

Problems and Countermeasures of Mediation System in Civil Litigation

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ABSTRACT

This study discusses the mediation system and its application in civil litigation. Firstly, it introduces the background and importance of mediation system in civil litigation. Then it expounds the purpose and significance of this study, and points out that the role and value of mediation system can not be ignored in dispute resolution. Then, from the legal point of view, this paper analyzes the main characteristics and forms of mediation system, and investigates and compares different mediation ways and methods in practice. Through the analysis of relevant cases, this paper reveals the actual effect and application value of mediation system in civil litigation. Finally, it summarizes the main conclusions and significance of this paper, and holds that mediation system has an important function of promoting and maintaining judicial justice in civil litigation, and further improving and developing this system is the current research and reform direction.

KEYWORDS

mediation system; Civil litigation; Applicable; Effect; value

1 Introduction

In recent years, the mediation system in civil litigation has become one of the hot spots in the legal field. As a non-litigation dispute resolution method,^[1]It can not only solve the contradictions and disputes between the disputing parties, but also improve judicial efficiency and reduce social costs. The purpose of this study is to explore the mediation system and its application in civil litigation, with a view to deepening the understanding and application of this system.

The mediation system in civil litigation has a long history and is an important part of China's traditional culture and legal system. With the acceleration of the process of rule of law and the deepening of international communication, the mediation system is more and more widely used in practice, and a series of new problems and challenges have emerged. Therefore, the in-depth study of mediation system in civil litigation will not only help to make up for the blank of relevant legal research, but also provide new legal ideas and solutions. The research results can fill the gaps in existing legal research, provide new research perspectives and theoretical support for academic circles, and promote the development of related disciplines. The research also has important guiding significance for legal practice, which can provide decision-making basis and operational guidance for relevant practitioners and promote the mediation system in civil litigation to better meet the needs of social development.

2 Historical review and current situation analysis of mediation system in civil litigation

2.1 Institutional origin

Civil litigation mediation is an important system in China. As a long-standing way to solve disputes in China's judicial history, civil litigation mediation has a long history in China, and its origin can be traced back to ancient society, in which tribal elders or heads of families play the role of mediators and resolve various disputes by means of consultation and mediation.^[2]As early as the Western Zhou Dynasty, there were records of mediation. Since the Qin and Han Dynasties, justice has been the principle of mediation of interest and litigation. By the Song Dynasty, there were many civil disputes, and mediation had an institutionalized development trend. In modern times, it has also played a very important role in settling disputes. With the social changes and the advancement of the legal construction process, the adjustment mechanism is gradually integrated into the mainstream judicial process. With the penetration of the advanced concept of rule of law, China's mediation mechanism continues to evolve and deepen its development and improvement. Since the founding of the People's Republic of China, China has successively promulgated a number of major laws and regulations, which have effectively consolidated the core position and important functions of mediation mechanism in civil litigation.

Nowadays, China's mediation mechanism has formed a complete system structure. Courts at all levels have special mediators to properly deal with civil disputes among all kinds of citizens. At the same time,^[3]A large number of professional mediation institutions and excellent mediation talents have sprung up like mushrooms after rain, fully meeting the diverse needs of the general public for mediation services. This long-standing, well-developed folk way, that is, the civil litigation mediation mechanism, will play an increasingly significant role in the process of the sustainable development of society and the continuous improvement of legal standards, so further improving and perfecting this

kind of mechanism has become an important research topic and reform direction.

2.2 The current situation of mediation system

From the perspective of national legal system, it is not difficult to find that mediation system has clearly established its important position as one of the civil dispute resolution mechanisms in China's legal system. For example, Article 136 of the Civil Procedure Law of People's Republic of China (PRC) clearly stipulates: "The people's court shall, in addition to accurately applying laws and regulations to resolve civil disputes, take the initiative to guide and facilitate the parties to reach a settlement consensus according to their statutory functions and powers." This regulation undoubtedly strengthens the status of mediation system in the field of civil litigation and its implementation effect, thus laying a solid legal cornerstone for the development and growth of mediation system. In addition, relevant laws and regulations as well as departmental regulations also make detailed provisions on mediation procedures, methods and related requirements, making the mediation system more feasible and effective in daily practice.

In terms of practical cases, the current mediation system has been widely adopted and recognized in China's civil litigation practice. People's courts at all levels and other relevant institutions in China vigorously promote and implement mediation, and are equipped with corresponding mediation institutions and professional mediators. According to relevant statistical data, the success rate of mediation in civil litigation cases in China has been rising in recent years, and the total number of mediation cases has also shown a gradual upward trend. All these strongly show that the effectiveness of mediation system in civil litigation practice has been widely recognized and praised by the general public.

However, the current mediation system is not impeccable, and there are still many places that need attention and improvement. For example, there are still obvious deficiencies in the setting of procedures in the mediation process, which may be potentially dangerous to the fairness and enforceability of mediation results. In addition, the construction and training of mediators need to be promoted more comprehensively and deeply, so as to improve the professional quality and mediation business ability of mediators. Finally, the general public's awareness and enthusiasm for mediation system need to be further improved, so that mediation has a stronger social effect and influence.

Although the existing mediation system has played an important role in civil litigation, the problems and challenges it faces cannot be ignored. Therefore, in order to further improve the effect and quality of mediation, and then promote the continuous development of judicial justice, we think it is particularly urgent and crucial to study and inspect the current situation of mediation system and its reform direction.

2.3 Existing problems

Disputes related to mediation system are widely reflected in its scope of application. Some mainstream views in academic circles hold that mediation system should be applied to all kinds of civil disputes, including contract disputes and tort disputes, which have always been concerned by people.^[4] They firmly believe that the mediation system can better meet the diverse needs of the parties and provide a more flexible and efficient way to resolve disputes. However, there are also some scholars who hold different views. They think that the mediation system is not completely applicable to all types of cases, especially those involving important elements such as safeguarding public interests and stabilizing social stability. The judicial judgment of the court may be more favorable, and the application value of the mediation system should not be overstated.

As far as the dispute over the implementation mode of mediation system is concerned, it should be noted that the implementation of mediation system in China at present mainly depends on the establishment of specialized mediation organizations and the allocation of mediators with corresponding qualifications. However, due to the uneven overall quality of mediators, the fairness and rationality of mediation results are obviously facing certain challenges. At the same time, the establishment and operation of existing mediation institutions need to be further improved and standardized. In some areas, the resources of mediation institutions are in short supply, which makes it difficult to meet the growing needs of the parties, which greatly reduces the actual effect of mediation work. Therefore, how to improve the professional quality of mediators and strengthen the configuration and management of mediation institutions will become the primary issue to be solved urgently at this stage.

In the process of actual mediation,^[5] There are always cases where the subjective will of the parties is ignored, or the mediation procedure is forcibly started, which seriously infringes the rights of the parties and even deprives them of the right to find other ways. Even if the mediation procedure is simpler than litigation, it can't be controlled at will. As far as the system is concerned, the procedure always occupies the core position, which provides the necessary guarantee for the realization of the system goal.

The differences on the effectiveness evaluation of mediation system are quite controversial. On the one hand,^[6] Studies have confirmed that the mediation system has shown remarkable effects in handling civil disputes, which is helpful to reduce the court trial pressure and improve the efficiency and quality of conflict resolution. This view has received many

support voices. On the other hand, some studies have revealed that the mediation system has some limitations and dilemmas. For example, some parties may use the mediation mechanism to seek personal gain, which leads to the deviation of the mediation result from fairness; Or, the parties who fail to reach the will may choose to continue to start complicated judicial procedures, resulting in unnecessary consumption of judicial resources.

3 Suggestions on Perfecting Mediation System in Civil Litigation

3.1 Strengthen legal protection

Building and strengthening the foundation of a country ruled by law. Nowadays, although China has clearly established the mediation system at the legislative level, there are still many legal gaps and inadequacies that need to be filled and improved. In view of this, we should strengthen the legal protection of mediation system, carefully formulate and improve relevant laws and regulations, and clarify mediation procedures and responsibilities and obligations of all parties, so as to provide a solid legal basis for mediation practice.

Attach importance to and enhance the professional training and collaborative management of mediators.^[7] Mediators play an important role in the mediation system, and their professional quality and professional ability have a decisive influence on the effectiveness and quality of mediation. To this end, we need to pay more attention to the selection, training and collaborative management of mediators, and strive to improve their professional skills and moral cultivation, so as to make sure that they can undertake the heavy responsibility of mediation.

Construct a complete mediation institution and its organizational structure system. Mediation institution is the core of promoting and implementing mediation work, and its organizational structure and operating mechanism are directly related to the effectiveness and quality of mediation. Therefore, we must make every effort to build a complete mediation institution and its organizational structure system, clarify the functions and authorities of mediation institutions, strengthen the standardized management and supervision of mediation institutions, and ensure that mediation institutions can efficiently complete mediation tasks.

Resolutely implement the mediation decision and strengthen supervision. The ultimate goal of mediation is to properly resolve disputes and reach a settlement agreement recognized by both parties. However, in practice, the implementation of mediation decisions is often hindered by many factors. Therefore, we must resolutely implement the mediation decision, strengthen supervision, ensure that the mediation results can be effectively fulfilled, and effectively protect the legitimate rights and interests of the parties.

3.2 Improve regulation efficiency

The first thing to do is to strengthen the training and selection of mediators, and ensure that they have professional theoretical knowledge and practical operation skills. Mediators should have a solid legal knowledge base and accumulated rich practical experience, and be able to master many mediation techniques and strategies flexibly, so as to lay a good foundation for further guiding the parties to conclude an agreement. Among them,^[8] The court also needs to set up a professional mediation department, and the mediation staff are hired in the society to organize them to participate in relevant training, explain professional ethics, and further optimize the quality level of the team. Moreover, it is necessary to group the mediation teams, effectively classify mediation cases and solve them, so as to improve the efficiency and success rate of mediation. Moreover, in the process of actual mediation, witnesses from both sides are needed to ensure the fairness and impartiality of mediation. On this basis, we should build a court mediation and supervision system, set up a professional supervision mechanism, and the court should assume the responsibility of judicial supervision, and set up a citizen supervision platform to prevent mediation staff from engaging in malpractices for personal gain. Secondly,^[9] It is necessary to build and improve a comprehensive mediation process and system, and strive to provide high-quality and efficient mediation services for the parties. The court should set up a special mediation office with sufficient staff and related resources to ensure the smooth operation of mediation. At the same time, the use of modern information technology means to build an electronic mediation platform, the mediation process will be handled online, and the work efficiency and service level will be comprehensively improved.

Finally, the legal protection and system improvement of the mediation system must be strongly supported. At the level of laws and regulations, we should strengthen the specific norms and innovation of mediation system, clarify the legal status and legal effect of mediation, and ensure the legitimacy and influence of mediation in judicial procedures. At the same time, establish a strict mediation evaluation mechanism, rigorously evaluate the mediation effect and monitor the whole process, find and correct the problems and deficiencies in the mediation process in time, and strive to promote the continuous improvement and innovation of the mediation system.^[10] In recent years, the relevant systems of the court generally regard the settlement rate as the standard of court assessment, which leads to the disadvantages. Therefore, the evaluation system of judges should be reformed and improved.^[11] Taking multiple measures to substantially improve the

efficiency of mediation is helpful to give full play to the unique role and great value of mediation system in civil dispute resolution.

4 Tag

The application of mediation system in civil litigation is of great significance and value. Through in-depth research and analysis of the mediation system in civil litigation, this paper reveals the main characteristics and forms of the mediation system from a legal perspective, and discusses different mediation ways and methods through investigation and comparison in practice. Through the analysis of relevant cases, this paper reveals the actual effect and application value of mediation system in civil litigation.

In the part of historical review and current situation research of mediation system, this paper combs the origin and historical evolution of mediation system, which lays the foundation for further discussion on the current situation of mediation system. In the case analysis part, the representative cases are selected for detailed analysis, so as to have a more comprehensive understanding of the practical application and effect of mediation system in civil litigation.

In the process of studying the mediation system, we also found some problems and disputes. For example, some scholars have differences on the effectiveness and operability of the mediation system, which need to be further discussed and resolved. In view of these problems, this paper puts forward some suggestions, including strengthening the legal guarantee of mediation system and measures to improve mediation efficiency from a substantive point of view. These suggestions are helpful to further improve and develop the mediation system in civil litigation.

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