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Research on Criminal Legal Aids for Migrant Workers in China

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Abstract With the acceleration of industrialization, urbanization, as well as the reform and opening-up, the amount of migrant workers is increasing sharply. However, the specialty of criminal cases is ignored, rights of migrant farmers and legal aids for them are neglected, making them commit crimes for lack of basic knowledge of laws and failing to be treated with fairness. The aim of enjoying human rights is a failure. Based on the legal aids for migrant workers, the paper discusses how to protect legal rights of migrant workers in criminal cases and make them enjoy fairness of laws, making laws play a true part in criminal cases and fulfill the aim of human rights protection.

Key words Migrant workers, Criminal legal aids, Problems and recommendations

1 Overview

1.1 Legal aids in criminal cases

1.1.1 Legal aids. Legal aids system dates back to the 19th century in England. There are two main forms, civil legal aids and criminal legal aids. The initial aim of the system is to ensure the justice of judicial process. In different countries, explanation of legal aids varies. From the perspective of definition, there are some features. Firstly, objects of legal aids are those who cannot afford to pay totally or partly the fees of law service. Secondly, legal aids are realized by reducing fees or charging free of services. The last is that the aim of legal aids is to ensure that rights will be enjoyed. Legal aids transform from the traditional social charity to a guarantee of nation to citizens. Based on the common features of legal aids in different countries, this paper defines legal aids as the free or cheap legal aids provided by the staff in the legal aiding organizations that the government establishes for the litigants in straitened circumstances or particular cases^[1].

1.1.2 Criminal legal aids. Like the legal aid systems, understanding of criminal legal aids is different in different countries. But objects of criminal legal aids are those who are poor or have difficulties in enjoying basic rights. The basic problems every country wants to solve through legal aids are eliminating legal barriers of different levels, making each member enjoy the fairness of laws to realize the judicial justice and accelerate the completion of judicial systems. Therefore, based on the important features of criminal legal aids, this paper defines it in this way: in the criminal lawsuits, people who are too poor to afford to pay for the fees enjoy the service for free, so as to realize fairness and protection of laws.

1.2 Definition of migrant workers Definitions of migrant workers are various. Some think they are the special groups in the process of industrialization in China from the perspective of their function. They are the important part of labor and play an important part in social construction. Some, based on their features,

define those who have rural registration while they work in cities with non-agricultural groups as migrant workers. This paper takes the latter's advice. They have features as follows: Firstly, they are rural registered. Secondly, they are no longer involved in agricultural production and they earn salary to satisfy their needs like most citizens.

1.3 Criminal cases of migrant workers According to statistics, by the end of the year 2014, the whole population had been 138 000 000 0 and the ratio of rural population to the urban population is 55%. In other words, farmers are more than half in the whole population. Large amount of rural labor floods into the city and accelerates the urban development, adding new strength to the city. At the same time, it brings lots of security problems. According to reports, with the acceleration of urbanization, criminal cases dominated by migrant workers increase which account for more than 70% and they are characterized with high criminal proportion, high arresting and detention rates. Results show intentional injuries against personal rights dominate most, accounting for 25%; cheating against property crime is secondary, accounting for 15%; crimes against social security account for 20%. Based on the above cases, criminal cases of migrant workers are characterized with the following features: Firstly, most criminals are dominated by the young male; Secondly, education of migrant workers is usually low; Thirdly, most are the first time to commit crimes; Finally, most criminal cases are against property and personal rights.

2 The existing problems and reasons of criminal legal aids for migrant workers in China

2.1 The existing problems Because of the imperfection of human rights and policies, protection of the disadvantaged group is gaining more and more importance and legal aids develop fast, covering wider and wider ground. It increases nearly 3 times from 1235 in 1995 to 3693 in 2012. People enjoy the legal aids increase too, from 190000 to 1140000 in 2012. In term of the quantities of legal aids, it increases sharply by 8 times from 117545 in 1999 to 1022015 in 2012. However, in fields of criminal legal aids, there

exist problems, such as inadequate covering, unobvious increasing of aiding cases, especially aids for migrant workers. In recent years, according to statistics, although there is a big increase in quantities in cases and population, increase in criminal legal aids is not obvious, even falling behind. It decreases from 40% in 2005 to 13% in 2012. Obviously, the aim to protect the disadvantaged of criminal aids has not been realized. Especially in cases of migrant workers, legal aids cases are much lower in practice. According to statistics in 2015, during five years from 2006 to 2011, there are only 191 cases of criminal legal aids for migrant workers, benefiting only 123 people. Reasons are, on one hand, legal aids for migrant workers are focused on asking for salaries and so on, on the other hand, there is no law showing legal aids for migrant workers, plus complicated application and approval of legal aids, migrant workers enjoy little of the legal aids. The above reasons contribute to this bad phenomenon. The failure of criminal legal aids for migrant workers results in high arresting rate and so on, unable to protect the basic rights of migrant workers. Because of the lack of law knowledge and defenders, similar cases have different judicial results, which is not good for the improvement of judicial justice and not suitable for judicial aims and tasks.

2.2 Research on reasons

2.2.1 The imperfection of laws. There are 695 comprehensive laws in protecting legal rights of migrant workers, such as *Notice of Management and Service for Migrant Workers by the Party Central Committee and Further Improvement of Job Environment of Migrant Workers by the State Council* (2004), and *Some Suggestions on Solving Problems of Migrant Workers* (2006), in which regulations concerning legal aids for migrant workers are only 50, accounting for about 7%. Laws concerning legal aids for migrant workers are obviously inadequate. And it lacks special training courses. Although there is no clear definition of the groups of legal aids, according to Regulations of Legal Aids, the staff are mostly lawyers and workers in legal aids organizations, even other members of social organizations. Because of the specialty of the case, it covers different kinds of social and living aspects. So, it is necessary for groups to improve basic knowledge of laws. The comprehensive knowledge is beneficial to solving problems.

2.2.2 The imperfection of application procedure. There is no chapter covering the procedure of legal aids except Chapter 3, 4 while Chapter 3, 4 have simple definition of application and checking of legal aids. Migrant workers are only a part of members who are suitable for legal application. Although there are regulations of legal aids in *Policies Concerning Criminal Legal Aids* in Article 7, 8, 12, 13 and 14, they are not clear in words using and definitions. For example, definitions of in time and should are not clear. So, in practice, there is no method to protect the judicial rights of migrant workers. With the rapid acceleration of urbanization, crime with migrant workers dominated increases. According to statistics, crime concerning migrant workers accounts for more than 70% in total all over the country. The reasons are low levels of education, little knowledge of laws concerning legal aids, easily

missing opportunities to apply for free aids, or defenders themselves are not responsible for lack of benefits. All of which result in failure to conduct the legal aids efficiently.

2.2.3 Gap between capital investment and needs. Investment by the government plays an important part in formulating laws concerning aids for migrant workers. Large amount of money is the basis of carrying on legal aids for migrant workers and the guarantee of judicial rights of migrant workers. There are direct grants and indirect grants in financial aids for migrant workers. The direct grant is managed by the center of corresponding legal aiding, belonging to the annual budget. The indirect grant is to cut down a part of fees generated by the court and other judicial organizations when providing services for migrant workers. In other words, the indirect grant is to increase capital investment in judicial organizations. However, the low economic development in China results in difficulties in satisfying the great demands of migrant workers for legal aids at present. Both the direct grant and the indirect grant are not efficient enough.

2.2.4 Low efficiency in dealing with cases. Since the edition of the criminal procedure law in 2012, cases concerning legal aids for migrant workers increase. Lawyers are receiving large amounts of cases like this. Because they are free of charge, most lawyers choose to give them up or just deal with them in a hurry when they are contradicted to their interests. The main reason for which is investment in this field cannot be met with demands of legal aids for migrant workers, which influences quality of cases and it is not beneficial to protection of migrant workers' benefits. At the same time, in reality, lawyers who have many other cases themselves cannot be serious in checking cases, analyzing cases and cannot be present at court materially. All of them contribute to a low efficiency of dealing with cases of legal aids for migrant workers.

3 Improvement of legal aids policies

3.1 Laws improvement Policies of Criminal legal aids for migrant workers should be set up in forms of laws. On the one hand, a specific law concerning legal aids for migrant workers should be set up. Therefore, policies will be presented in forms of laws. On the other hand, in specific legal aiding regulations, words like apply for legal aids must be changed into should provide legal aids. Migrant workers should be included into the majority of legal aids to raise the practical use of criminal legal aids for migrant workers. Making special laws of criminal legal is supplementary to laws in China to avoid conflicts, save resources and raise efficiency, making laws more specific. It makes laws more formal, providing basis for laws and theory which make it operate in a long and steady condition. Changing may into should, firstly, is suitable for human rights protection, judicial and moral concepts in protecting legal rights of the weak group. Secondly, including migrant workers into legal aids objects fits in with the original aims of legal aids. In other words, protecting the weak group makes laws be used equally and realize justice. All of which play important roles in realizing these aims. Finally, migrant workers fit in with the

common features that laws define perfectly. In other words, reasons for aiding are that they are the weak groups. In criminal cases, unfair and unjust results result from their weak status. Therefore, it is necessary for them to ask for help from laws, avoiding unfair results because of unrelated factors.

3.2 Improvement in money investment Government investment and social donation are the main sources of legal aids for migrant workers. As it is mentioned above, the fees are far away from meeting needs of legal aids for migrant farmers. Therefore, it is a must to increase investment. Firstly, the government may set up a special fund organization, enhancing social influences of criminal legal aids for migrant workers by propagating by media and holding large charity activities, enabling more people know about the importance of criminal legal aids for migrant workers. Secondly, it is necessary to adopt a method combining prizes and punishment. Currently, lottery has become the sixth industry and the major goal of setting up lotteries in China is to help the weak group just like migrant workers. So, we can draw a part from the lottery income or even the taxes paid by big winners as capital of criminal legal aids for migrant workers. Meanwhile, we can accumulate the capital for legal aids through drawing some money from capital punishment paid by criminals. Finally, after enlarging fee resources, we should establish the special organizations. It is necessary to activate the fund organization to supervise and manage it, ensuring that the fees will be used in practice in criminal legal aids for migrant workers, guaranteeing judicial rights will not be damaged.

3.3 Introducing motivation mechanism, improving quality of legal aids Problems like bad quality of defending in legal aids, as it is mentioned above, we can learn some lessons from efficient theories to introduce motivation mechanism and combine legal aids system with graded system of lawyers, benefiting lawyers in terms of prizes and interests according to the situation lawyers

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effective approach for university volunteer undertaking. Brand construction manifests maturity of public welfare undertaking. The higher the brand value, the greater the marginal effect of the volunteer undertaking. Therefore, agricultural universities should start from following three aspects to build volunteer brands. (i) Serving rural areas. Volunteer organizations in agricultural universities have advantages of being close to agriculture, farmers and rural areas, so they should combine such advantages and establish sustainable brand activities through some agricultural, rural areas and farmers supporting platforms. (ii) Contacting social public welfare organizations. University volunteer organizations should be open minded and seek cooperation with some social public welfare organizations, especially those with certain experience in rural areas, regulate themselves with high criterion of requirements, make meticulous organization, give prominence to achievements, and strive for realizing the linked effect. (iii) Active propaganda. It is recommended to build brands for the

engaged in legal aids cases. For example, when a certain amount of cases is finished, it is appropriate to promote lawyers to another level according to the results to activate lawyers to better finish aiding cases and improve defending quality. Improvement in quality of cases, it is beneficial to lawyers themselves. Therefore, lawyers will be more active in improving quality of cases. In this situation, problems such as low efficiency will be solved.

4 Conclusions

In the experiment and research of legal aids in China, most researchers put emphasis on rights protection of migrant workers, such as labor rights and interests, salary rights and so on, ignoring establishment of criminal legal aids, which does not fit in with lawsuit goals of human rights protection in China. With the rapid acceleration of urbanization, migrant workers are becoming closer to cities and they are the main strength in pushing economic development of cities. However, because of the special features of migrant workers and the imperfection of criminal legal aids, the basic judicial rights of migrant workers cannot be guaranteed. So, it is significant to set up systems of criminal legal aids and protect judicial rights of migrant workers by analyzing the current problems existing in criminal legal aids for migrant workers.

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public through network, radio and television, set up brand image, and bring into play influential power and appeal of volunteer brands of agricultural universities.

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