

The Conflict and Improvement of China's Civil Litigation Mediation System under the Current Background

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Abstract: In the current social environment, there are some urgent problems and contradictions to be solved in China's civil litigation mediation system. This paper aims to analyze the causes of these contradictions, and propose corresponding measures and suggestions to solve them, so as to promote the healthy development of our civil litigation mediation system. The research finds that the current civil litigation mediation system faces major difficulties, such as unreasonable system design, lack of uniformity in operation norms. Therefore, it is necessary to improve relevant laws and regulations, standardize mediation procedures, strengthen the training of mediation personnel, and promote diversified dispute resolution mechanisms to safeguard the legitimate rights and interests of parties and improve judicial credibility.

Keywords: Civil Litigation Mediation System; Institutional Conflict; Improve Suggestions; Dispute Resolution

1. Introduction

Mediation, as an important dispute resolution method, plays an irreplaceable role in China's civil litigation. However, with the increasing complexity of social relations, the current civil litigation mediation system has also exposed some shortcomings and needs to be improved. The following will focus on this topic to deeply analyze the contradictions and problems existing in the current civil litigation mediation system and propose feasible solutions. I hope to contribute to the reform and development of our country's civil litigation mediation system.

2. Defects and Contradictions of System Design

2.1 Lack of Uniformity in Legal Basis

The legal basis of the civil litigation mediation system mainly comes from the Civil Procedure Law, the People's Mediation Law and other laws

and regulations. However, due to the different enactment times and adjustment objectives of these laws and regulations, there are certain differences in the provisions of the mediation system, and there is a lack of unified concepts and principles. For example, the Civil Procedure Law gives the court the power to mediate civil cases, but it is not clear enough about the specific mediation procedures and effectiveness recognition; while the People's Mediation Law focuses on the establishment and operation of people's mediation organizations, and lacks norms for judicial mediation. Some local regulations make relevant provisions on the mediation system, but there are certain conflicts and differences with the upper law. The disunity of the legal basis has brought many troubles to the implementation of the mediation system. On the one hand, due to the lack of clear and unified norms, different regions and different courts differ greatly in terms of mediation concepts, procedures and effectiveness recognition, resulting in the practice of mediation, such as "one word" and arbitrary procedures, which affect judicial justice. On the other hand, the dispersion and conflict of legal basis also bring difficulties to the protection of the rights of the parties and reduce the authority and credibility of mediation. Therefore, the unification of the legal basis of mediation system is a prerequisite for improving this system and enhancing its authority and credibility.[1]

2.2 Procedure Specifications Need to Be Improved

The standardization and institutionalization of civil litigation mediation procedures are crucial to guarantee the quality of mediation and safeguard the rights and interests of the parties. However, the provisions of current laws and regulations on civil litigation mediation procedures are relatively principled and simple, lacking pertinence and operability, which brings certain obstacles to the development of mediation in practice. Specifically, the existing

laws and regulations lack clear norms for many key links such as the eligibility review of mediation, the qualification conditions of mediators, the selection of mediation methods, and the validity identification of mediation agreements, which leads to the problems of randomness and uncertainty in practice. For example, whether mediation has strict eligibility review standards, whether mediation can only be conducted by professional mediators, whether multiple mediation methods can be adopted,

how to determine the effectiveness of mediation agreements, and how to hold accountable for violations of mediation agreements are all lacking clear answers in the current laws and regulations. In addition, the supervision mechanism of the mediation procedure in the current law is also relatively weak, and the lack of effective supervision may lead to violations of the law in the mediation process and infringe on the legitimate rights and interests of the parties.[2]

Table 1. Table of Conflict and Improvement Parameters of Civil Litigation Mediation System in China Under the Current Background

Parameter number	The parameter name	The current situation	recommendations for improvement
1	Unity of legal basis	disperse	Unified laws and regulations
2	Code of mediation procedures	ambiguity	Clearly stipulate the mediation procedures
3	Mediation personnel specialization	be different	Improve the training and selection criteria
4	Mediation methods are diversified	single	Introduce diversified mediation methods
5	Recognition of mediation effectiveness	Lack of clear provisions	Clarify the effectiveness standard of the mediation agreement
6	supervisory mechanism	weak	Establish an effective supervision mechanism
7	Docking of prosecution and mediation	The operation is not smooth	Standardize the docking process of litigation and mediation
8	Dispute resolution mechanisms are diversified	Limited role	We will strengthen other dispute resolution methods
9	Public mediation awareness	lack	Enhance the publicity of the mediation culture
10	Mediator team building	lag	We will strengthen the building of professional teams

3. Operational Dilemmas and Challenges

3.1 Rigid Concepts and Methods of Mediation

Although civil litigation mediation has advantages such as simplicity, efficiency and saving litigation burden, there are still some rigid problems in the concept and method of mediation in practice. On the one hand, some judges and mediators stop at the narrow understanding of "reconciliation", and equate mediation with the two parties in dispute making concessions and reaching an agreement under the auspices of the judge. It has ignored the functions of mediation in soothing emotions, resolving contradictions and repairing relations. On the other hand, the mediation methods lack diversification, and the traditional "sit-to-sit" mediation mode is dominant, lacking innovation and relevance. This single and rigid mediation

concept and method is difficult to adapt to the increasingly complex civil disputes at present, which restricts the development space of the mediation system. In order to solve this dilemma, it is necessary to change the concept and expand the connotation and extension of mediation. Mediation should not be limited to the distribution of interests between the two sides of the dispute, but should pay more attention to emotional repair and relationship reconstruction, truly give play to the function of "turning conflict into friendship", and actively absorb the theories of psychology, sociology and other disciplines to innovate mediation methods.[3] According to the nature of disputes and differences in mediation objects, various mediation methods such as professional mediation and online mediation can be flexibly used to improve the pertinence and effectiveness of mediation.

3.2 The Professional Level of Mediators Varies

The professional quality of mediation personnel directly determines the quality and effect of mediation work. At present, the professional level of civil litigation mediation personnel in China is obviously uneven, which restricts the efficient operation of the mediation system. The proportion of the existing mediation personnel with professional legal knowledge and mediation skills is low, and the legal literacy and professional ethics need to be improved. At the same time, there is also a lack of systematic and professional training mechanism for mediation personnel, and the supplement and update of mediation personnel mainly rely on temporary short-term training, which is difficult to truly improve the overall professional level. In the face of this dilemma, it is particularly urgent to strengthen the professional construction of mediators. First, it is necessary to improve the selection and appointment system of mediators, establish strict qualification criteria, ensure that mediators have solid legal foundation and professional mediation skills, and then establish a career development channel for mediators to provide vocational training and continuing education for mediators. Improve their thinking ability and communication skills, at the same time, increase incentives for mediation personnel, provide them with reasonable salary and career security, and attract more outstanding talents to join the mediation cause.[4]

4. Determination and Supervision of Mediation Effectiveness

4.1 Lack of Clear Provisions on the Validity Determination of Mediation Agreements

The rules for determining the validity of mediation agreements are directly related to the authority and enforceability of the mediation system. However, the lack of clear and unified provisions on determining the validity of mediation agreements in the current laws and regulations has brought certain troubles to the practical operation. There are grey areas in operation, and there are great differences in the standards and standards applied by courts in different regions when reviewing the validity of mediation agreements. Some of them are more strict in reviewing the content of agreements and establishing procedures, while others are

relatively lenient, resulting in inconsistent implementation standards. The lack of clear and unified rules for determining the validity of mediation agreements is likely to lead to disputes during the implementation of mediation agreements and affect the authority and credibility of mediation results. Therefore, it is necessary to make specific provisions for determining the validity of mediation agreements at the legal level to clarify the standards and procedures for reviewing the validity, such as formulating detailed rules on the formal elements, substantive content and conclusion process of agreements. At the same time, a unified mechanism for reviewing the validity of mediation agreements should be established to achieve the consistency of implementation standards, eliminate regional differences to the maximum extent, and provide a solid guarantee for the authority and enforceability of mediation results.[5]

4.2 The Mediation Process Lacks An Effective Supervision Mechanism

The mediation process of civil litigation is related to the major interests of the parties. If there is a lack of effective supervision, violations of the law are likely to occur and infringe the legitimate rights and interests of the parties. First, the current law does not make clear provisions on the subject of supervision in the mediation process, resulting in a lack of strong internal and external supervision subjects; second, the relevant provisions on supervision methods are too principled and general. Lack of practical supervision measures, difficult to detect and timely correct violations; In terms of supervision and relief, the law has not made specific provisions on the subject of relief, relief procedures, etc., and there is a lack of effective relief channels after the rights and interests of the parties are damaged. To establish a sound supervision mechanism for mediation process is crucial for maintaining procedural justice, standardizing mediation behavior and improving parties' recognition of mediation results. To this end, it is necessary to clarify supervision subjects and their responsibilities in law, such as establishing internal supervision bodies and external third-party supervision bodies. It provides clear supervision methods such as opening complaint channels, conducting on-site inspection, etc., and establishes a sound supervision and relief mechanism to provide

remedies when the rights and interests of the parties are damaged. [6] Only through a sound supervision system can the fairness and justice of the mediation process be truly guaranteed and the judicial authority be maintained.

5. Popularization and Application of Multiple Solution Mechanism

5.1 The Litigation and Mediation Docking Mechanism Does Not Work Well

The effective docking of litigation and non-litigation dispute resolution mechanism is the key to achieve diversified dispute resolution and give full play to the functions of mediation system. At present, the operation of litigation and mediation docking mechanism in China is not ideal, which restricts the role of mediation system in dispute resolution, which is specifically manifested in the lack of clear legal basis for litigation and mediation docking due to lagging legislation. As a result, there is a large space for operation and arbitrariness in practice, the specific procedures for litigation and mediation docking lack of norms, the lack of clear referral standards and procedures affect the work efficiency, the lack of effective supervision mechanism for litigation and mediation docking cannot guarantee the quality of referral, and also bring hidden risks to the protection of the rights and interests of the parties. In order to smooth the channels for litigation and mediation docking, it is necessary to clarify the basis and principles of litigation and mediation docking at the legal level. Standardize the specific procedures of litigation and mediation docking, such as formulating unified referral standards, clarifying the transition time node of litigation and mediation, etc., to improve the operability of litigation and mediation docking. At the same time, an effective supervision mechanism should be established to ensure the quality of referral, avoid procedural violations and damage to rights and interests, etc. By giving full play to the role of litigation and mediation docking mechanism, diversified dispute resolution can be achieved to the maximum extent. Fully tap the potential of the mediation system.[7]

5.2 Other Dispute Resolution Methods Play A Limited Role

In addition to litigation and mediation, China's current law also provides for arbitration, administrative adjudication and other civil

dispute resolution methods to form a certain diversified pattern, but the role of these other dispute resolution methods in practice is relatively limited, and there are certain obstacles to form effective convergence and interaction with the mediation system, which affects the synergistic effect of multiple settlement mechanisms. From the perspective of legal status, litigation and mediation systems are the main channels for dispute resolution at present, while arbitration, administrative adjudication and other methods have relatively low legal status and lack clear institutional guarantee. From the perspective of operation mechanism, other dispute resolution methods lack effective channels and procedures for docking with litigation and mediation, and there is a gap between them, making it difficult to achieve positive interaction. From the perspective of social awareness, the public's understanding and acceptance of other dispute resolution methods are relatively low, and cognitive impairment also restricts their practical application. In order to give full play to the advantages of the diversified dispute resolution mechanism, it is necessary to proceed from two aspects: legislation and practice. First, relevant laws and regulations should be improved to clarify the legal status of various dispute resolution methods and provide a solid institutional guarantee for them. Second, it is necessary to coordinate various dispute resolution methods and establish an effective cooperation mechanism to achieve positive interaction. At the same time, we should strengthen the publicity to improve the awareness of the public and lay a social foundation for the wide application of the multi-solution mechanism.[8]

6. Cultivation and Construction of Mediation Culture

6.1 The Public Lacks Awareness of Mediation

Building a good mediation culture and improving the mediation consciousness of the whole society is an important foundation to advance the reform of civil litigation mediation system in our country. However, the public cognition of mediation system in our country is still not high and lacks the awareness to proactively choose mediation to solve disputes. This has restricted the development of mediation system to a certain extent. On the other hand, due to the lagging economic and cultural

development in some areas, the public's lack of understanding of the concept of rule of law is likely to cause doubts about judicial credibility and they are reluctant to accept the results of mediation. Meanwhile, there are some misunderstandings in the public's understanding of mediation. If mediation is equated with conciliation concessions and rights cannot be fully protected, the resistance to mediation is further aggravated, and the lack of awareness of mediation is not conducive to the smooth promotion and operation of the mediation system. To solve this dilemma, it is necessary to vigorously cultivate mediation culture from the social level to enhance the public's awareness of mediation, and the government and judicial organs should increase publicity. The advantages of the mediation system should be publicized to the public in various forms, the doubts and misunderstandings of the public should be solved, and the social influence of the mediation system should be expanded. The concept of mediation should be infiltrated into the national education system, the mediation culture education should be integrated into the basic education and the publicity of the rule of law, and the public's awareness of mediation should be cultivated from the source. At the same time, the guiding role of public opinion should be given full play. Modern means of communication such as news media and network platforms are used to widely publicize the concept and typical cases of the mediation system, and form a good atmosphere for the whole society to pay attention to and support the mediation cause.

6.2 The Construction of Mediation Professional Team Lags Behind

Professional mediator team is an important force to promote the reform of mediation system. At present, the relatively backward construction of professional mediation team restricts the efficient implementation of mediation work. The specific performance is that the overall number of mediators is too small, which does not match the increasing number of civil disputes, the work pressure is relatively high, the proportion of outstanding mediation talents is not high, the knowledge structure of mediators is simple, and the work experience is insufficient. It is difficult to cope with the needs of complex disputes, and the lack of career security and development channels for mediators leads to a serious brain drain, which hinders the sustainable

development of the team. In addition, the current training channels for mediators are also inadequate, mainly relying on simple short-term training, and it is impossible to build a systematic education system. In order to improve the overall quality of the mediation professional team, it is necessary to strengthen the construction from various aspects. First, it is necessary to improve the selection and appointment system of mediators, formulate strict qualification conditions to ensure that mediators have solid legal and mediation professional knowledge, and then establish a standardized training system for mediators. A long-term training mechanism combining mediation theory and practice should be set up to provide regular vocational training and continuing education for mediators. It is also necessary to increase incentives for mediators, reasonably raise salaries and benefits and set up corresponding career development channels to create a good environment for the professional development of mediators. Meanwhile, it is also necessary to strengthen cooperation with institutions of higher learning and explore the establishment of mediation majors in universities. To train mediation talents from the source, only by building an adequate and highly qualified mediation professional team can we provide solid talents guarantees for the continued development of our country's mediation.

7. Closing Remarks

The current civil litigation mediation system in our country does have some contradictions and problems that need to be solved urgently. Improving relevant laws and regulations, standardizing mediation procedures, strengthening the construction of the mediator team, promoting diversified dispute resolution mechanism and cultivating mediation culture are the key to crack these dilemmas. China's civil litigation mediation system can really be stable and long-term, in order to resolve civil disputes and maintain social harmony to play a greater role, I believe that through continuous theoretical discussion and practical innovation, China's civil litigation mediation will usher in a brighter future.

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