

On the Regional Collaborative Online Civil Litigation Mechanism Towards River Basin Integration-Take the Yangtze River Basin as an example

Xinpin Li

Southwest Petroleum University Law School, Chengdu Sichuan, 610000, China

ABSTRACT

Under the background of carbon neutrality, the protection of environmental resources is becoming more and more important. As a new litigation mode, online civil litigation plays a great role in improving the quality and efficiency of judicial services and judicial innovation, but it faces many problems. This paper holds that the consent of the parties, as the applicable condition and legal basis of online litigation, should be defined as the procedural choice of the parties, rather than a litigation contract or an authorization. The Special Procedure Law of Online Civil Procedure should be formulated in time, and the corresponding conflict principles should be explained, and the corresponding procedures should be improved and innovated, and the online litigation platform in the Yangtze River Basin should be built together.

KEYWORDS

Regional collaborative; Online civil litigation; Consent of parties; Application of evidence

1 The necessity of the development of online litigation

The practice of regional collaborative online civil litigation in the Yangtze River basin is helpful to promote the theoretical research of regional judicial cooperation. By studying the cooperation mechanism and rules between courts and between courts and other judicial organs in the online civil litigation of regional cooperation in the Yangtze River basin, we can provide new perspectives and ideas for the theoretical research of regional judicial cooperation in China.

The practice of regional collaborative online civil litigation in the Yangtze River basin can effectively improve the quality and efficiency of judicial services. Through the online litigation platform, parties can conveniently submit litigation materials, conduct online trial and apply for execution, which improves the convenience and efficiency of litigation. At the same time, the court can shorten the trial period and improve the trial efficiency through online trial and electronic delivery. At the same time, the coordination between the court and environmental justice and administrative law enforcement will provide a strong judicial guarantee for environmental protection.

2 Principles to be followed in online civil litigation

Article 2 of the Rules of Online Litigation of People's Courts puts forward five principles of online litigation, namely, the principle of fairness and efficiency, the principle of legality and voluntariness, the principle of rights protection, the principle of facilitating the people and benefiting the people, and the principle of safety and reliability.^[1] This paper mainly studies the construction of regional collaborative online litigation mechanism from the principles of fairness and efficiency, convenience and benefit, and collaboration.

2.1 Pursuing the principle of fairness and efficiency as the goal

Principle of fairness and efficiency. Carry out online litigation activities in strict accordance with the law, improve the trial process, improve the working mechanism, strengthen technical support, improve judicial efficiency and ensure judicial justice. Then, for the emergence of online litigation mode, whether it is the legal basis discussed by academic circles, the legal norms of the effectiveness of online civil litigation, the application of evidence, and the construction of regional collaborative online litigation platform should take the principle of fair universities as the goal value pursuit.

2.2 By means of the principle of facilitating the people and benefiting the people

Principle of facilitating the people and benefiting the people. Optimize online litigation service, improve the function of litigation platform, strengthen the application of information technology, reduce the litigation cost of the parties and improve the efficiency of dispute resolution. Take into account the judicial needs of different groups, strengthen litigation guidance for special groups such as minors, the elderly and the disabled, and provide corresponding judicial convenience.

^[2]After analyzing the problems of online civil litigation evidence application and the lack of efficient and convenient litigation platform, the improvement of the two aspects is mainly reflected in perfecting the evidence application

procedures in the Yangtze River basin, creating a unified and safe evidence platform for evidence collection, transmission and cross-examination, and cooperating to build an online litigation platform in the Yangtze River basin.

2.3 Guided by the principle of synergy

Regional collaborative online civil litigation should be guided by the principle of collaboration. The principle of coordination is embodied in, for example, collaborative handling of case data and evidence. In regional collaborative online civil litigation, different courts can share judicial resources, such as judges and lawyers, so as to realize the rational allocation of judicial resources and avoid the waste of judicial resources. In addition, in the collaborative handling of court affairs, we can realize the collaborative work between different courts through online meetings, online discussions, etc., and improve the efficiency of court work. Cooperate in handling litigation procedures. In the regional collaborative online civil litigation, the collaborative handling of litigation procedures between different courts can be realized, such as filing, serving and hearing, so as to reduce the litigation cycle and improve the efficiency of case trial.

3 Analysis of the problems in online civil litigation

3.1 The legality of online litigation is not clear

According to Article 4 of the Rules of Online Litigation of People's Courts, "People's courts should obtain the consent of the parties when conducting online litigation", and online litigation is based on the consent of the parties.^[3]The theoretical analysis of the legal basis is helpful to understand the principle of online litigation equivalence, that is, online litigation and offline litigation have the same effect, but the legal basis of online litigation is still controversial, especially on how to interpret the core element of "consent" of the parties, there are three different perspectives in academic circles:

"Litigation contract theory" attempts to incorporate "consent of the parties" into the civil litigation contract system of our country, which is regarded as the consensus reached by the court and the parties on the new online litigation mode, thus affecting the litigation process, and the court determines the facts and applies the law according to the established online litigation rules. According to the legal nature of "the consent of the parties", Professor Zhang Weiping thinks that it is essentially the authorized behavior of the parties, and puts forward the "authorized consent theory".^[4]This theory is based on the premise that online litigation procedure has not been stipulated by law. Most scholars, such as Wang Fuhua, Zhang Xingmei and Xie Dengke, hold the theory of "procedural option", and believe that online litigation is the procedural option of the parties, the essence of which is litigation empowerment and the basic procedural rights of the parties.^[5]The parties can choose civil dispute settlement ways and litigation processes within the framework of laws and regulations as they wish, such as ordinary procedures and summary procedures. At present, with the development of network technology, it is necessary to expand the cognition of "procedural option" and improve the system.

This paper advocates the adoption of this theory for two reasons: first, it conforms to the current mode and future trend of online litigation; The second is to integrate into the online litigation rules system, which not only meets the practical needs, but also highlights the core position of the parties' litigation.

3.2 Lack of corresponding legal norms

Driven by the national judicial policy, the society is quite tolerant of the implementation of judicial reform. China leads the world in the practice of digital litigation and online litigation. Our country once formulated the Rules of Internet Court Trial to guide online litigation, and now the Rules of Online Litigation are generally applied, but they are explanatory provisions and cannot replace formal legal procedures. Although Article 16 of the Civil Procedure Law revised in 2021 makes general provisions on online litigation and confirms that online and offline litigation are equally effective, it is still difficult to fully meet the requirements of online litigation standardization.^[6]

3.3 The lack of evidence in online civil litigation

There is a problem of standardized fragmentation in the application of civil evidence in online litigation, which is rooted in the lack of a complete system design and outstanding performance in the construction of special types of evidence application system on the Internet, resulting in an imbalance between common and proprietary evidence applications at the normative level. There are two specific reasons: first, the supply of norms is insufficient and unbalanced, which leads to confusion in the rules of using civil evidence in online litigation; Second, the rapid development of Internet justice has aggravated the problem of standardized supply.

In practice, there are two major problems in online litigation. First, the preparatory stage is not well connected, and there is a "time lag" in the submission of the original evidence. Because the online litigation separates the submission of

the original evidence from the online trial, in fact, some judges will ask the parties to submit the original evidence that needs to be reviewed or supplemented after the court. Second, the protective measures have not fully played their role, and the risk of evidence information security is high. Online litigation transmits litigation materials through the Internet, breaking the time and space restrictions. However, the decentralized Internet makes network defense easy and attack difficult. The parties provide a large amount of personal information and litigation data, and the evidence information is at high risk of disclosure.

4 Perfect path of online civil litigation

4.1 Standardize national and local online litigation procedure legislation

At present, considering the insufficient accumulation of experience and knowledge in online litigation, the Civil Procedure Law should at least consider making clear provisions in some important links of online litigation. After the pilot legislation in various regions, we should investigate the actual effect of law implementation and evaluate the cost and benefit, and when the time is ripe, we should introduce the Special Procedure Law of Online Civil Procedure in due course. The following aspects must be considered in the formulation of the Special Procedure Law of Online Civil Procedure.

We must adhere to the basic principles and systems of the Civil Procedure Law. Judging from the practice of online litigation, online litigation has not challenged the basic principles and systems of the Civil Procedure Law, which is still the minimum standard that must be observed in civil litigation. Attention should be paid to technological development. The remarkable feature of online litigation is that technology plays a decisive role in it, and it relies more on network technology and mobile devices than traditional offline litigation. We should fully consider the premise relationship between technical support and the effectiveness of litigation implementation. Only when the technical support is perfect enough can the litigation act be given real effect.

4.2 The expansion and interpretation of the principle of direct speech

There are many disputes about the legality of online litigation, because it breaks through the traditional principle of civil litigation, especially under the network media, breaking the time and space restrictions of traditional trial and challenging the principle of direct speech. However, in online litigation, all parties can still fully participate in key links such as proof, cross-examination and debate, and participate in the whole process. It can be seen that no matter how online litigation innovates the traditional trial method, the plaintiff's litigation behavior and the judge's judgment are based on direct participation. Therefore, online litigation does not deviate from the core essence of the principle of direct speech and the principle of judicial experience. In view of the increasing popularity of online litigation, it is necessary to broaden the understanding of the principle of direct speech.

4.3 Improve the application of corresponding procedures.

Create a unified and safe evidence platform for evidence collection, transmission and cross-examination in the Yangtze River area. The key to solving the problem of civil evidence application in online litigation is to make all civil evidence application activities be completed directly on the online litigation platform and achieve unified legal effect. Driven by the Opinions on Accelerating the Construction of a Unified National Market issued in 2022, it is inevitable for the court to build a unified and efficient evidence platform with the help of government-led infrastructure. The specific measures are as follows: Create an evidence platform for collaborative evidence collection on the whole network data platform: build an "application-filing" channel between the evidence platform and other databases for the evidence that the parties can electronically; For other electronic data, build an "application-review" channel. On the premise of ensuring information security, we will build a "data center" and a "business center" connecting the courts, public security and other organs to realize data sharing and business collaboration.^[7] Establish an efficient and transparent cross-examination network platform: the order of online litigation value is procedural benefit value > procedural justice value > procedural freedom value.^[8] In the stage of cross-examination, it is necessary to build a network system platform for cross-examination of essential facts based on the principle of "fill in the blanks", so as to guide all parties in litigation to display evidence in time around legal elements and essential facts, explain cross-examination views, verify the claims of the parties, and improve the quality and effect of court debate.

4.4 Collaborative Construction of Online Litigation Platform in Yangtze River Basin

At present, there are few technical obstacles to building an online dispute resolution platform shared by regions and even the whole country. The key point is to solve the problem of sharing the platform and expand the benefit scope of

high-quality and efficient online dispute resolution mechanism.^[9]and local courts should be encouraged to strengthen the co-construction of online dispute resolution platforms, share costs and learn from each other through agreements; On the other hand, when the time is ripe, a general online dispute resolution platform will be developed under the guidance of the Supreme Court to realize the unified platform and technology sharing. There are many cases of environmental resources and economic disputes in the Yangtze River basin, which have geographical and economic particularity. With the support of corresponding conditions and documents, it is suitable to build an online litigation platform in the Yangtze River basin. To build this platform, we should focus on the following factors:

Technology selection: J2EE platform, Spring, Hibernate and other mature technical frameworks are selected to create a highly available, extensible, safe and easy-to-maintain application system, and the new model of "artificial intelligence+procuratorial service" is integrated to improve the efficiency of case handling.

Data storage: In view of the vast area of the Yangtze River basin and the need to share a large amount of information between judicial institutions, a unified data center should be established, distributed storage technology should be adopted, and data security should be ensured by encryption.

Security protection: build a multi-level security protection system, and strictly manage data transmission, application access, user authentication and other aspects to ensure the safety and stability of online litigation.

5 Conclusion

The Yangtze River basin has spawned many cities with its superior geographical conditions, but environmental protection has not been paid enough attention in the process of economic development. Under the concept of green development, environmental protection has been promoted to a new height, which accords with the concept of intergenerational justice. At present, the simultaneous trial of cross-basin disputes is inefficient and costly, so it is of great significance to improve and develop cross-regional online litigation in theory and practice. This paper analyzes the legal basis, legal norms, evidence and the connection of litigation platforms in online civil litigation, takes the principle of coordination as the guide, facilitates the people and benefits the people as the means, and aims at efficiency and justice, and puts forward to appropriately expand and explain the connotation of the principle of direct speech to resolve the conflict between online litigation and traditional civil litigation. It is expected that the Special Procedure Law of Online Litigation will be formulated in time, and innovative evidence application measures will be introduced to build an online civil litigation platform in the Yangtze River Basin.

About the Author

Xinpin Li, Graduate student of law (non-legal studies) at the Law school of Southwest Petroleum University, research interests: financial law.

References

- [1] Cao Z. X. (2023). On the principles of civil judicial procedure in the context of online litigation. *Trade and Economic Law Review*, (3), 1-20.
- [2] Zhang H. X. (2021) . On the Procedural Safeguards of Modal Evidence in Remote Testimony in China: A Concurrent Review of the Rules on Online Litigation of the People's Courts. *Journal of Political Science and Law*, (4), 151-160.
- [3] Xie D. K. (2022). On the Party's Procedural Option Right in Online Litigation. *Nankai Journal (Philosophy, Politics and Social Sciences Edition)*, (1), 17-24.
- [4] Xie D. K. (2022). The Chinese Model and Future Development of Online Litigation. *China Review of Administrative Law*, (4), 151-166.
- [5] Hu T. H. (2023) . Research on the Procedural Option Right of Online Litigation in the Context of the Intelligence of Civil Litigation. In *Collected Works of Emerging Rights (Volume 1, 2023 - Collected Works of Emerging Rights Research)* (pp. 10). East China University of Political Science and Law. DOI:10.26914/c.cnkihy.2023.050831
- [6] Zhang W. P. (2022). Online Litigation: System Construction and Legal Principles - Reflections Centered on the Civil Litigation Procedure. *Contemporary Law Review*, 36(3), 17-35.
- [7] Gu J. J. (2023) . The Fragmentation Problem of the Application of Civil Evidence in Online Litigation and Its Solution. *Journal of Shandong University (Philosophy and Social Sciences Edition)*, (6), 56-70. DOI:10.19836/j.cnki.37-1100/c.2023.06.006
- [8] Gao T. (2022) . The Impact of and Coordination in Online Litigation on Criminal Litigation: Taking the Criminal Trial Procedure as the Entry Point. *Nankai Journal (Philosophy, Politics and Social Sciences Edition)*, (1), 25-32.
- [9] Liang P., & Chen T. (2017). Online Dispute Resolution across Time and Space: A Case Study of Beijing-Tianjin-Hebei Region. *Journal of Hebei University (Philosophy and Social Sciences Edition)*, 42(2), 80-87