

Legislative Perfection of Social Organizations Participating in the Cultural Heritage Conservation in China

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Abstract

Social organizations, as the main force of cultural heritage conservation in China, play the role of information transmission, participation in system design, promotion of practice and coordination of social forces. But the existing legislation lacks adjustment of social organization. It makes the legal status of social organizations in the cultural heritage conversation unclear, and limits the role of social organizations. This paper hopes to elaborate and analyze the problems existing in the legislation and practice of cultural heritage organizations, and then put forward suggestions to improve the legislation. This paper adopts the research methods of hermeneutics, comparative studies and sociology of law. In the first part, the importance and legal status of social organizations in the protection of cultural heritage are explained; in the second part, the existing legal provisions and practice status are expounded; in the third part, the existing legal provisions and practice status are analyzed; the fourth part gives the corresponding legislative improvement suggestions for the problems analyzed in the third part.

Keywords

Social Organization, Cultural Heritage Conservation, Legislation

1. Introduction

Social organizations in China refer to the social organizations registered in the civil affairs department, including four categories, such as associations, private non-enterprise units, foundations and foreign-related social organizations (Liu, 2018b). Social organizations for the cultural heritage conservation refer to all social organizations that participate in the cultural heritage conservation, which

are bottom-up, voluntary and self-operating for the purpose of public benefit. In practice, due to various reasons, they cannot register with the civil affairs department, thus they cannot obtain the legal personality, and can only exist in the form of grassroots organizations (Liu, 2018c). In the process of the development of cultural heritage social organizations, the cultural heritage social organizations with legal personality inevitably lose part of their independence because of their dependence on the government. However, the unqualified cultural heritage social organizations cannot avoid relying on the support or assistance provided by the government or enterprises due to the lack of their own resources and imperfect organizational structure, resulting in the loss of their nature of independence and public welfare. In the cause of cultural heritage conservation, the power of social organizations can act as a bridge between the government and the individual public, and play a role in both top-down and bottom-up communication. Especially under the condition that the number of heritage and population in our country are relatively large, it is more necessary for social organizations to participate in theoretical research and practical exploration of cultural heritage conservation. The participation of social organizations in the cultural heritage conservation in China is still in its infancy, and there are many problems both in the legislation and practice, which need us to deeply analyze and explore the corresponding improvement strategies.

2. Legal Status of Social Organizations for the Cultural Heritage Conservation

The participation of social organizations in the construction of public culture is an important embodiment of social civilization and progress, and a symbol of the modernization of the national governance system and governance capacity (Liu, 2018a). Social organizations shoulder special responsibilities and missions in the cause of cultural heritage conservation. They are the transmitters of information, the participants in the system design, the promoters of practice and the coordinators of social forces. Compared with the participation of the individual public, social organizations have more powerful status advantages to prevent and stop the destruction of cultural heritage; Compared with the participation of enterprises, the public welfare of social organizations avoids the damage that profit-making may bring to cultural heritage. In the whole cause of cultural heritage conservation, social organizations, the government and other social forces together form a pluralistic and co-governing organic whole.

1) The transmitter of information

The participation of social forces is the essence of the conservation of cultural heritage and an indispensable role in the conservation mechanism of cultural heritage. Public participation is based on the public's right to know, and the response mechanism, as an important link of public participation, also takes information feedback as a necessary condition. Therefore, as a bridge between the government and the public, social organizations of cultural heritage play a role

in transmitting information by actively promoting, advocating and calling for the implementation of laws, regulations and policies related to cultural properties to disseminate information related to cultural heritage, and feedback the wishes and opinions of social organizations and the public to the government and administrative departments. To form a closed loop of information transmission and feedback for public participation in the conservation of cultural heritage.

2) Participants in system design

Social organizations of cultural heritage participate in the design of the legal system of cultural heritage by reflecting the demands of their fields and making relevant professional recommendations. China's cultural heritage is huge in scale and quantity, distributed in various provinces and regions. According to the basic principle established in the "Conservation Law of Cultural relics", our country implements the administrative management system of territorial management and hierarchical responsibility for the conservation of cultural relics. The administrative department for cultural relics under The State Council (that is, the State Administration of Cultural Heritage) shall be responsible for the work of cultural relics throughout the country, and the local people's governments at various levels shall be responsible for the work of cultural relics within their respective administrative areas. For the design and improvement of the legal system of cultural heritage conservation, it is necessary to consider the characteristics and corresponding conservation measures of cultural heritage at different levels, as well as regional characteristics and administrative differences. The cultural heritage conservation organizations or social organizations of cultural heritage sites distributed in various provinces can clearly grasp the cultural heritage characteristics and conservation characteristics of the province or region, and summarize the local legal improvement measures suitable for the region in practice.

3) Promoters of practice

Cultural heritage social organizations share part of the cultural heritage conservation work for the government by participating in the law enforcement practice of cultural heritage. According to the results of the third national cultural relics census, there are nearly 770,000 immovable cultural relics in China, including 2352 national key cultural relics conservation units; The state approved and announced 118 famous historical and cultural cities and 350 famous historical and cultural towns and villages; There are 41 world heritage sites, including 29 world cultural heritage sites and 4 world cultural and natural mixed heritage sites. China has more than 28.64 million pieces (groups) of cultural relics collected in museums, and a large number of cultural relics collected in other state-owned units and folk; At present, there are 3415 museums, including 2384 cultural relics system museums, 575 industry museums and 456 private museums (NCHA, 2012). Corresponding to the huge scale of cultural heritage, the government and administrative departments have a huge workload in the conservation work, and have to face the problems of insufficient manpower, lack of funds, delayed technology and poor conservation at the grass-roots level. Com-

pared with the government, social organizations of cultural heritage have the natural advantages of wide distribution, comprehensive coverage and abundant personnel organization. Compared with the individual public, the social organizations of cultural heritage have relatively perfect organizational structure, wide channels for raising funds, and strong coordination and execution ability. Social organizations can not only solve part of the burden of the conservation work of the government and administrative departments, but also alleviate the resource problems such as the shortage of funds and talents for the conservation of cultural heritage. As an important complementary force for the conservation of cultural heritage, social organizations can jointly form a multi-governance operating mechanism for the conservation of cultural heritage with the government and individuals.

4) Co-ordinators of social forces

At present, all sectors of society are paying more and more attention to cultural relics work, and the enthusiasm for participation is also getting higher and higher, but the overall level of participation is not high, and the market vitality has not been fully released, and it is necessary to further strengthen publicity, improve policies, and enhance capabilities. With the development of the economy and society, the improvement of the cultural consciousness of the whole society, and the improvement of relevant policies and systems, the overall level of social forces' participation in the conservation and utilization of cultural relics will certainly continue to increase (Liu & Yu, 2018). Scattered social forces need the platform and bridge function of social organizations of cultural heritage to express their willingness to participate and participate in cultural heritage conservation through an organized path. The government also needs the coordination and balance of social organizations to communicate the government and the public, and convey the will of management and laws and policies. Social organizations, as the coordinators of social forces, contact public power and private rights, and form a pluralistic co-governance legal mechanism with government and public participation.

3. Current Situation of Legislation and Practice of Social Organizations Participating in Cultural Heritage Conservation

In recent years, the relevant laws and policies of our country are encouraging social forces to participate in the conservation of cultural heritage. At present, cultural heritage social organizations are developing and prospering gradually, and have become an indispensable living force in the cause of cultural heritage conservation. In terms of legislation, cultural relics conservation law, administrative law, administrative procedure law, civil procedure law and relevant legislation of social organizations are all protecting social organizations' participation in cultural heritage conservation. In practice, cultural heritage conservation organizations across the country are also constantly exploring how to better coordinate

social forces to participate in the great cause of cultural heritage conservation as an organic part of the multi-governance operation mechanism of cultural heritage. On the whole, the development of social organizations for cultural heritage conservation in China lacks a clear legal status in legislation and the design of related supporting systems, and the development is rapid but insufficient and unbalanced in practice.

1) Current legislation on social organizations participation in the cultural heritage conservation

Although Law of the Peoples Republic of China on Protection of Cultural Relics has not clearly stipulated the principle of public participation in cultural relics conservation, it stipulates in the general provisions that “all organs, organizations and individuals have the obligation to protect cultural relics according to law”. In the Law of the Peoples Republic of China on Protection of Cultural Relics (Revised Draft) (draft for comment) issued by the State Administration of Cultural Heritage in 2020, a number of principled provisions on public participation in cultural relics conservation have also been added. Based on the particularity of the humanistic development of intangible cultural heritage, China’s Intangible Cultural Heritage Law clearly stipulates that “the state encourages and supports citizens, legal persons and other organizations to participate in the conservation of intangible cultural heritage”.

The Regulations on the Registration and Administration of Social Organizations is an important institutional basis for social organizations to participate in cultural heritage conservation in a legal capacity. The regulations stipulate that social organizations in China must be non-profit social organizations, and the establishment of social organizations requires basic conditions such as the number of members, organizational structure, full-time personnel, fixed residence, and funds and assets, which shall be registered and managed by the government registration and management organs, and supervised by the competent units and registration and management organs.

Public interest litigation of cultural heritage is an important judicial remedy for the cultural heritage conservation. At present, Article 55 of the Environmental Protection Law is often used as the legal basis in China. Under the Environmental Protection Law, social organizations that can file public interest lawsuits must meet the following requirements: to register with relevant departments in accordance with the law, and to specialize in environmental protection public interest activities for more than five consecutive years and have no illegal records. However, only immovable cultural relics in cultural heritage can be effectively remedied according to the legal relationship of environmental protection. Since the Civil Procedure Law of 2015 added legal provisions for public interest litigation, relevant organizations stipulated by law can also initiate public interest litigation against acts that harm social public interests.

The Charity Law of the People’s Republic of China stipulates tax incentives for charitable donations, exemption from related fees, and charitable recognition;

The Regulations on Museums clearly encourage social forces to set up museums, and stipulate that social donations enjoy preferential tax policies; The Regulations on the Conservation of the Great Wall encourage citizens, legal persons and other organizations to participate in the conservation of the Great Wall; The Measures for the Administration of Cultural Volunteer Services regulate the work of volunteer services. Shanxi Province promulgated the Measures for Social Forces of Shanxi Province to Participate in the Protection and Utilization of Cultural Relics (Zhang, 2020); The Law on Intangible Cultural Heritage and the Law on the Guarantee of Public Cultural Services have established the basic principles of encouraging and guiding public participation; The Regulations on Foundation Management promote the participation of social forces in public welfare undertakings by regulating the organization and activities of foundations.

2) Current practice of social organizations participating in the cultural heritage conservation

Social organizations are playing an increasingly prominent role in the conservation and utilization of cultural heritage. The three basic characteristics of social organizations are non-governmental, public welfare and sociality, which coincide with the nature of the work of cultural heritage conservation. Social organizations of cultural heritage have gradually appeared in the public eye, and have been developing and growing under the joint promotion of the government and social forces. According to statistics published in 2018, there are 257 social organizations in the field of cultural relics conservation across the country, including 29 national organizations, 180 local organizations, 27 volunteer teams, and 21 university associations (Liu, Yu, Yu, & Du, 2018). The China Foundation for Cultural Relics Conservation carried out 28 charitable projects in 2018, and non-governmental cultural relics organizations in some places also played an important role (CFFCHC, 2018).

The current state of conservation of cultural relics resources in our country and the sharp contrast between government investment and social participation shows that in the field of cultural relics conservation, it is not only necessary for social organizations to actively participate, but also has room for extensive participation in development. Specialized fund-raising organizations for cultural relics conservation, especially related public welfare foundations, are relatively small in number and scale, but they have also shown a rapid development trend in recent years. In general, in the field of cultural relics conservation, a cross-border ecosystem is gradually taking shape, which is jointly formed by social organizations, enterprises and governments (Zhan, 2018).

Various social organizations are dedicated to the cultural heritage conservation in their own way, such as Shanghai Ruanyisan City Heritage Conservation Foundation, Xiangyang Gleaning Folk Culture Work Group, Henan Dahe Network Cultural Heritage Section, Chongqing Cultural Relics Conservation Volunteer Service Team, Suzhou Ancient City Photographing and Recording Vo-

lunteer Association, Great Wall Station, Guangzhou Folk Cultural Relics Conservation Association, Peking University Cultural Relics Lovers Association, Beijing Guo Wenyan Cultural Heritage Conservation Center, Fuzhou Old Architecture Team, Shanxi Mingdao Cultural Relics Conservation Foundation, etc. They participate in the cause of cultural heritage conservation through photography, volunteer service, Internet publicity, regular search, emergency rescue, and participation in cultural heritage conservation projects (CFFCHC, 2017).

It can be seen that at present, the ways of cultural heritage social organizations participating in cultural heritage conservation are mostly concentrated in the stage of cultural heritage information disclosure and assisting participation and supervision, which belongs to the primary participation stage. Professionalism of cultural heritage conservation requires social organizations to have strong professional and strict professional qualifications. However, most social organizations of cultural heritage in our country lack professional qualifications, making them lack independent ability of cultural heritage conservation, and unable to directly participate in professional cultural heritage conservation work, and limited participation in system design.

4. Legislative Problems of Social Organizations Participating in Cultural Heritage Conservation

1) The national legislation is not clear on the legal status of social organizations for cultural heritage conservation

At present, China's adjustment of social organizations mainly relies on the "Regulations on the Registration and Administration of Social Organizations", which is low in rank and too brief in content. In practice, what actually plays a role is the regulations and normative documents issued by the Ministry of Civil Affairs as the registration and administration authority of social organizations and the various Ministries and commissions of the State Council as the competent authority of social organizations. As well as the local regulations, rules and normative documents issued by local governments, they are huge in number, due to the low level of legislation, their content, form, formulation, release procedures and whether public are arbitrary, limited effectiveness, and quite a lot of contradictions (Bu, 2011). The fundamental right to freedom of association is enshrined in Constitution, but current legislation on social organization has not yet implemented this fundamental right. In China's existing legislation, there is no general law regulating social groups, which makes the legal subject status of social organizations in the conservation of cultural heritage unclear, and they cannot fully play the overall role of social forces in the practice of cultural heritage conservation, so as to communicate and link government forces and social forces.

2) Local legislation is insufficient to promote the development of social organizations for cultural heritage conservation

Local legislation should be adapted to local conditions to improve the design

and implementation rules for public participation in the conservation of cultural heritage. Our country has a vast territory, and the amount and form of cultural heritage in each province are not the same, and the mass foundation and reality of public participation are also different. The mass basis of cultural heritage conservation first requires social forces to fully recognize the public nature of cultural heritage and the necessity of public participation in cultural heritage conservation. Social organizations, as the coordinators of social forces, should give full play to their promoting role in practice in each province and region under the leadership and supervision of the government, identify the cultural heritage characteristics of their own provinces and regions, and coordinate social forces to actively and fully protect cultural heritage. Therefore, local legislation should improve the system design related to public participation in cultural heritage-related legislation according to local characteristics, promote the development of cultural heritage conservation organizations in the local area, and enable cultural heritage conservation organizations to give full play to their functions and missions such as information transmission and power coordination.

3) Legislative restrictions on social organizations for cultural heritage conservation in practice

China's current management system for social organizations is dual management system, which makes the registration of cultural heritage social organizations more difficult, resulting in a large number of cultural heritage social organizations and successfully incorporated into the registration management in practice. In accordance with the Regulations on the Registration and Administration of Social Organizations, a competent business unit of a social organization may apply for registration with the registration and administration authority after obtaining the consent of the relevant competent business unit. This dual management system resulted in excessive registration conditions, and many social organizations could not find the relevant business authorities, and therefore could not obtain legal registration. A large number of social organizations can not meet the registration conditions, so they are outside the legal regulation and cannot be included in the effective supervision of the law. Of the more than 2300 national social organizations registered by the Ministry of Civil Affairs, only a few hundred take the conservation, research and dissemination of cultural heritage as their main purpose. Out of more than 6000 foundations nationwide, only about 50 are in the field of cultural heritage (Zhan, 2018).

Strict dual management system makes social organizations official color, lack of independence and their own social influence. At present, China's social organizations implement "centralized registration, dual responsibility, hierarchical management", and each social organization must accept the dual supervision of the competent business unit and the registration management authority. This makes the independence of the community, the lack of people, difficult to fully perform the function of industry management, difficult to play the intermediary function in economic and social development (Bu, 2011). The conservation and

utilization of cultural heritage are often in conflict with local economic construction and urban development. If we cannot get rid of the bondage of local government and relevant administrative departments, social organizations will be powerless and helpless to protect cultural heritage. Cultural heritage conservation organizations need to export professional advice on cultural heritage through their own vigorous development, relatively independent of the government and regulatory units, and convey the voice of social forces for cultural heritage care.

5. Suggestions on Perfecting Legislation for Social Organizations to Participate in Cultural Heritage Conservation

1) Fill the gaps in national legislation and clarify the legal status of social organizations

The existing legislation should clarify the legal subject status of social organizations in relevant provisions, implement the freedom of association in the Constitution into the law, and truly combine the development of associations with the transformation of government functions. First of all, a basic law regulating social organization should be formulated to link up with the Constitution. Second, other separate laws, regulations, and rules have provisions for different types of social organizations, which should be consistent with the upper law and international conventions. On the basis of forming a sound, unified and well-defined legal system for social organizations, the organization construction of social organizations of cultural heritage should be further standardized, and the activity space for their conservation and active utilization of cultural heritage should be guaranteed, so as to realize the positive interaction between social organizations of cultural heritage and the government and the administrative departments of cultural heritage. At present, there are a large number of grassroots organizations that have not been registered but have been paying attention to and carrying out cultural heritage conservation activities, and they play an important role in the cause of cultural heritage conservation. Under the leadership of the government and through the continuous efforts of social forces, the improvement of legislation on social organizations can provide more convenience and resources for the registration and follow-up development of social organizations.

2) Fully exercise local legislative power and improve the implementation rules for public participation

All provinces, cities and regions shall fully exercise their local legislative power and improve the supporting system and implementation rules for public participation in the conservation of cultural heritage. All provinces, cities, municipalities, regions and autonomous regions may, on the basis of legislation enacted by the National People's Congress and its Standing Committee, formulate provisions on the implementation of the Law of the Upper Level. They may also, on the condition that the Law of the Upper Level is not violated, formulate local

legislation that is practical and highly operational in accordance with the actual conditions of their provinces, cities and regions. According to the characteristics of local cultural heritage and the actual situation of public participation, local regulations on cultural heritage conservation shall be formulated, and implementation rules on public participation in cultural heritage conservation shall be improved in accordance with the provisions of laws and regulations. Specifically, local legislation and implementation rules should focus on the following: First, clarify the legal status and supervision mechanism of social organizations in the conservation of local cultural heritage. Cultural heritage conservation involves different administrative departments, such as cultural departments, ethnic and religious departments, cultural relics departments, tourism departments, industrial and commercial departments, etc. The legislation does not clearly specify the competent departments, resulting in cultural heritage conservation organizations can not connect with the government leadership and supervision. Second, local legislation and implementation should strengthen research, carry out a detailed investigation of the types, characteristics and conservation of cultural heritage in the region, and dig into the practical basis for social organizations to participate in cultural heritage conservation, and formulate practical conservation plans (Zhang, 2019).

3) Break through the restrictions of registration management and promote the diversification of resources for the development of social organizations

First of all, the double registration system applicable to the current adjustment social organizations in our country is too nervous and can be properly opened up. First of all, for social organizations that need strict examination and approval, the pre-examination and approval procedure can be adopted, and the registration authority will be registered after the approval, and the registered social organizations will be given preferential policies related to finance and taxation. Social organizations that do not require prior approval according to law may be directly registered by the registration and administration authority in accordance with the provisions of the law according to conditions, and if they organize and carry out social activities without registration according to the provisions of the law, they shall be banned according to law. Secondly, it is possible to strengthen the promotion role of social organizations in the practice of cultural heritage conservation by increasing the intensity of government purchasing activities or increasing the ways of government entrusted services, and to enhance the social influence and credibility of cultural heritage conservation organizations through social organizations' participation in the practice of cultural heritage conservation. Under the condition that social organizations of cultural heritage have relevant qualifications, social organizations can be granted certain rights to participate in administration, such as the identification and grading of cultural relics. Thirdly, in the drafting process of laws and regulations, some suggestions can be put forward in the name of cultural heritage conservation

organizations to give full play to the participation role of social organizations in the system design. In terms of fund raising, under the leadership of social organizations such as the China Foundation for Cultural Relics Conservation, local low-level cultural relics conservation organizations will be established. Under the premise of lawful exercise of organizational functions, guide local social forces to invest more resources in the conservation of cultural heritage.

4) The combination of foreign and native experience

Like China, most European countries are major heritage countries. Over the years, the public participation mechanism has developed relatively well. Social organizations and people have been participating in the practice of cultural heritage conservation from the past to the present, and even promoted the legislation related to cultural heritage and promoted the improvement of the cultural heritage conservation mechanism. British folk cultural heritage conservation groups have been committed to the conservation of architectural heritage, social organizations and the public can wake up to the awareness of cultural heritage conservation early, and enthusiastically participate in the conservation of cultural heritage. The National Trust, the UK's heritage conservation charity, has 5000 prehistoric sites and more than 1100 historic buildings, and is well placed to protect heritage from damage. The conservation of cultural heritage in France has experienced a process from "centralization" to "national conservation", and finally successfully transferred the right of conservation of cultural heritage to the hands of social forces. NGOs such as the French Association of Old Houses, the Association of Old Mansions, and the French Association of Volunteer Work Camps for the conservation of cultural Heritage, through the practice of protecting cultural heritage and the publication of publicity measures, let people have a better understanding of cultural heritage; Providing professional services for private historic buildings; Through the research and training of professional conservation work, volunteers are recruited to participate in the actual restoration activities of cultural heritage, and the publicity and education of cultural heritage conservation are carried out.

In the United States, the cultural heritage conservation system is a combination of government management and non-governmental organization management. The government rarely participates in the conservation of historical buildings directly, and is only a supporting role of many individuals, research institutions, enterprises and non-governmental organizations. Through their own work, NGOs have enabled America's architectural heritage to play a new historical role while being protected, such as the East State Correctional Facility, a former abandoned prison, which now serves as a place for people to visit and learn. Japan has built its own heritage conservation system with cultural goods as the core. On this basis, heritage conservation is carried out in three directions: the Ministry of Culture, urban planning departments and relevant non-governmental organizations, among which the experts from universities work in traditional neighborhoods to carry out sustainable conservation of architectural cultural

heritage, which is recognized by local residents and improves the status quo of cultural decay in communities (Liu, 2018b).

These experiences show that the effective conservation of cultural heritage depends on the cultivation of the awareness of cultural heritage conservation of the whole people, and the public interest and responsibility given to social organizations will further promote the government to respond more quickly (Wu et al., 2020). The participation of social organizations in the conservation of cultural heritage has its own soil, and the mass line is the best foundation for the public to participate in the conservation of cultural heritage. Under the supervision of the government and the administrative department of cultural heritage, social organizations participate in the legislation of cultural heritage conservation according to law, promote the practice of cultural heritage conservation, communicate with the government and the public, coordinate the participation of social forces in cultural heritage conservation, and form a cultural heritage conservation mechanism governed by the government, social organizations and the public.

6. Conclusion

In a favorable policy environment, social organizations should give full play to their role in promoting the practice of cultural heritage conservation and actively participate in the system design of cultural heritage, mobilize social forces and act as a bridge to communicate the relationship between the public and the government, and the whole society should jointly promote the improvement of the multi-governance cultural heritage conservation mechanism. As an effective force in social organizations, the current development scale and conservation practice of cultural heritage conservation do need to be improved compared with other fields such as environment. However, with the awakening of public awareness of cultural heritage conservation and the demand for cultural heritage rights, the role of cultural heritage social organizations will become more and more prominent. It is believed that through the improvement of social organization legislation and public participation in cultural heritage conservation system, cultural heritage conservation will be vigorously developed in our country, and social organizations will be more effective in promoting the practice of cultural heritage conservation.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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