain judicial supervision, otherwise processing of prostitution personnel is independently by the public security organs, the contrary to restrict the personal freedom should follow the rule is. Second, there is a legal basis. Restriction and deprivation of citizens' personal freedom can only be stipulated by law, which has been defined in the administrative punishment law enacted and implemented in 1996. The legislation law passed in 2000 emphasizes this point again in the form of the basic law. The content of restriction and deprivation of personal freedom in the asylum and education system should also have definite legal basis. The current basis is the decision of the standing committee of the National People's Congress on prohibiting prostitution and whoring and the measures of the state council on the reception and education of those who engage in prostitution and whoring. The former can be equated with the law in rank, while the latter is an administrative regulation, not a law. Third, the procedure is reasonable and legal. In fact, the process of the asylum education system is defective, which excludes the due process rights of the asylum education personnel. The specific content of deprivation is the innocent presumption of the punished person, confessions out of free will, access to effective hearing opportunities, the right to defense and legal help, the public decision process and other basic rights. Fourth, follow the principle of proportion. In fact, the sex trade is essentially the

behavior of the civil subject dispose of his body, is originally a person's freedom, but happened to be the free disgraceful consideration violated and ethics, so on the punishment is to consider the double legitimacy of means and purpose, and foster education for a long period of time, is obviously not conform to the principle of proportion [3].

B. Reception and education system and legislation law

Article 8 of chapter 2 of the legislation law clearly stipulates that compulsory measures and penalties concerning deprivation of citizens' political rights and restriction of personal freedom can only be enacted by law. This is the absolute reservation of legislation law. The measures for the reception and education of prostitutes and whoring personnel promulgated by the state council and the law on the administration and punishment of public security issued in 2005 provide the basis for the compulsory measures for the reception and education of ordinary prostitutes and whoring personnel, which in essence violates the absolute reservation of the legislation law. But does that of course mean that the asylum system is no longer functioning? Not really. As promulgated by the state council "prostitution or whoring personnel for education method" was promulgated in 1993, the standing committee of the National People's Congress on is strictly prohibited to engage in prostitution or whoring is promulgated in 1991, it has already set up in the form of law for prostitution or whoring personnel "forced on legal, moral education and productive labor", so administrative rules and regulations formulated by the state council in 1991, the standing committee of the National People's Congress enacted on the basis of the law, so does not violate the relevant provisions of the legislative law.

C. Reception and education system and related laws

In the law on punishment for public security administration, the punishment for those who engage in prostitution is "detention and fine", and there is no mention of the reception and education system. That is to say, the law on punishment for public security administration does not punish those who engage in prostitution and whoring with educational measures. Some scholars believe that the public security administration punishment law is a new law, which is superior to the old law in providing legal basis for the asylum and education system. Of course, the asylum and education system is abolished [4]. First of all, although the asylum education system is far less frequently used in practice, it is undeniable that it is still effective in China. According to the ministry of public security, "compulsory education measures" in the law on punishment for public security administration refer to reeducation through labor, which has been abolished, and the detention and education system is not the same as reeducation through labor. As for "law of punishment for public security administration", it does not clearly stipulate the reception and education system. This law mainly provides for administrative punishment. Therefore, two administrative punishment measures, detention and fine, are adopted to punish prostitution and whoring. In my opinion, education is more important than punishment, so it is not only an administrative punishment. Therefore, from the perspective of the law of punishment for public security management, I think the shelter education system is legitimate.

II. ANALYSIS OF THE SUBSTANTIAL LEGITIMACY AND RATIONALITY OF THE SHELTER EDUCATION SYSTEM

Undeniably, foster education system in the society have played a positive role, but along with the advancement of the rule of law and the people of awareness of the ideas of democracy and human rights, for education system has exposed many problems in respect of legal and rational essence, and its operation mode, etc is highly consistent with the reeducation through labor system, there are also serious defects, has become increasingly unable to adapt to the pace of social development and progress [5].

A. The nature of shelter education is confused and unclear

For holding the nature of the education measures, generally considered the "administrative measures of compulsory education", is based on 1993 promulgated by the state council "prostitution or whoring personnel for education method" in clause: "education, as mentioned in the present measures refers to the prostitution or whoring researchers focusing on legal education and moral education, the organization to participate in productive labor and the examination of the venereal disease, treatment measures of administrative compulsory education.[6] But in practice, I think the nature of the institution is more like a criminal penalty. The reeducation through labor system has been abolished because it is an administrative penalty in name but actually a criminal penalty. Similarly, no matter from the definition, practice or the characteristics of administrative compulsory measures, "preventive, temporary and non-punitive" does not meet the requirements. In essence it is more severe than the average minor criminal offence. For one thing, the shelter education system lasts from 6 months to 2 years of compulsory labor education; Secondly, the punishment content of the detention and education system is imprisonment, which is actually more strict than the control, detention and probation in criminal punishment, and its degree can be equal to that of prison, because the management mode of imprisonment is almost similar to that of prison. Thirdly, custody education and reeducation through labor, which have been abolished, are similar in terms of management mode and custody mode [7].

B. Current shelter education is unfair

Ruan Qilin once pointed out that "the reason for abolishing reeducation through labor can be applied to the asylum and education system." [8] The continuation of shelter education is unjust. First, it clearly violates the requirements of substantive justice. Because the object of receiving education measures is prostitution, whoring, but can not reach the labor rehabilitation, certainly not reach the criminal offense, which is actually a general violation, the degree of violation is far lower than the criminal offense. It's harmful to the society than a serious murder cases such as arson is not worth mentioning, but it does for society, morality and damage the disgraceful consideration is larger, but overall less harmful to the society, and the proportion of duty under administrative law principles defined penalties shall be adapted to the offender the degree of illegal and harmful to the society, but for education system for 6 months to 2 years of fixed-term imprisonment penalty equivalent to a relative should be, but also impossible to probation, is typical of the substantive law violation [9].

Secondly, asylum education violates the requirement of procedural justice, and its discretion is too concentrated with the public security organs. The main body of receiving education is the public security organ to carry out alone without the intervention of judicial organ. The handling process of shelter education is also examined and approved by the internal public security organs in writing. This is a huge damage to the rights of the parties. It is also clearly against modern procedural justice. Thirdly, asylum education violates the requirements of international conventions on the protection of human rights. The international covenant on civil and political rights states: "in determining any criminal charge brought against any person or in determining his rights and obligations in a litigation case, every person shall be entitled to a fair and open hearing before a competent, independent and impartial tribunal established by law." Although the measures of reception and education are not criminal punishment, the ACTS of prostitution and whoring are not criminal behaviors. According to the spirit of human rights protection in international conventions, they should go through proper legal procedures to fully protect the rights and freedoms of the parties concerned.

To sum up, there is a serious crisis in the institutionalized education system in terms of both formal legitimacy and substantive legitimacy. I believe that the institutionalized education system is likely to be abolished in the future. There are, of course, those who argue that there is no need to abandon the asylum system altogether, and that it can be improved to some extent. For example, professor Zhang Shaoyan holds the view of reform. "in the future reform, measures to deprive and restrict freedom, including housing and education, must follow the principle of rule of law and the principle of judicature, that is, the judicial organs must make decisions according to the judicial procedures in accordance with the laws enacted by the NPC [10].

III. EMPIRICAL ANALYSIS OF SHELTER EDUCATION SYSTEM

Up to now, China's asylum and education system has been clearly stipulated in the criminal law and the law on the prevention of juvenile delinquency. What makes me deeply feel is the minors targeted by this system. According to the current provisions of China's criminal law, the fourth paragraph of article 17 stipulates that minors under the age of 16 who are not subject to criminal punishment may, when necessary, be taken in by the government for rehabilitation [11].

In 2013, the re-education through labor system was abolished, and now more and more judicial personnel are calling for the abolition of the detention and education system, because the detention system is inconsistent with the rule of law. On March 20, 2003, Sun Zhigang, who had graduated from college for two years, died in a reception and treatment station in Guangzhou. He was detained and beaten for not having a temporary residence permit. Well-known actor Huang Haibo was detained 15 days later for visiting prostitutes and detained by Beijing police for six months. The case, involving a public figure, has drawn great attention to the housing and education system. Under the current detention and education system, prostitutes can be detained for 15 days, followed by six months to two years. This means that the personal freedom of

the parties is subject to the restriction of no less than 6 months or as long as 2 years, which is a major means of restricting the personal freedom of the parties and violates substantive justice and procedural justice. There is another very typical case. In April 2012, a 12-year-old boy killed his aunt with a fruit knife in Xidu town, Hengyang county, Hunan province. Regrettably, the boy did not reach the legal age, and there were not many underage perpetrators who could not receive proper punishment. As a result, he could neither effectively comfort the victims nor correct the minors involved, and it was not conducive to maintaining fairness and justice. Therefore, it is necessary for the minors involved in the crime who cannot be investigated for criminal responsibility to be accepted and educated by the government, which is responsible for the victims, the perpetrators and the society.

Although the criminal law stipulates that the age of 14 years old is the age of criminal responsibility, it does not stipulate the minimum age of the objects of custody and upbringing. Considering that the psychological and physiological age of minors is relatively early, the age of juvenile delinquency is becoming more and more obvious, and there are still many defects and deficiencies in practice. In my opinion, there is essential difference between the expiration of the detention period and the expiration of the penalty execution period. Institutionalization itself is not a measure of punishment, but a measure of relief, especially for minors, not only relief, but also education. In my opinion, there is essential difference between the expiration of the detention period and the expiration of the penalty execution period. Institutionalization itself is not a measure of punishment, but a measure of relief, especially for minors, not only relief, but also education.

IV. CONCLUSION

In terms of the specific design of judicial procedure, a public security court can be set up under the existing court organization system in China to hear relevant cases through simple procedure or special and convenient procedure. The law enacted by the National People's Congress should be known as the law on social correction (and services). But I don't think the system should be improved or abolished. Because the system has many defects and problems in the above analysis, the system itself exists, not through improvement or "patch" method to improve it. Besides, the reeducation through labor system has been abolished, and the institutionalized education system, which is highly similar to it, also has some similar defects, so it is likely to be abolished [12].

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