

On the Protection of the basic procedural rights of the parties in China's Civil Litigation

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Abstract: To make every citizen feel fairness and justice in judicial trials is the basic principle and goal of China's current judicial procedures. The parties should not only realize the protection of their substantive legitimate rights and interests in civil proceedings, but also respect their procedural basic rights. This is not only the embodiment of the litigant's status as the subject of civil litigation, but also the means and ways to seek relief after the litigant's legitimate civil rights and interests are violated. The fundamental procedural rights of the parties are of great significance to the protection of the rights and interests of the parties, the smooth proceeding of judicial activities and the sound rule of law. This paper mainly discusses through three aspects, the first one is the outline of the parties' procedural basic rights; The second is to analyze the problems in the process of protecting the fundamental rights of the parties; The third aspect is the exploration of the path to guarantee the procedural rights of the parties in China.

Keywords: Civil action; Party; Procedural rights.

1. An overview of the fundamental rights of the parties' proceedings

The main content of the litigant's procedural basic right includes the connotation of the litigant's procedural basic right and the meaning of the litigant's procedural basic right.

1.1. An overview of the fundamental rights of the parties' proceedings

The basic rights of the parties involved in the procedure include the right to participate in the procedure, the right to choose the procedure, the right to request the fair procedure and the right to obtain the judgment in time.

1). The right of the parties to participate in the proceedings

The right to participate in the proceedings of the parties includes (1) the right to hear the proceedings of the parties in the proceedings; (2) It also includes the right to receive notice of the procedure.

2). Program option

Procedural option is (1) included in civil litigation rights, the parties can choose to exercise the right of prosecution, right of reply, right of counterclaim, right of appeal and so on according to their will; (2) The parties can choose the specific procedure, and (3) it also includes the choice of hearing mode. The parties can choose whether to hear the case in public through consultation; (4) The choice of court trial form; (5) The parties choose the court of jurisdiction through consultation according to law, appeal by agreement, choose not to appeal by agreement, change the execution method, etc.;

3). Right to fair process and right to prompt judgment

(1) The party to obtain the right of timely judgment means that the party has the right to request the court to hear the case within the time limit prescribed by law and protect the rights and interests of the party; (2) The party's right to claim fair procedure is the party's right to request the court and the judge to conduct a fair trial on the party's request.

1.2. The significance of protecting the procedural basic rights of the parties

The basic procedural rights of the litigants are the basic interests that should be protected by the litigants in civil proceedings. The meaning of protecting the litigants' basic procedural rights is shown as follows:

1). Help protect the legitimate rights and interests of the parties

The basic procedural rights of the litigant are the embodiment of the litigant as the participant in the civil trial, and also the important way for the litigant to realize the right relief. The court is the main place to resolve disputes and safeguard rights and interests. In the process of judicial trial, the court should conduct relevant judicial trial in strict accordance with the procedures and categories stipulated by the law.

2). It is conducive to the fairness of judicial trials

Let the parties feel justice and fairness in the civil trial, not only reflected in the final result, but throughout the whole process of civil or trial.

3). It is conducive to the perfection of China's judicial work

China adheres to the rule of law and the construction of a socialist legal society with Chinese characteristics is a long-term goal and ideal. China starts with every little thing in judicial trials, so that the people can truly feel the sense of security, fairness and justice brought by the rule of law in judicial trials.

2. The dilemma facing the protection of procedural fundamental rights of parties in China

He above has fully explored the significance of the protection of the parties' procedural basic rights and interests. However, in the current judicial trials in China, the infringement of the parties' procedural rights and interests occurs from time to time, mainly including the following aspects:

2.1. The court is weak in protecting the procedural rights of the parties

Great pressure and heavy tasks are common problems in the judicial trial process in China at present. There are mountains of case files in grassroots courts, and judicial officials have to try a large number of files and cases every day. In addition, the uneven team of judges with different professional qualities and abilities, and the emphasis on entity rather than procedure have always been the main problems that China should face in judicial trials. The court's weak consciousness of safeguarding the procedural rights of the parties is mainly reflected in the following aspects:

1). Establish facts without debate

After accepting the case of the parties, the court determines the facts of the case according to the evidence and discussion provided by the parties, and then makes the final judicial decision according to the provisions of the law. In order to further shorten the trial practice and reduce the trial pressure, the court in the case facts are often only in the process.

2). Failure to timely disclose legal opinions and psychological evidence

In the process of hearing the judge has the right to clarify the parties, through various ways to help the parties to clarify the issues in the litigation. However, some judges in order to avoid trouble, or cannot correctly grasp the limits of litigation, resulting in the parties' right to know cannot be maintained.

3). The emphasis on neutrality over substantive equality

There is nothing wrong with judges acting as the third party of independent parties, but they overemphasize neutrality and ignore substantive equality. In some cases, judges are fully aware of the dilemma faced by the parties, but they allow the situation to go on for the sake of neutrality, handing down the death penalty to the weak party in advance. It is right to stress the neutrality of judges, but in this process must focus on substantive equality.

4). Being too passive about investigative evidence

China's Civil Procedure Law clearly stipulates that a people's court may apply to a court for investigation and collection of evidence that it deems necessary for a case to be tried or that a party is unable to collect. In judicial practice, the court is too passive to investigation and collection of evidence. The court often imposes excessive evidence collection obligations on individuals and avoids its own power investigation.

2.2. The trial level system of civil procedure needs to be perfected

At present, our civil procedure adopts the principle of two final cases and the system of trial level with the exception of the final cases of first instance. However, the system of civil procedure trial level needs to be perfected.

1). The judicial functions of courts at all levels in China are mixed and confused.

China's basic courts, intermediate people's courts, higher People's courts and even the Supreme People's Court can hear cases of first instance, and all courts except the basic people's courts can serve as the people's courts of final appeal. Such a relatively chaotic configuration does not highlight the responsibilities of different levels of courts.

2). The interests of the parties at the trial level are not guaranteed

China adopts the way of first instance and final instance for small cases, which aims to improve judicial efficiency and

reduce litigation costs, but impairs the interests of the parties at the trial level virtually

2.3. Judicial independence needs to be strengthened

The judiciary is independent, and the judicial work of the people's courts shall be made in strict accordance with the provisions of the law, on the basis of the facts of a case and the evidence submitted by both parties, without interference from other administrative organs and public organizations. However, the current judicial trial of the court is still subject to the interference of the parties, the leaders of the court and the higher court to varying degrees.

2.4. The remedy mechanism for damage to rights is not sound

1). Damage to the fundamental procedural rights of the parties is not included in the statutory causes of appeal and protest

Chinese law clearly stipulates that if a party refuses to accept an invalid award made by a court of first instance, it shall lodge an appeal with a people's court at a higher level in accordance with law. For minor procedural violations, there are no clear provisions, nor does it include in the statutory grounds for appeal and protest.

2). The channels for the parties to report the situation to the relevant agencies are too narrow

There are various types of supervision methods in China, including supervision by the People's Congress, supervision by higher courts, supervision by public opinion, procuratorial supervision, etc. However, after the parties' civil procedural rights are violated, the only way to directly and effectively solve the problem is to report the situation to the relevant authorities.

3). The remedy system of procedural rights of parties has not been established

After the procedural rights of the parties are violated, the remedy measures and the improvement mechanism are no longer suitable for the development of the current society and the maintenance of the rights of the parties.

3. Exploring ways to protect the fundamental rights of litigant's procedure in China

3.1. Further improve the court in civil litigation to the litigant's basic litigation rights protection

At present, with the deepening of judicial reform, the society has put forward higher requirements for the judicial trial work of the court. It is not only necessary to have a fair judicial result, but also to establish a sense of service, so that the civil people can feel fairness and justice in the process of judicial judgment.

1). The court protects the procedural rights of the parties

The court should protect the basic rights of the litigants in the litigation process, respect the litigants' litigation rights, give the litigants sufficient freedom and space for sufficient discussion of the case, so that both parties can negotiate and mediate within the scope of relative freedom, and fully respect the autonomy of the litigants.

2). Courts should constantly improve relevant procedures

In the identification and summary of the facts of a case, the

court should give both parties sufficient time to debate and cross-examine, and correctly summarize and conclude the focus of the case dispute. The judge should combine the case matters of the parties and the provisions of the national law, and combine the jurisprudence with common sense. In addition, the system of compulsory representation by lawyers is not implemented in civil litigation, so the court should pay more attention to the realization of litigant's litigation rights in the judicial process.

3.2. We will improve the current grading system

1). Clarify the functional scope of the courts at all levels

He scopes of judicial functions of the people's courts at all levels should be clarified. Basic courts and intermediate people's courts accept cases of first instance, while higher people's courts do not accept cases of first instance. As the highest judicial organ in the country, the Supreme People's Court is responsible for the judicial work of the courts in the whole country, supervises and guides the judicial work, and pays attention to cases of universal significance and legal value.

2). Safeguard the rights of the parties at the trial level

To safeguard the parties' rights at the trial level, the court of second instance mainly examines the facts and reasons determined by the court of first instance and legal issues, except when the facts are seriously unclear. According to the trial characteristics of the court of second instance, the parties' right to trial of second instance should be safeguarded.

3.3. Guarantee judicial independence

Judicial adjudication is independent, and reform of the judicial system should be further strengthened. First of all, we should establish the correct idea of judicial independence. Secondly, we should carry out institutional reform and discard the influence of local party and government in judicial work. The financial independence of the courts should be placed under the unified responsibility of the central government, and the selection, appointment, removal and punishment of judges should be handled by independent special committees.

3.4. We will improve the mechanism for relieving damage to rights

1). We will improve the system of appeal and protest

First of all, the system of appeal and protest should be perfected, and the procedural rights of the parties should be included in the cause of the court's second instance.

2). We will expand channels for reporting the situation of the parties concerned

At present, the parties' procedural rights are infringed by a single channel of reflection, reflection effect is often unsatisfactory. In order to broaden the channels for litigants to reflect, in addition to the hearing court itself, should also include higher courts.

3). Establish a sound system for the relief of the parties' procedural basic rights

The current protection of the litigant's litigation rights is mainly aimed at the substantive rights. The maintenance of

the procedural rights should be sound, and the substantive rights should be guaranteed through procedural rights by referring to the current attention and relief to the substantive rights.

4. Epilogue

The basic procedural rights of the parties in civil proceedings are the embodiment of the people - centered. In China's judicial work, there has long been a tradition of emphasizing entity and neglecting procedure, which leads to the lack of attention or even neglect of the procedural rights of the parties in the judicial trial. This greatly damages the interests of the parties, and even affects the substantive trial, resulting in misjudgment and law-bending judgment. To avoid the occurrence of the above phenomena and safeguard the procedural rights of the parties, the court should constantly attach importance to the procedural rights of the parties, expand the remedy ways of the procedural rights of the parties, improve its own work, change the thinking of work, and enhance the work efficiency.

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