

On Perfecting the senile Determined Guardianship System in remote area of our country

Quan Xu ^{1, a}, Xinru Zhao ¹, Yang Liu ² and Wen Tang ^{1,*}

¹School of Law, Anhui University of Finance and Economics, Bengbu 233030, China

²School of International Trade and Economics, Anhui University of Finance and Economics, Bengbu233030, China

*Corresponding Author e-mail : tangwen82@163.com, ^a1545749879@qq.com

Abstract

With the development of Chinese social economy, and the aging degree of Chinese remote areas and the loss of young labor force, the implementation and improvement of the guardianship system is especially important to the elderly groups of Chinese remote areas. However, the implementation time of senile purposeful guardianship system is short, the system is not perfect, and the elderly groups in remote areas have a low understanding of the purposeful guardianship system, and the implementation of the purposeful guardianship system is not smooth because there is no auxiliary system to assist the implementation. Therefore, By studying the elderly groups in remote areas and the implementation status of the voluntary guardianship system in remote areas, the team put forward constructive suggestions on improving the elderly voluntary guardianship system in remote areas in order to promote the development of the elderly voluntary guardianship system in remote areas.

Keywords

Remote areas, Senile voluntary guardianship system, Dual-track supervision, Voluntary guardianship assistance system.

1. Introduction

The aging in remote areas of China is increasing, and the problem of guardianship of the elderly has become a difficult problem that must be solved. In the case of legal guardianship of the elderly without relatives, the intended guardianship system, as the only choice, is not smoothly implemented in the elderly in remote areas, and many places still need to be improved. Therefore, by studying the current situation of population aging in remote areas, the implementation status and problems in the implementation of the voluntary guardianship system in remote areas are put forward, and the corresponding suggestions are provided for the application of the voluntary guardianship system in remote areas of the elderly groups.

2. Population aging and the implementation of senile Determined Guardianship system in remote areas of China

2.1. Current situation of aging in remote areas

The remote areas studied in this paper are Tibet, Gansu, Shaanxi, Ningxia, Qinghai and Xinjiang According to the survey and statistics of aging in remote areas, we can get the aging data of remote provinces: the elderly dependency ratio of Gansu is 18.5%, and the number of people aged 65 and above is 3.1478 million; The old-age dependency ratio in Yunnan was 15.4%, with 5,073,300 people aged 65 and above. The old-age dependency ratio in Tibet is 8.1%, with 20700

people aged 65 and above. The elderly dependency ratio in Qinghai was 12.3%, with 514,100 people aged 65 and above. The old-age dependency ratio in Xinjiang was 11.1%, with 2,005,900 people aged 65 and above. The old-age dependency ratio in Shaanxi is 19.2%, and the number of people aged 65 and above is 5,266,600. Some scholars have found that the provinces with inter-provincial population outflow are mainly in the central and western regions (including the remote areas), while the provinces with inter-provincial population inflow are mainly in the central region. Some scholars calculate and compare the population age structure, migration rate and fertility rate of central European countries, and find that the degree of population aging in countries and regions will be further enhanced with the migration of people. Most of the remote areas studied in this paper are located in the west of China, and because of the vast territory, sparse population, climate environment and other reasons, the economic development of the west has lagged behind the east of China for many years. It is an indisputable fact that the young and middle-aged labor force in the west is moving east, and some studies show that with the aging wave of the eastern baby boom, the aging in the west will become the biggest problem in front of us.

2.2. Implementation of senile care in remote areas

2.2.1. The elderly in remote areas have a low understanding of the voluntary guardianship system

The author's team used summer and winter vacation to conduct a small scope of the survey about the senile voluntary guardianship system in Tibet, Shaanxi and Gansu places of our country. According to the survey conducted by our team's interviews, most of the elderly have a low understanding of the senile voluntary guardianship system. In 200 surveys, 12% of the elderly know or understand the senile voluntary guardianship system. Eighty-eight percent of seniors had not heard of senile voluntary guardianship. This data shows that the senile voluntary guardianship system in remote areas of China also needs education and publicity, especially in rural areas, where the loss of young adults is higher than that in urban areas and the education level of rural elderly is lower than that in urban areas.

2.2.2. The elderly in remote areas have low willingness to adopt the voluntary guardianship system

The author made a deep investigation on the willingness of the elderly to adopt the senile voluntary guardianship system. The author's team visited some areas in remote areas in winter and summer vacation, and the team carried out the education and propaganda of the senile voluntary guardianship system to the visited elderly and explained the differences and advantages of the senile voluntary guardianship system compared with the traditional guardianship. However, more than 70 percent of the elderly expressed resistance to the senile voluntary guardianship system, 18 percent of the elderly accepted the senile voluntary guardianship system and said they would use the senile voluntary guardianship system if needed, and the rest of the elderly said they were not interested in the senile voluntary guardianship system. Traditional thinking and old-fashioned behavior of the elderly in remote areas mean that the guardianship system in the remote areas of the elderly groups to promote the road resistance and long.

3. Literature Review

3.1. The rights and obligations of guardians are not clear

It is determined that when the guardianship system is applied to the elderly groups in remote areas, the rights and obligations of guardians are not clear. As for the rights of guardians, Article 34 (1) of the Civil Code stipulates that the duty of guardians is to carry out civil legal acts on behalf of the wards and protect the personal rights, property rights and other legitimate rights

and interests of the wards. But it is not clear what rights the guardian gets. Chinese law does not stipulate whether the intended guardianship must be paid. In the practice of elderly groups in remote areas, the guardian's right to claim compensation depends on the intended guardianship contract signed by both parties. However, when the elderly do not perform the obligation to pay remuneration and the contract is not agreed, whether the guardian has the right to unilaterally terminate the agreement remains to be discussed.

As for the obligations that guardians should perform, the reasons for the elderly people in remote areas to become persons with limited or without civil capacity are different, so the obligations that guardians should perform are also different. Therefore, it is not possible to prescribe the obligations that guardians should perform prematurely. Article 26 (1) of the Law on the Protection of the Rights and Interests of the Elderly and Article 34 (1) of the Civil Code have provisions, but they are more general, and there are still no clear provisions on the obligations of guardians. Depending on the customs at that time, the remote provinces often require guardians to have the ability to assist the elderly to complete certain tasks such as temple worship and customs and festivals.

3.2. The guardianship supervision system is not perfect

Prior supervision is mainly manifested as the absence of contract review. According to Article 33 of the Civil Code, it is necessary to determine one's guardian in writing. However, according to the author's research results, the elderly in remote areas have a low level of education, and they are unable to complete even simple writing behaviors such as signing their names. It is even more difficult to conclude the guardianship agreement by writing books. Our law is whether oral instruction or electronic contract can also be added to the way of determining guardians. Secondly, matters concerning personal protection and property affairs in the intended guardianship contract are very important for the ward. There are few lawyers and other professionals engaged in the legal industry in remote areas, and many intended guardianship contracts are directly signed with the assistance of the neighborhood committee. However, if the contract is not drawn up with the help of lawyers or professionals, then the contract may have a greater legal risk. The identity of intentional guardianship restricts the identity relationship in the non-traditional sense, and the interest relationship between the two is more than human, so the prior guardianship of intentional guardianship is the foundation of the smooth progress of intentional guardianship. Business supervision is manifested as the absence of daily supervision. The effective time of the voluntary guardianship contract for the elderly in remote areas is usually when the guardian loses the capacity to act or becomes a restricted capacity for civil act. At this time, the elderly group is basically unable to supervise the performance of the guardianship contract, and can not provide timely and effective self-relief when the guardian improperly performs the duty of guardianship. Therefore, the guardianship should be supervised by the public power. Public supervision can not only discover the improper performance of the guardian in time and assist the ward in relief, such as major matters such as the disposition of large amounts of property and medical decisions, but also the examination of such matters by public power can effectively help protect the person and property of the ward and avoid major losses.

In the practice of the elderly group in remote areas, the voluntary guardianship system is often difficult to supervise because of the lack of operational rules. In practice, the situation that guardians are both athletes and referees is obviously not consistent with the legal substantive justice, while other persons with guardianship qualifications according to law, residents' committees, villagers' committees, medical institutions, women's federations, disabled persons' federations, organizations of the elderly established according to law, civil affairs departments and other subjects have no clear supervision content and responsibilities. It is also difficult to fulfill the supervision obligations, resulting in the loss of supervision in form. Remote

areas have a vast territory, and the implementation of public power supervision and guardianship will greatly increase the work pressure of basic courts and other civil affairs departments and also consume a large amount of judicial resources. However, it is difficult to guarantee the implementation of private power supervision without specific auxiliary provisions. Therefore, when the guardianship system is applied to the elderly in remote areas, operational rules should be formulated based on the principle of minimal intervention and localization of supervision, and dual track supervision should be carried out with the autonomy of private law as the main intervention of public power as the supplement, so as to achieve the balance between the autonomy of private law and the supervision of public power.

4. Suggestion

4.1. Strengthen the publicity and popularization of the voluntary guardianship system for the elderly in remote areas

According to the author's survey results, the elderly in remote areas have a low understanding of and acceptance of the voluntary guardianship system. One is that the propaganda of the voluntary guardianship system is not enough. The other is that the elderly are old-fashioned and dare not try the unknown things. However, in the absence of legal guardianship for the elderly, intentional guardianship is undoubtedly the best solution. In view of this situation, we should vigorously carry out the publicity work of the intentional guardianship system of the local government, such as broadcasting and visiting publicity, so as to enhance the familiarity of the elderly groups in remote areas with the intentional guardianship system. Special education for willing elderly people enables them to practice voluntary guardianship while protecting their legal rights and interests from infringement.

4.2. Implement the necessary auxiliary system according to the needs of regional practice

Some developed provinces of our country have established some auxiliary systems to assist the voluntary guardianship system, among which the notary system and trust system are the most suitable for the elderly groups in remote areas. The elderly can go to the notary office for notarization after both parties agree to sign the "voluntary Guardianship Contract". Having declared the validity of the "voluntary Guardianship Contract", the notary office will pre-examine the "voluntary guardianship Contract" to avoid the risk of invalidation and revocability of the contract. It will also supervise the performance of the voluntary guardianship agreement and help the ward to make a true and accurate expression of the intention. Respect the true wishes of your ward. Notarization can directly and effectively protect the rights and interests of the elderly group from infringement, and can also directly pursue the responsibility after being infringed.

In addition, the trust system can also be adopted in advance, and the trust property can be entrusted to the trustworthy trust industry to manage, freezing the intention of the trustee to dispose of the property freely, which can not only help the elderly people whose judgment ability has been recovered or lost to preserve the property safety, but also prevent the elderly people from engaging in unselfish legal acts. Article 13 (4) of the Civil Code allows a natural person to establish a testamentary trust. Article 19 of the Trust Law requires the trustor to have full civil capacity, so the elderly in remote areas can use the following two ways to apply the trust: the elderly first set up a testamentary trust, and then conclude a voluntary guardianship agreement with the relevant individuals or organizations: 2. The elderly establish a testamentary trust and enter into a voluntary guardianship agreement with the individual or organization concerned. Of course, a trust system adapted to local conditions should be adopted

in accordance with the actual situation of each region in order to help the guardianship system to better apply to the elderly in remote areas.

4.3. Clearly define the rights and obligations of guardians in old age

Special provisions should be made for the rights of the elderly in remote areas. First of all, the claim right of the guardian should be determined. It is determined that the guardianship parties can negotiate to determine the guardianship fees before signing the contract, and the contract with the asking price higher than 100% of the local average level will not be recognized. If the guardian undertakes other affairs of the ward, which causes the charge to be too high, the guardian may unilaterally terminate the voluntary guardianship contract if the ward fails to pay the guardianship fee for two months without reason. Secondly, in addition to the basic proxy implementation of civil legal acts and the protection of the guardian's personal rights and property rights, the people's judge should also give the guardian more extensive rights to assist the guardian to complete the daily behaviors. Due to the huge differences in regional customs and cultures, the general and enumeration norms can be made. For example, the elderly in a particular position must attend the custom activities, but if they are unable to participate in the activities, the guardian can participate on behalf of them; If the guardian needs to inquire the records of the ward's money and even transfer the money to fulfill his guardianship obligations, the guardian shall, out of good faith, allow the guardian to do so.

According to different groups of people, guardians should perform different duties. The elderly groups in remote areas should take into consideration both regional factors and civil capacity and stipulate the guardianship duties that guardians should perform. The guardian acts on behalf of the ward to carry out civil legal acts. When the guardian should act on behalf of the ward and what kind of authority the guardian can act on behalf of the ward should formulate detailed norms according to the judicial practice in remote areas and conform to the local customs order to facilitate the performance of the guardian. A judicial interpretation should be issued to explain in detail how to protect the guardian's personal rights and property rights and whether to protect against the guardian's expression of will.

4.4. Establish and improve the supervision system when the voluntary guardianship system is applied to the elderly groups in remote areas

The prior supervision of the senile voluntary guardianship system in remote areas is mainly concerned with the time to start performing duties in the guardianship agreement. Domestic and foreign the supervision of guardianship agreements generally involves public power and notarization, but there is no supervision means whether the guardianship agreements begin to implement. If completely relies on people's Court as public authorities to intervene, but our country has no cases that the guardianship agreements put on record. On the other hand, it will greatly increase the workload of people's Court. At this time, the village committee and neighborhood committee closest to the people are often easier to supervise. As the subject of registration and record of the intended guardianship, they can file a lawsuit to the people's court on behalf of the elderly when the guardian improperly performs the duty of guardianship. The post supervision is mainly manifested as the supervision of guardians' abuse of guardianship duties. Remote areas are vast in size and generally live together by clans. As a passive guardianship method, the withdrawal of guardianship can only be initiated by a third party. According to the provisions of Article 32 of the Civil Code, the village committee and the neighborhood committee can report the registered agreement to the civil affairs department of the case for the record. The state organ can also inquire the relevant information of the elderly in remote areas, and if there is any change in the information of the guardian, it can immediately examine whether it is caused by the abuse of guardianship power by the guardian. The

combination of passive and active guardianship can better protect the legal rights and interests of the guardian

5. Conclusion

China's voluntary guardianship system has been implemented for a short time and is in its initial stage. There is no systematic standard for the voluntary guardianship of elderly groups, especially in remote areas, there is no law to regulate it. The Civil Code has improved and supplemented it to some extent, but the current voluntary guardianship system for elderly groups in remote areas still cannot meet the needs of social development in the region. The explicit qualification of the intended guardian, the rights and obligations of the guardian after the beginning of the guardianship and the supervision of the intended guardianship need to be improved. The aging of remote areas is accelerated, and the contradiction between demand and legislation makes it very necessary to improve the intended guardianship system for the elderly in remote areas.

Acknowledgments

This article is the research result of the 2022 Undergraduate Research Innovation Fund project of Anhui University of Finance and Economics Law School, titled "Research on the elderly care in remote areas under the background of Aging society" (No. XSKY22216).

References

- [1] Hanghang Zhang, Zhiying Yan. Study on the effectiveness of self-rated health indicators of the elderly population in China [J]. China Health Policy Research,2022.
- [2] Zengwen Yan. Research on Population migration, fertility rate and population stable state of aging [J]. China Population, Resources and Environment,2014.
- [3] Jiazhen LI. On the Perfection of Adult Determined Guardianship System in our Country [D]. Guangdong University of Foreign Studies,2019.
- [5] Chen Hui. On the Improvement of Voluntary Guardianship Supervision System in China [D]. Qingdao University of Science and Technology,2021.
- [6] Yan Chen. Research on the Issue of Determined Guardianship Notary in our Country [D]. Tianjin Normal University,2021.
- [7]Jie Wen. Construction of Legal Rules for Collaborative Application of Trust and Adult Guardianship [J]. Social Sciences of Chinese Universities,2022.
- [8] Xiaoqi Han. Research on Legal Problems of Determined Guardianship of the Elderly in our country [D]. Dalian Ocean University,2020.
- [9]Shuqin Liu. A Study on Voluntary Guardianship Supervision System [D]. Lanzhou University,2022.
- [10] Xuefeng Zhou. Construction of Senile Voluntary Guardianship System [D]. East China University of Political Science and Law,2016.
- [11]Xiaolong Zhang. Study on the Legal System of Voluntary Guardianship for the Elderly [D]. Jilin University of Finance and Economics,2020.