

## The Reason Evaluation of Judgment Problems in Civil Procedure

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**Abstract.** This article deeply analyzes the civil procedure of sentences in court. The present civil procedure exist inattentive institution, principle of direct language become apparent, debate principle without content, and judges are lack of independence. Hope relative department introspect all these problems.

**Keywords:** civil procedure, legislation, pronounce judgment

### 1. Introduction

With the rapid development of our economic and social transformation improvement, there increases the various civil procedure. The civil procedure has been the most cases that accepted in court. For the civil procedure with simply process, we should use pronouncement of judgment. Except some not essential public cases, the Supreme People's Court approves this point. The further research of this problem will help us to perfect this system, improve the judicial credibility, and protect the social harmonious.

However, there exist many questions in our pronounce judgment of civil procedure. For example, the legislation deficiency, the low effectiveness or the imperfect condition is seriously limit the institutional application of pronounce judgment system and damage the judicial system authority. Therefore, we need to deeply research these problems and find the perfect method. Through the demonstration, this article finds some elements existing leaks that should be improved.

### 2. Inattentive institution

Pronouncement of civil procedure is usually considered as basing on the Law of Civil Procedure. Some scholars believe that it is the imperfect regulations caused a range of problems in the pronouncement of civil procedure. We can look for answers from the Law of Civil Procedure to research whether this view is correct.

Judgment pronouncement appears in the Law of Civil Procedure, section 134th. From the content perspective, there has one rule in the 134th section of Civil Procedure Law of the People's Republic Of China. "People's courts will pronounce the judgment no matter the cases of public trial or non-public trial. The cases pronounced in courts will be sent judgment within 10 days. The pronouncement on a fixed date must send the judgment immediately. In other words, whether the civil proceeding is public trial or not, judgment must be open to implement. However, the pronouncement in court is not clearly explained. There only simply declared, if in this manner, there shall send the decision within 10 days. Nevertheless, based on the pronouncement and fixed-term sentence, pronouncement is in the former. That means at the beginning of the law-making, pronouncement is the preferred system in the consideration. For some cases of simple procedures, implementation of the system is preferable. However, there has no such condition in the reality. That is not for the rule, the most considered is personal factor.

Due to the system and personnel factors, many problems are not suitable for giving sentencing in China. Many areas backlog cases so long, there has no enough human material to do the investigation. Moreover,

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there appear many problems during the sentences in court. Therefore, from court point of view, it is more willing to select regularly sentencing method. This will has ample comparison of case research and improve judgment of correctly rate as far as possible. In this case, a lot of people think is existing loopholes in law. In fact, China has completed the revision and improvement of legal system that reference to the legal systems in Europe in recent years. So is the civil law. Even if made imposition to the system of pronouncement, the current situation may not meet expectations. We must recognize the actual problem and look for the cause from multiple angles. From a legislative standpoint, of course, too careless is the consideration and that is the root of the problems.

### **3. Principle of direct language become apparent**

Principle of direct language is also called orality. It is applying in the judicial systems around the world and dividing into principle of direct trial and principle of verbal trial. Principle of direct trial refers to judges and jurors can only handle cases personally and direct access the evidence in a court. These materials are the judgment basement. Principle of verbal trial requires the parties in court must use cross-examination debate on court. The principle is the necessary conditions for implementation of openness principle, debate principle and principle of direct trial. From the current conditions, the courts are not very good in the implementation of that principle. Both cases approval and instructions are resting more on the superficial problems. The Judicial committee discuss the submitted case and get the final judgment, the collegial panel report views for the leadership approval, or lower courts report to higher courts and submitting, all these practices are seriously contrary to the principle of direct verbal trial. In addition, the appearance rate of witnesses is very low in the civil procedure. The judicial practices existed mostly the replacing of written testimony and testimony apathetic. This condition reflects awkward condition of the principle of direct trial.

### **4. Debate principle without content**

As a fundamental principle of the Chinese civil procedure law, principles of debate inherited from the Europe legal system and become an integral part of the principles and procedures of civil procedure. With the integration and synchronization with the international community, as well as massive change by opening up, people have a great deal of cognitive change about the old legal system and legal consciousness. More and more people start to emphasize implementation of the new legal system. Similarly, the civil procedure also reflects this change. Ideological awareness has penetrated to the concept of fairness and equality. People debate on the cases greatly based on Western justice system. They expressed their views fully under the auspices of the plural in the court in order to ascertain the facts of the case. Therefore, the debate principle will get more and more application. Debate principle embodies in the whole aspect of the procedure, protects the fundamental rights of the parties, and strengthens the dominance of the parties during the proceedings.

Certainly, in China, our current legislation affirms the debate principle. We can find it in the 12th item of the Law of Civil Procedure. Nevertheless, different from that, the current debate has serious disadvantages of contents and it is far away from the Europe debate principles. The more regrettable is the debate between both parties has no constraint force for legal. It means the dialectical results cannot influence the success or failure for the court decision. It is more helpless that the both sides on the debate have no consequences of legal responsibility. This leads some parties will run off at the mouth or even creating something out of nothing. Moreover, the slander things have also occurred frequently. Because of this, most trial judges do not concern the party debate but more believe in the written material. They are relying on the doubtful points of materials to decide trial results. Therefore, the frothy debate without legal restrain on the principles is difficult to influence the judgment.

### **5. Judges are lack of independence**

Since the state founding, in order to determine the judicial checks and balances, our court structure also references the administrative organ setting, and includes the same mode of operation. The judge in the case of sentencing is difficult to achieve independence. This no independence system of severely affected the pronouncement. For the judge, each case might hide many unknown factors. This is forcing it can only

reach a conclusion only after repeated investigations. For the parties, there is lack of transparency and fairness. On the specific manifestations, the thinking points can be seen in the following:

Firstly, the administrative court system has problem in the personnel management. The national authorities enact the personnel system of court system. Whether the employment or promotion of staff must be performed after sibling-related personnel departments. The Local people's government institutions and the preparation of regulations is established in 2007 provide the management requirements. Therefore, the people's courts are difficult to have independent rights of personnel management, and ultimately derived for the serious situation. In addition, the judges on the management implement the hierarchical system. Although there have different level with grand justice, senior judges, and judges respectively, the judges have a lot of difference in the same level. The most used is continues the institution's administrative hierarchy. The result is killed some officials voice, the so-called subordinates must be subject to the potential rating rules and this is seriously affect the superior judges of independent judicial authority.

Secondly, reporting system between the upper and lower courts. This is common for everybody in the court system. For the ordinary people, this is strange, especially in civil proceedings. The submitting reports is lower court accepted the case must ask for instructions to the superior court with orally or writing. Then the case processing program and the results will conduct by the higher court instructions. This should not exist from the regulation. Because we only require the higher court has the right of monitoring the lower courts and do not interfere in the lower court's work. Nevertheless, in the long period of time and under the supervision, the conductor from lower courts to the higher courts has been formed. This is directly result the lower court's rights have been elevated and the pronouncement has insufficient sustaining power. After the long-term so down, higher court has been used to the habit. Moreover, this popularity result the low pronouncement of civil procedure in court.

## **6. The tanglement of intercession and judgment**

In the long period, our country has been living in the entrenchment of the feudal autocratic system. The Chinese culture changes from a hundred schools of thought strive into dominance of Confucianism. We have grown accustomed to the Confucian doctrine, interpersonal stress and word must give room for everything. Therefore, this idea goes on to the legal system and mediation of court is the preferred approach to manage the case for judgment. Most civil procedure is not serious and the court is likely to be the peacemaker. This leads after the founding our country, we even resolve civil disputes from the written form of mediation as the preferred way rather than the system that we expect of. From the history view, since 1982 the trial implementation of Law of Civil Procedure to the Law of Civil Procedure in 1991, the priority principle of mediation being gradually established. However, there are a lot of experts and scholars concern on this issue, running and cries on the pronouncement implementation. This leads to the relative department attention. For example, the Supreme People' Court once develop the judicial revolution of "one step to the court, pronouncement of judgment", emphasize to increase the pronouncement rate in court.

After entering the 21st century, our guidelines in the civil trial attempted to reform, but does not smooth. There has repetition and justice policy tilt to mediation many times. Under the goal of building a harmonious socialist society, in 2006, the Supreme People's court handling provisions for civil cases. The conciliation cases that suitable for mediation will give priority to the mediation, and the cases that suitable for trial will give priority to trial. In appropriate cases, combine mediation and trial to strive for the timely process of cases. Then in 2008, make simple modification to that principle, implement the principle of mediation first. Through the data summary in recent years, the result in basic maintains consistency with the principles. The administrative guidelines have a huge impact on the justice system. Both mediation and trial guidelines are directly conditioned by the results of the civil procedure. The court implementation of judicial system is particularly hard. There is no doubt that long-term negative result cannot bear by the society. If the original method should be sentences in court, but change into mediation, the damaging right is the person that provides civil procedure.

## **7. Summary**

China's feudal system lasted thousands of years, the impact on Chinese society and culture is immeasurable. Although we have already entered the 21st century, many remnants of the bad habits still affecting people's lives, and restricting the construction of China's legal system. So we should actively seek to change and improve the rule of law. Moreover, for the civil procedure, we should strive for high performance, principles of fair, open, strong, and direct principles. Improve the style of past procrastination to avoid black-box operation. Pronouncement in court as far as possible, thereby raising the legal recognition awareness from people and try to be really try hard to entered the legal state.

## 8. References

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