

# *The Establishment of the Community Correction Hearing System*

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**Abstract:** In China, citizens enjoy extensive rights and interests and freedoms. Although the objects of community correction are not ordinary citizens, their legitimate rights and interests such as employment, schooling, personal dignity and residence infringement are still protected by the Constitution. With the development of the society, the community correction work has become more and more complex, and the protection of the rights and interests of the community correction objects has become more and more sudden. The existing laws on the provisions on the protection of the rights and interests of community correction objects are too general and backward, and cannot be open and transparent. Through the in-depth analysis of the problems caused by the lack of community correction hearing system, the conclusion is reached through field research, in order to better protect the legitimate rights and interests of community correction objects and broaden the community correction relief channels, it is particularly important to add the community correction hearing system.

## **1. Introduction**

### **1.1 The concept of community correction**

In China, community correction is a foreign term, mainly based on the translation of "community corrections" or "community-based corrections". On the basis of combining their own national conditions and community correction practice, fully learn from the beneficial practices of other countries, and gradually develop into a community correction system with Chinese characteristics.<sup>[1]</sup> Community correction refers to the criminals will meet the conditions of community correction within the community, by the special state organs in the relevant social organizations and civil organizations and social volunteers, with the help of the judgment, ruling or decision, correct their criminal psychology and behavior habits, and promote its smooth return to the prison penalty execution activities.<sup>[2]</sup> In China, the community correction work is specifically responsible for by the judicial administrative department.

## 1.2 The concept of the hearing

The hearing system is a concept with a very broad meaning, which is generally used in the field of administrative law and public decision-making. The core of the hearing system means that the relevant authorities will make decision affect relevant personnel, before a public hearing, at the hearing, relevant personnel can free opinion, provide relevant evidence, relevant authorities will directly according to the hearing process, relevant personnel can also put forward reconsideration of the decision.<sup>[3]</sup>

The provisions of laws and regulations on the hearing system accelerate the construction of the hearing procedures and the implementation and promotion of the hearing system. Many central and local government departments have formulated special hearing procedures or rules and methods. Hearing is widely used in many fields, such as price decision, local legislation, administrative punishment and state compensation.<sup>[4]</sup>

Community correction hearing means that when the community correction institution makes a decision that affects the rights and interests of the community correction object, the community correction object may apply for a hearing if the community correction institution decides; if the community correction institution may hold a hearing.

The personnel participating in the community correction hearing include but are not limited to the personnel of the member units of the community correction committee, the personnel of the community correction institution, the personnel of the village (neighborhood) committee, the police of the local police station, the community correction objects and their family members or agents, etc.

The hearing of the juvenile community correction object is held in a non-public manner.

## 1.3 Background of community correction hearings

In recent years, with the continuous development of community correction system in China, the problems facing community correction work has become diverse and complex, especially on July 1,2020, the community correction law of the People's Republic of China (hereinafter referred to as the "community correction law") enacted, the protection of the rights and interests of community correction object is particularly important. However, the relevant supporting system of community correction is far from the continuous development of community correction work under the new situation; the focus of community correction staff is mainly on the supervision of community correction objects, not the protection of the community rights and interests of community correction objects.

Through the field investigation of community correction institutions in R County, S Province, China, the author found that the professional quality of the existing community correction team is not high, which affects the work quality of community correction. There are 5 staff members in R County, S Province, China, in community correction institutions, and 500 community correction objects in the jurisdiction, who are distributed in 10 judicial institutes for community correction. Each judicial department has 1 staff member in charge of community correction. In R County, S Province, China, there are 15 people engaged in community correction work, and the ratio of community correction staff to community correction objects is 1 to 33. Among the 15 community correction workers, only 3 graduated from the law major. In addition to completing the community correction work, the staff of the Justice Institute also need to undertake the work of people's mediation, law popularization and publicity, placement, help and education. Since the grass-roots judicial institute belongs to the dual management of the judicial bureau and the grass-roots government, the staff of the institute of justice also need to participate in the relevant work of the grass-roots government. It is the norm of the grass-roots judicial institute with fewer people and

more work. At present, most of the community correction workers have not systematically learned legal knowledge, lack relevant professional knowledge and skills, and have a big gap with the work requirements. When making decisions that affect the rights and interests of the community correction objects, they are highly subjective and easy to cause corruption.

## **2. Problems caused by the lack of community correction hearings**

Community correction system, as a way of non-imprisonment penalty execution, is the execution method corresponding to imprisonment correction. According to the existing laws, the relevant institutions, organizations and individuals have the obligation to protect the legitimate rights and interests of the objects of community correction; the community correction institutions shall take reasonable and necessary measures and methods to avoid unnecessary influence on the normal work and life of the community correction objects; the community correction institutions shall not restrict the personal freedom of the community correction objects. When the legitimate rights and interests of community correction subjects are violated, they can file accusations, appeals, and reports to the People's Procuratorate. They can also directly approach the community correction institutions or appeal to the county-level or higher local governments that have established community correction institutions, the people's court of the community correction execution site, the public security organs, and other relevant authorities. When criminals conduct community correction outside the prison, personal freedom is restricted, such as restricting meeting special persons, restricting access to specific places, restricting the scope of daily activities, etc. Meanwhile, community correction institutions may take measures and methods such as determining community correction groups, formulating community correction plan, communication, information verification, relocation approval, assessment, reward and punishment, and electronic positioning. All of these restrictions affect the personal rights and interests of the object of community correction. The lack of the community correction hearing system may cause the following problems:

The decisions made to these community correction objects are not made by the court through a public hearing, but are made by the judicial administration department. However, the current "Community Correction Law" and "Community Correction Implementation Rules" do not make relevant provisions on the community correction hearing system. After the author's front-line investigation of the community correction work, I learned that the judicial administrative departments did not set up any hearing procedures when actually carrying out the community correction work, which made the judicial administrative organs lack open and transparent procedures for the decisions made by the community correction objects. Judicial administrative organs for community correction object made a significant impact on its rights and interests, the decision, what is the basis of decision, decide the procedure, for the above problems the author thinks that to community correction team members, and to community correction object and their families, also want to community correction object community life. Through the community correction hearing, the community and even the society can understand the community correction system. On the one hand, the lack of the community correction hearing procedure will make the decisions made by the judicial administrative organs lack openness and transparency, on the other hand, it will make it difficult to protect the rights and interests of the community correction objects, and also damage the community members' right to know.

The lack of the community correction hearing system is not conducive to the construction of the mass foundation of the community correction system. The legislative background of Community Correction Law is to implement community correction according to law, promote their smooth return to society in the socialized and open environment, help to reduce prison detention, avoid cross infection, save the execution cost, and reflect legal civilization and social progress; help to

resolve negative factors, ease social contradictions, prevent and reduce crime, maintain social harmony and stability, and improve the modernization level of social governance system and governance capacity.

Through the localization of China, the community correction system has developed into a work pattern of government leadership, department coordination and social participation. It fully mobilizes social forces to participate in community correction, and adheres to and improves the social governance system of joint construction, joint governance and sharing. In the process of community correction, on the premise of providing the institutional basis and order by the state, the integration of social forces and public forces into the correction of criminals is not only an effective way to educate and help the objects of community correction, but also an important embodiment of the organic unity and coordination of national governance and social participation.

In the community correction system, the community correction institutions adopt a hearing procedure for the relevant decisions made regarding community correction subjects. They invite members of the community correction committee, personnel from the community correction institutions, members of the village (neighborhood) committees, police officers from the jurisdictional police station, community correction subjects, and their family members or representatives to participate. The relevant matters of the hearing will be announced promptly, which will contribute to community awareness of the community correction system and strengthen its foundation among the public.

The lack of community correction hearing system makes it very difficult for community correction objects to safeguard their legitimate rights and interests. In the current "Community Correction Law", the protection of the legitimate rights and interests of community correction objects is only detailed in Article 34.

The current law stipulates that the relief of the rights and interests of the community correction object is post-relief. Although the regulations require the people's procuratorate or the relevant authorities to inform the complainant, the complainant and the informant; but for the community correction objects that are urgent to protect their legitimate rights and interests, some of the materials that violate the decision of the community correction object are difficult to obtain the community correction object. The collection of data and the rush of departments also increase the time cost of the community correction object, making it difficult for the community correction object to protect their legitimate rights and interests.

The lack of community correction hearing system hinders the community correction objects from claiming their power in time. The hearing procedure will safeguard their legitimate rights and interests through the publication, proof proof and cross-examination of the opinions of community correction objects and reconsideration of unreasonable decisions. However, the lack of the community correction hearing system makes the community correction objects have no pre-procedure to safeguard their own rights and interests, which makes the protection of the legitimate rights and interests of the community correction objects become passive.

### **3. Construction of the community correction hearing system**

The Community Correction Law stipulates that protecting the legitimate rights and interests of community correction objects is an inevitable requirement for fully implementing the rule of law and the criminal policy of combining mercy with severity. According to Article 4 of the Community Correction Law, community correction work should adhere to the principle of conducting law, respecting and protecting human rights. From the perspective of the practices of countries outside the region, special attention is also paid to reasonably drawing the boundary between strengthening regulatory intervention and protecting the legitimate rights and interests of community correction

images. It is the basic requirement of protecting the legal rights and interests of the subjects of the community correction. According to the Canadian Correction and Conditional Release Act (Corrections and Conditional Release Act), parolees may apply for reconsideration if the parole board fails to comply with the basic principles, the wrong application of the law, or violate relevant regulations.<sup>[5]</sup> There are similar provisions in the laws of Germany, Japan and other countries. Since the 1970s, the American criminal rights protection movement, the federal court fully involved in the rights and interests protection of criminals, set up inmates appeal procedure, set up in prison, responsible for the investigation of criminals and other citizens to prison officials, and the US constitution on the principle of human rights protection and due process applies to probation and parole supervision. Carria, the justice of the Supreme Court, wrote in his judgment of *Griffin v. Wisconsin*: " For probationers (the same does parolees), it is certain that they do not enjoy the full freedom of every citizen, but enjoy conditional freedom based on compliance with specific restrictions.

The construction of community correction hearing system will have a profound impact on community correction work. Firstly, the construction of community correction hearing system is conducive to community correction decisions more open and transparent, which reduces the subjectivity of community correction staff; secondly, the construction of community correction hearing system is conducive to cultivating the awareness of community correction objects maintaining their legal rights through legal channels; again, the construction of community correction hearing system is a good publicity for the community correction system, which can better promote social participation in community correction work, thus promoting and helping the community correction objects to return to society smoothly and become legal citizens.

### **3.1 Scope of application of the community correction hearing system**

The Law of Administrative Punishment of the People's Republic of China makes specific legal provisions on the scope of application of administrative hearing. The scope of application of administrative hearing is the decision of administrative penalty proposed to be made by administrative organs. Different from the application of administrative hearing, the scope of application of community correction hearing is the decision made by community correction institutions.

The personal and property rights and other rights enjoyed by the community correction objects are not infringed upon, and they are not discriminated against in employment, schooling and enjoyment of social security. Community correction institutions should be in accordance with the law into the community correction object supervision and management, education support, in accordance with the daily performance into the assessment of rewards and punishments, for formalities after apply out and moved to the community hu correction object, community correction institutions shall be approved in accordance with the law, in the process of community correction, shall respect the personality of community correction object, protect the identity of the community correction object information, personal privacy.

The delineation of community correction hearing procedures is mainly based on the decisions made by community correction institutions on the specific work of community correction, which mainly covers pre-judgment investigation, risk assessment, change of management level, leave, regular cross-city and county activities, change of residence, etc. If the community correction objects have objections to the decision made by the community correction institution during the above community correction work, they may apply to the community correction institution for a hearing, and the community correction institution shall decide whether to hear according to the needs.

### **3.2 Main participants in the community correction hearing system**

Referring to the administrative hearing system, the community correction hearing shall be presided over by the community correction institution who is not an investigator of the case; if the party considers that the moderator has a direct interest in the case, they shall have the right to apply for withdrawal.

Unlike administrative hearing, community correction hearing is a special problem of special groups, so community correction hearing system participants mainly have community correction agency staff, procuratorate in community correction agencies, prosecutors in community correction agency police, correction team members (including: correct family members, village (house) committee staff, community police, etc.) and other spectators, community correction object can personally participate in the hearing, also can entrust one to two agent, minors community correction hearing is not open. When necessary, staff members of higher judicial administrative organs may also be invited to attend the hearing.

### **3.3 Starting procedure of community correction hearing system**

One is the application of community correction subjects. Community correction subjects may apply for a hearing with the community correction agency if they believe that the agency's decision has infringed upon their legitimate rights and interests, causing unnecessary impact on their normal work and life. Juvenile and community correction subjects who are unable to apply for a hearing in person may have their guardians apply to the community correction agency for a hearing. Upon receiving the hearing application, the community correction agency should organize the hearing.

Second, if a community correction institution considers it necessary to hold a hearing when making a decision affecting the rights and interests of the community correction objects, it may hold a hearing. In some cases, when the information provided by the community correction institution is insufficient to make decisions according to the community correction object, due to the particularity of community correction, the information provided by the community correction should be disclosed to the community and the correction team members and solicit the opinions of the correction team members. Because the correction team members, as the usual supervisors and education helpers of the community correction objects, have the right to know any decisions made by the community correction institutions on the community correction objects. For example, for community correction subjects who apply for a change of execution site, they will be transferred from the original execution site to a new one for community correction. Prior to the change, a hearing can be conducted involving relevant personnel from both the original and proposed execution sites to assess whether the proposed execution site is conducive to the supervision and management of the community correction subject.

### **3.4 Relief procedures of the community correction hearing system**

We should improve the relief channels and make it clear that the objects of community correction have the right to apply, accuse and report to the people's procuratorates or relevant organs. If the object of community correction considers the hearing result unreasonable, it may apply for reconsideration to the higher judicial administrative organ for the hearing result within the prescribed time. Community correction work is imprisonment criminal execution work, community correction hearing and the corresponding relief system should be different from administrative hearing and administrative reconsideration, community correction hearing can be used as an object to the procuratorial organ appeal, charges and report front program, for community correction object received part of the case can be filed to the people's court.

## 4. Conclusions

Protecting the legitimate rights and interests of the objects of community correction is an inevitable requirement for fully implementing the rule of law and the criminal policy of combining mercy with severity. China's law has always paid attention to the protection of the legitimate rights and interests of the objects of community correction.<sup>[6]</sup> On the one hand, we should carry out the supervision and management of the objects of community correction according to the law, maintain the normal order of community correction, pay attention to the correction effect, realize the correction purpose of promoting the smooth return to the objects of community correction, prevent and reduce the crime of the crime and add the community correction hearing system, so that the objects of community correction are lawful, quickly and effectively safeguard their legitimate rights and interests. The addition of community correction hearing system has not only its legal significance, but also its social significance, which is worthy of further study.

## References

- [1] Zhang Kai, Jiang Zuzhen. *An Introduction to Community Correction* [M]. The Law Press. 2022.
- [2] Wu Zongxian. *Introduction to Community Correction (2nd Edition)* [M]. China Renmin University Press. 2020.
- [3] Liu Xiaoyan. *Research on the Application of criminal procuratorial hearing system* [D]. Shandong University, 2023.
- [4] Xie Zhongfeng. *Reflection and improvement of the community correction system* [D]. Jilin University, 2014.
- [5] Guo Jian'an. *The Canadian Corrective and Conditional Release Act* [M]. China University of Political Science and Law Press, 2001.
- [6] Wang Aili. *Interpretation of the Community Correction Law of the People's Republic of China* [M]. China Democracy and Legal System Publishing House. 2020.