

Study on the Protection of Tourist Guide's Labor Rights and Interests Based on the Tourism Law

Zhao Hongfeng

Guangdong Institute of Science and Technology, Guangdong, Zhuhai, 519090

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Abstract: The implementation of the Tourism Law in 2013 has played an active role in safeguarding the labor rights and interests of tour guides in the form of the Basic Tourism Law. However, the investigation and analysis show that the protection of tour guides' labor rights and interests in the Tourism Law is still inadequate, mainly reflected in the violation of the right to personal dignity, the damage to the right to remuneration for labor, the absence of the protection of social security rights, and the relative lack of safeguarding rights system. We should rectify the vicious competition chaos at low prices in travel agencies, protect personal dignity, construct a salary system combining protection with incentives, implement the legal responsibility of travel agency protection, and improve the system of government protection in order to improve the protection of tour guides' labor rights and interests.

1. Introduction

After nearly 40 years of rapid growth, China's tourism industry has grown into an important pillar industry in the national economic structure. Tour guides, as representatives of travel agencies, play a central role in helping tourists to carry out their travel plans and experience the pleasant experience of tourism. Up to 2016, China has more than 800,000 licensed tour guides. Such a huge professional group has made great contributions to the development of tourism industry in China, but on the other hand, it has long been in the marginal zone protected by national laws and regulations. The implementation of the Tourism Law in 2013 has played a positive role in safeguarding the labor rights and interests of tour guides in the form of the Basic Tourism Law. However, the survey found that the protection of tour guides' labor rights and interests is still worrying.

2. Current Situation of Protection of Tour Guide's Labor Rights and Interests

2.1. The right to personal dignity is often violated

The right of personal dignity is the core power in the right of personality, which is embodied in the right of reputation, portrait, name, privacy and honor, and concentrates on the right of reputation. According to the relevant provisions of the Constitution and the General Principles of Civil Law, the right to personal dignity of our citizens is inviolable. The Tourism Law, which came into effect in 2013, also stipulates that tourists should not infringe upon the legitimate rights and interests of other practitioners, including tour guides, when participating in tourism trips and mediating various contradictions in tourism trips. Whether as a national citizen or a tourist practitioner, tour guides' right to personal dignity is protected by law. When conducting tour guides' activities, their personal dignity should be protected, their personal safety must be guaranteed, and unreasonable requirements should be resisted in accordance with the law. According to the survey, 59.3% of the tour guides felt that there was "social and tourists' disrespect for the tour guide profession" in their work, while 29.8% of the tour guides pointed out that there had been "the phenomenon of being teased and humiliated by tourists" in their work. According to the survey, the tour guide's right to personal dignity has not been well protected in his work^[1].

2.2. Long-term infringement of the right to remuneration for work

Labor remuneration right is the right of workers to pay reasonable remuneration according to the quality and quantity of work results after fulfilling their labor obligations in accordance with the legal relationship. China's Labor Law and Labor Contract Law also stipulate that workers have the right to receive remuneration. Employment enterprises should pay their workers in full and on time according to the contract agreement and relevant laws and regulations. According to the provisions of the Tourism Law, as an employing enterprise, travel agencies need to sign employment contracts with their hired tour guides, pay wages and pay social security fees in full. Even if companies temporarily hire tour guides to work for travel agencies, they also need to pay the tour guides' service fees in full. At the same time, travel agencies are required to prohibit compulsory tour guides from paying for and demanding any fees for tour guides when they assign tour guides to serve tour groups. According to the requirements, the tour guides' service fees are indicated in the travel contracts signed between travel agencies and tourists. From the current legal provisions, whether as a laborer or a tour guide, their right to remuneration for labor is protected by law^[2].

2.3. Lack of protection of social security right

The right to social security is a kind of economic help given by the government and society to maintain the basic living standards of the guaranteed objects in the stage of injury, illness, senility and other stages. The Constitution of our country stipulates that citizens can get economic assistance from the state and society under the conditions of senility, illness and incapacity to work. The Tourism Law promulgated in 2013 also stipulates that travel agencies need to sign labor contracts with their hired tour guides, pay economic remuneration and pay social security fees. From the above-mentioned legal provisions, the state guarantees compulsory social security rights of all workers, including tour guides, through legislation. But this is not the case^[3].

2.4. Relative Lack of Rights Defense System

The Tourist Law, which came into effect in 2013, has made some progress in protecting the labor rights and interests of tour guides. For example, Article 38 of the Tourism Law stipulates that when a travel agency assigns a tour guide to serve a tour group, it is forbidden to compel a tour guide to pay for the tour and ask for any fees for the tour guide. In addition, the Tourist Law for the first time in the relevant laws to infringe on the rights and interests of tour guides, which makes the protection of tour guides' rights and interests of the system has the law to follow. However, its implementation effect is not ideal. According to the survey, 45.1% of tour guides choose to "swallow their voices with patience" when their work rights and interests are infringed. This shows that after the implementation of the Tourism Law, the situation of tour guides to safeguard their labor rights and interests is still not optimistic^[4].

3. Measures to Improve the Protection of Tour Guide's Labor Rights and Interests

3.1. Rectify the vicious competition of low prices in travel agencies

On the one hand, we should fight hard to curb the chaos of low-price competition in the travel agency industry. The administrative department of tourism may, in conjunction with public security and industrial and commercial departments, impose heavy penalties on them in accordance with relevant laws. It may confiscate the illegal income of the travel agency, order it to stop business and rectify it until it revokes its travel enterprise industry access license, and impose a high fine. Illegal and irregular travel agencies shall be included in the bad information bank of tourism business services, and shall be included in the credit files of tourism business services and published to the public. At the same time, the person in charge and the party concerned of the illegal travel agency should also be punished. The person in charge and the party concerned of the travel agency whose business license has been revoked shall be forbidden to enter into the business of the travel agency within a certain period of time.

On the other hand, efforts should be made to eliminate the soil of low-price vicious competition.

The administrative department of tourism should actively create conditions to promote travel agencies to get rid of "homogenization" competition, encourage travel agency enterprises to win the market by relying on innovation of tourism products and upgrading of quality services, strengthen the protection of intellectual property rights for travel agency tourism product innovation, and encourage travel agencies to develop their own tourism products with characteristics. Products are registered as trademarks for protection. We should increase the propaganda for tourists and publish the guided price formulated by the travel agency association to the society through various media means, taking the calculation of travel cost as the reference object, so that tourists can correctly identify the vicious low-price competitive tourism products, recognize their harmfulness, achieve rational consumption, and consciously resist and actively report travel agencies. Behavior of vicious competition at low prices. The training of tour guides should be strengthened, and they should resist the vicious competition of low prices, report the vicious competition of low prices in travel agencies, and actively safeguard their labor rights and interests^[5].

3.2. Protecting the Tourist Guide's Personality Dignity in a Multi-pronged Way

Tourism bureaus at all levels should strengthen the protection of tour guides' right to personal dignity. They should abandon the thinking mode of "emphasizing management while neglecting protection", and take the initiative to intervene and protect tour guides' right to personal dignity. Travel agencies, as the employers of tour guides, should stand on the front line of protecting tour guides' right of personal dignity. However, due to the fierce competition in the market, travel agencies are afraid to offend tourists, resulting in the damage of their economic interests, and they tend to take a laissez-faire attitude towards tourists' acts of impairing the dignity of tour guides. As an employee, the loss of the tour guide's right to personal dignity is not only a personal loss, but also a damage to the overall interests of the travel agency, which is the relationship between "lip death and teeth cold". At the same time, when the tour guide's right to personal dignity is damaged, the relevant judicial departments can not be affected by the negative news about tour guides by public opinion. They should keep the judicial professionalism and independence, so that tour guides can obtain timely and fair judgments, and protect the legitimate rights and interests of tour guides^[6].

3.3. Constructing the Compensation System of Tour Guide Combining Guarantee and Incentive

The current salary structure of tour guides in China is unreasonable, which basically consists of basic salary, group allowance, shopping Commission and a few tips. The basic salary of tour guides is low or even none at all. Although the tour allowance is about 100-200 yuan per day, the tour guides do not have the tour allowance in the off-season. The tour guides' shopping Commission has become the main source of income for tour guides. The tour guides have to devote their main energy to shopping with tourists to earn commission income. 。 This leads to the decline of tourists' experience and the increase of contradictions between tour guides and tourists. Therefore, it is urgent to construct a compensation system for tour guides, which combines guarantee with incentive.

Travel agencies should safeguard the rights and interests of tour guides to obtain reasonable remuneration according to law. Travel agencies should establish and improve reasonable salary distribution methods for tour guides, and make reasonable basic salary and group allowance according to the level and professional skills of tour guides. Travel agencies should conclude labor contracts with tour guides, establish labor relations, clarify the rights and obligations of both parties, and effectively regulate and restrict the actions of all parties in accordance with relevant laws such as Tourism Law, Labor Contract Law and so on. If a travel agency hires a tour guide temporarily, it shall sign a labor contract with the tour guide in accordance with the Tourism Law, agree on the rights and obligations of both parties, and pay the tour guide service fees in full and on time in accordance with the terms of the labor agreement, so as to ensure the tour guide's right of remuneration for work.

At the same time, travel agencies should establish incentive system for high-quality service of

tour guides. Travel agencies should establish and improve the performance reward system for tour guides, whose main content is the professional quality of tour guides, the evaluation of tourists and the contribution of their professions. The professional accomplishment of tour guides directly affects the service quality of tour guides. Travel agencies should encourage tour guides to continue to strengthen learning and training, enhance their self-professional accomplishment and improve the service quality of tour guides. Tourists' evaluation of tour guides' service level is not only the basis for their survival and growth in the cruel market competition, but also an important criterion for evaluating the quality of tour guides' work. Tourist guides should be encouraged to obtain performance awards through high-quality service. Travel agencies in the performance allocation, can be based on the size of the benefits created by tour guides to enterprises, comprehensive consideration of their performance incentives^[7].

3.4. The Legal Responsibility of Implementing the Guarantee of Travel Agencies

We will continue to strengthen the supervision and management of travel agencies. Tourism bureaus and labor supervision departments at all levels should regularly check the implementation of the protection of tour guides' labor rights and interests, urge travel agencies to strictly abide by the relevant provisions of the Tourism Law and the Labor Contract Law, sign standard labor contracts with tour guides, and protect tour guides' labor rights and interests. Employers who fail to sign labor contracts with tour guides, pay labor remuneration on time and pay social insurance premiums in full and on time should be investigated and dealt with seriously according to law and regulations, and exposed publicly through the media. Introducing the integrity assessment mechanism of travel agencies, including travel agencies whose safeguard measures fail to meet the standards into the "blacklist" of corporate integrity, and jointly carrying out a one-vote veto in the year-end assessment of travel agencies, star rating, quality deposit return, promotion of domestic travel agencies to international travel agencies, financing from society and banks, etc.

3.5. Perfecting the System of Government Protection

First of all, improve the industry access and evaluation system. We should attach importance to the vocational education and training of tour guides, strictly enforce the system of industry access, improve the authority of qualification certification, control the number of tour guides and improve the quality of tour guides, clarify the service quality and professional ethics requirements of tour guides, attract more excellent talents to work as tour guides, and strengthen the training of tour guides' skills. Effectiveness runs through the career of tour guides; building a scientific and reasonable salary evaluation system, shifting the focus of evaluation to the quality of service, focusing on the assessment of tour guides' explanatory, guiding and coordinating abilities; and incorporating passenger evaluation into the evaluation system, combining the process with the results, travel agencies and passenger evaluation to implement incentives and penalties. Encourage mechanism, establish the system of tour guide title, mobilize the enthusiasm of tour guide work.

Secondly, we should establish a law enforcement mechanism of department linkage. In order to effectively safeguard the labor rights and interests of tour guides, it is necessary to strictly enforce the law and strictly implement the legal system to safeguard the labor rights and interests of tour guides. However, the emergence of illegal phenomena in the protection of tour guides' labor rights and interests has profound social and economic roots. It is very difficult for a single administrative department, such as tourism administrative department or labor supervision department, to effectively contain them. Therefore, it is necessary to establish a multi-sectoral coordinated law enforcement mechanism in practice. Government departments should seriously investigate the situation of violations of laws and regulations, distinguish the law enforcement responsibilities of grass-roots government departments and relevant departments, improve the efficiency of joint law enforcement, and prevent the occurrence of mutual prevarication.

Finally, we should improve the supervision system of labor rights and interests protection. We need to improve the supervision institutions of labor rights and interests protection of tour guides, form special supervision by tourism administrative departments and labor supervision agencies, and work mechanisms for social organizations such as trade unions and tour guides associations to

cooperate with supervision; improve administrative law enforcement procedures for labor rights and interests protection, enhance supervision capacity, increase law enforcement efforts, and attach importance to continuing education of law enforcement workers at the grass-roots level. To improve the level of law enforcement at the grass-roots level. In order to ensure the effective and sustained development of law enforcement activities, we can invite the news media to participate in law enforcement supervision, grasp the basic situation of law enforcement more comprehensively, regularly expose the list of travel agencies with insufficient safeguards to the society, accept supervision by public opinion, do a good job in publicity, and ensure that law enforcement is strictly carried out in accordance with regulations. At the same time, tour guides are encouraged to actively participate in the construction of their own labor rights and interests protection system, so that they have the right to know all kinds of information and information about the construction of the protection system, and to put forward their own opinions through hearings and other means. Third-party professional organizations such as tour guides' associations and social institutions should put forward opinions and suggestions on the construction of tour guides' labor rights and interests protection so as to ensure the fairness and accuracy of law enforcement decisions as far as possible^[8].

4. Conclusion

As the most important practitioner in the tourism industry, tour guides play an irreplaceable role in improving the quality of tourism and promoting the beautiful China. Strengthening the research on legal protection of tour guides' labor rights and interests will help to protect the tour guides' labor rights and interests, standardize the practice of tour guides, stabilize the tour guides, encourage tour guides to practise for a long time and constantly improve their professional quality. It is also conducive to curbing the chaos of tourism, resolving all kinds of contradictions in tourism activities from the source, and promoting the long-term, healthy and rapid development of China's tourism industry on the track of the rule of law.

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