

The Influence of the Reform of the Trial-centered Litigation System on the Criminal Procedure at the First Instance

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Abstract: The Forth Plenary Session of the Eighteenth CPC Central Committee proposed the “promotion of the reform of the trial-centered litigation system” and pointed out the direction for further advancing the criminal judicial impartiality. For the criminal procedure at the first instance, there are two requirements in the reform of the trial-centered litigation system; in the horizontal direction, the trial-based approach should be realized firstly in the relation of investigation, prosecution and trial; in addition, it should focus on court trial at the trial stage. In the longitudinal trial structure, a solid first instance should be built, and the authority position of the first instance in the recognition of facts should be established; at the same time, the function of each level of trial should reasonably be defined and adjusted; it can be ensured that the first instance resides in the position of “center of gravity” in the whole criminal procedure system.

Key words: A trial centre; criminal procedure at first instance; trial substantiation

Introduction

The Decision of the Central Committee of the CPC on the Comprehensive Promotion of Certain Important Problems in the Rule of Law, approved by The Forth Plenary Session of the Eighteenth CPC Central Committee, clearly puts forward “promotion of the reform of the trial-centered litigation system”, which points out the direction for further improving litigation system, ensuring the judicial impartiality and improving the credibility of the judiciary. This paper aims at exploring the influence of the reform of the trial-centered litigation system on the criminal procedure at first instance. On the one hand, we must correctly understand the essence of the trial-centered litigation system; on the other hand, we should explore the effective ways to reform the trial-centered litigation system in the existing criminal justice system and environment, with the criminal procedure at first instance as the dimension.

1. On the Essence of the Reform of the trial-centered litigation system

1.1 Background and Objectives of the Reform

In recent years, the personnel handling a case have not paid enough attention to the court trial in judicial practice of our country; some key evidence has not been collected or collected in accordance with the law; the cases of entering the court have not reached the requirements with clear case facts as well as accurate and sufficient evidence, so that the trial cannot proceed. The

deviation of the evidence rule and the code of conduct resulted in the poor quality of the criminal justice. In the judicial practice, there is deviation for the understanding and implementation of the basic principles in the division of responsibility, mutual cooperation and restriction stipulated by the constitution of our country. In a period of time, the investigation is emphasized while the trial is ignored; the words like “mighty police, the dominant law officers and the disadvantaged court” are popular. In this case, the authority of the judicial trial is lost and the judicial justice is damaged. The masses and the parties litigants ignore and have poor concept in the res judicata of the effective judgment and judicial power of the people’s court; the judgment or ruling of the people’s court shall be difficult, the execution of the judgment or the determination of the people’s court shall be difficult to implement and execute; even some parties resist the execution; they hand in the petition letter but don’t believe in law; the case shall not be dealt with; in some places, people use money to solve lawsuits and petition letters, which makes the judicial justice lost and brings serious injury to the social justice.

The aim of promoting the reform of the trial-centered litigation system is to play the final judgement function of the trial procedure and play the restriction and guidance function on the pretrial procedure, ensuring the decisive effect of court trial on fact-finding, the identification of evidence, the protection of the right to appeal and the impartiality of the judge so as to clear the chaos in the judicial practice of the criminal procedure mentioned above; the entity justice of the case can be realized through the procedural justice of the court trial; the outstanding problems that

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restrict the criminal judicial impartiality can be solved and it can be ensured that the facts and evidence of the investigation and prosecution of cases can be examined by the law. The function and effect of criminal judgment must be understood by modern judicial concept, which is the last checkpoint of social fairness and justice, plays a leading role in the whole society and must have the value of fairness and justice. The nature, neutrality of trial and finality of procedure determine that we must insist on focusing on trial; the procedural law, judicial law and rule of law rule require that we should insist on trial-centered doctrine in order to realize the real trial independence.^[1] Only in this way can the trial be positioned as the last line of defense, and the referee is authoritative.

1.2 Understanding of "Taking the Trial as the Center"

"Taking the Trial as the Center" has three different meanings:

Firstly, the trial is the centre of the whole criminal litigation procedure. For the proceedings like the case registration, investigation, prosecution and enforcement, the criminal liability of defendants can be determined only at the stage of the trial. In the whole criminal procedure consisting of investigation, prosecution, trial and so on, although the litigious activities are carried out around the criminal responsibility of the accused person, the investigation and prosecution procedure belongs to the preparatory procedure; the determination of the criminal suspects' criminal liability has only procedural meaning in the investigation stage as well as the stage of investigation and prosecution, and has no guilt legal effect; it has no decisive effect on the criminal liability of the defendant in the trial stage.^[2] The case materials formed during the investigation and prosecution stage can only be used to make procedural decisions applicable to coercive measures and prosecutions, and the conviction sentences in the trial can only be based on the evidence directly investigated by the court, and cannot be based on the case materials formed during the investigation and prosecution stages.

Secondly, the court trial is the centre of the entire trial procedure. The trial stage itself is a complex process, and its activities are diverse, including pre-trial preparation, trial of the court, and various activities outside the court. Taking the trial as the center emphasizes the decisive link in the trial process of the court trial, which realizes the leading role of the court trial on the pre-trial and post-trial proceedings. Because the right of conviction is the core of the right of criminal trial, the court trial is the key link to determine the existence of the defendant's criminal liability for the procedures like pre-trial preparation and delivery of written judgement; the power that determines whether the defendant is guilty is exercised by the people's court.

Thirdly, the first instance is the centre of the entire trial system. The fundamental problems to be solved by the court trial are the fact finding of the case as well as the adoption and exclusion of the evidence; the settlement of such problems is not made easier by the increase of the trial level; on the contrary, the

longer the trial level is, the longer the required time is, the farther the distance from the truth is, and the more difficult it is to solve. Therefore, "the ideal centralism should be the first-trial centralism".^[3]

At the same time, it is worth noting that taking the trial as the centre is to strengthen the function of the trial on the basis of adherence to the division of responsibility, mutual cooperation and restriction stipulated by the constitution of our country. The pre-trial stages like investigation, review and prosecution are the premise and basis of the trial; the trial-centered litigation system will not be constructed if breaking away from the pre-trial stage; the promotion of the reform of the trial-centered litigation system is not to weaken the meaning and function of the pre-trial procedure; on the contrary, it is to raise higher standards and requirements for the review and prosecution work. The main body of the reform of the trial-centered litigation system is not only the people's court, but it needs the resultant force of the court, the public security, the prosecutor and the defense lawyer to carry out the idea of "taking the trial as the center".

2. Path exploration of the reform of the trial-centered litigation system with the criminal procedure at first instance as dimensionality

The first task of the reform of the trial-centered litigation system is to cultivate the modern judicial concept and accurately position the trial power. The court trial is the last working procedure of the criminal procedure. It is the last defense line to realize the fairness and justice and prevent the wrong case. The effective referee must have both the *res judicata* and authority; the court trial of the people's court must exclude all interference, make independent trial, and only obey the law.

From the institutional level, the reform of the trial-centered criminal procedure system should be carried out in two directions:

In the horizontal direction, firstly, the trial should be taken as the center, and the relationship between investigation, review, prosecution and trial should be rationalized; secondly, the court trial should be taken as the center in the trial stage; the authority of the court's judgment comes from a fair trial, and the court itself cannot be divorced from the court trial to determine facts.

In the longitudinal structure, the authority status of the first instance in the recognition of facts should be established, and it is ensured that the first instance is in the position of "centre of gravity" in the whole criminal procedure system.

2.1 Relationship between Investigation, Review, Prosecution and Trial: Realization of "Trial Centralism"

The core requirement of taking the trial as the center is formed in the trial procedure as the judge's case information. It doesn't mean neglecting the investigation, review and prosecution procedure, and the investigation, review and prosecution are the preparation of the trial; the quality of the collected and applied evidence is related to the trial justice; the high-quality

investigation and prosecution can prevent the wrongs from the source. However, from the point of view of the litigation structure, in order to ensure that the case information serving as the basis of the judgment is formed in the trial, it is necessary to manually cut the channel of investigation and prosecution information entering smoothly into the trial procedure.^[4] Therefore, it is necessary to realize the trial centralism, resist the indictment-only doctrine and handle the public prosecution function and the legal supervision function of the people's procuratorate correctly.

Under the structure of adversary system, it is more effective to block the flow of pre-trial information due to the existence of a series of systems and rules. Insist on the confrontational litigation mode, that is, the judge is centered, and the prosecution and defense are equal. The chief judge is the chief of a court who should lead the court and command the court; the two sides shall obey the command of the court. In the legal relation of litigation, the prosecution and the defense acting as the prosecution function are equal and even equivalent.

The transformation from the file transfer doctrine to the indictment-only doctrine is realized. Under the system of full-case file transfer, as the judge has already known the case and the litigation evidence before the court, it is easy to form the pre-judgement and pay too much attention to the accuser's evidence and reason in the court trial, thus affecting the fair judgement. The indictment-only doctrine is put in place to avoid the judge's contacting and inspecting any case file and evidence material prior to the opening of the court, thereby completely cutting the connection between the investigation procedure and the judicial proceedings of the court.

The public prosecution function and the legal supervision function should be handled correctly. The judicial supervision of the People's Procuratorate has only the suggestions and the posteriori; in the course of the court trial, especially in the court, the trial can not be influenced by the legal supervision. The People's Procuratorate shall propose the opinions on making corrections for the court trial activities against the proceedings after the court trial; at the same time, it shall be submitted in the name of the People's Procuratorate, and it can't be submitted until it is reported to the chief procurator.

2.2 Trial: Realization of "Trial Centralism"

The so-called trial centralism, that is, the trial case is based on the court trial; the fact evidence is investigated in the court; the conviction sentencing debate is in the court; the judgment result is formed in the court; the judgment result is formed in the court; the direct speech principle is fully implemented; the illegal evidence exclusion rule is strictly enforced. The court trial is the core of the reform of the litigation system in the center of the trial, and it is the key link of the trial as the centre. The specific requirements of the trial are reflected in the following three aspects: firstly, all the evidence of the conviction and punishment must be investigated in the court, and cannot be judged only through the examination of

the file outside the court; the evidence that isn't investigated in the court cannot be used as the basis for the conviction and sentence; secondly, it is essential to fully guarantee the defense's benefit of argument, cross-examination and debate right; thirdly, the outcome of the judgement must be formed on the court to ensure that the case judgment is not affected by the external factors of the court.

The court's recognition and treatment of the case is based on both the full discussion and the defense of the evidence and the legal opinions of both parties in the court trial; the right to participate in the procedure and right to defense of the accused are guaranteed effectively; the basic principles of the open trial, the direct words and centralized trial have been fully implemented and reflected; all kinds of evidence; the fact finding and the application of law formed on the basis are the most scientific and fair. Therefore, the reform of the pre-court meeting, the improvement of the court system of the witness and the appraisal, the adherence to the rule of evidence and the rule of exclusion of illegal evidence are the important path of the substantive reform of the court trial.

In order to limit and avoid the effect of the information before the court trial and outside the court on the judgement, it is necessary to further reform and improve the pre-court meeting system. The basic function of the pre-court meeting system is to make full preparations for the centralized and successful trial of the court, clarify the focus of the dispute between the two parties and solve the procedural problems in the case. This "sufficiency", however, is limited, that is, the pre-court meeting should not prejudice the right of the accused to obtain a fair trial. While the pre-court meeting is a tripartite forum for three parties, there is a lack of procedural safeguards provided by a formal trial procedure; therefore, substantive issues that are closely related to the conviction of the accused should not be discussed in the pre-court meeting.

taking the trial as the center requires the judge to judge evidence, find out the truth and determine the penalty in person, which can change the current judge's written investigation mode, get rid of the reliance on the record of the file and play the role of the court trial; all the evidence shall be provided and verified by both parties in the court, which means that the system of the witness and appraiser appearing in the court must be implemented, and the issues that the witness and appraiser are difficult to be present at the case, attend the court and tell the truth can be solved. At the same time, it also puts forward higher demands on the participation of both parties in litigation and the application of evidence, and it is demanded that the work of the criminal defense lawyer be made into substance, which not only needs to establish and perfect the solid defence of the case, but also needs to improve the procedural defense of the case, aiming at the procedural justice and the entity justice, and comprehensively advance the criminal defense work.

The rule of evidence judgment and illegal evidence exclusion must be adhered to. The principle of evidence judgment means

that the case determination of adjudicatory personnel must be based on the evidence; the facts of the case cannot be determined if there is no evidence. The principle of evidence judgment is one of the basic principles of modern evidence law. In order to guarantee the proof power and the evidence ability of the evidence, we must strictly implement such links of evidence application like legal collection, fixation, custody, delivery, show, cross-examination, identification, authentication and so on in strict accordance with the law.^[5] There are two urgent problems to be solved in persisting in the rule of illegal evidence exclusion. One is that the judiciary authorities aren't willing to, don't want to and don't dare to exclude the illegal evidence in the proceedings, have shaken the implementation of this rule, afraid that the case determination can't proceed smoothly and the lawsuit cannot proceed. Second is that the definition of illegal evidence and the legislative provisions of exclusion range are unclear; especially for "threats, enticement and deception", the law does not specify their meanings; the means of illegally obtaining evidence are various, which is urgent to be clearly defined by the judiciary.

2.3 *The Relationship of Litigation Review: Realization of "Centralism of First Instance"*

In practice, the Chinese criminal trial carries out the two-tier trial system; the appeal procedure is not only the relief to the accused, but also is designed as the superior court's supervision and examination mechanism for the lower court's judgement. At the same time, the appeal is designed into a low-cost, low-risk litigation action—— there is no need to give the reasons for the appeal, and the appeal trial adopts the principle of "non-punishment of appeal" to eliminate the worries of the parties. With regard to the scope of the proceedings, the second instance is subject to a comprehensive review, which allows for a comprehensive and comprehensive review of the facts of the first instance, the application of the law and even the sentence without the limitation of the scope of the appeal. Therefore, the second instance is not only the re-trial of the case, but also the continuation of the first instance, which can accept new evidence and hear new facts. Therefore, the higher the trial level is, the greater the power is; the center of gravity of the whole criminal case procedure system also moves up; accordingly, the first instance has lost the position of the procedural gravity.

In fact, that first instance is the most recent judicial procedure whose space and time distance is the shortest from the case; the possibility of the destruction or loss of the articles left in the case scene are small; the impression that remains in the memory of the witness is also clear; it is the nearest from the case truth; the possibility of ascertaining the facts of the case is the largest.^[6] The realization of the essence of court trial at the first instance, the accurate determination of the facts and the correct application of the law can lay a solid foundation for the effective prevention of the wrongs. On the contrary, if the first instance proceedings is in

the form, the possibility of erroneous judgement in subsequent judicial proceedings will increase. On the other hand, the high-quality first instance procedure could be a solid support for the criminal justice system, effectively relieving the pressure of the central judiciary authorities. Therefore, it is very necessary to carry out the trial as the center and realize the first instance center.

3. Conclusion

The Forth Plenary Session of the Eighteenth CPC Central Committee proposed the "promotion of the reform of the trial-centered litigation system", which is of great theoretical and practical significance in the context of China's criminal litigation system and practice. The promotion of the reform of the trial-centered criminal litigation system needs to judicial procedure should be established in the relation of investigation, examination and prosecution and trial stage; the key is to properly block the impact of the investigation file information on the trial judgement. At the trial stage, it is necessary to carry out the idea of "taking the trial as the center", and the key is to ensure that the important witness attending court as a witness and strengthen the guarantee of the right to pledge to the accused. In the longitudinal review structure, it is ensured that the first instance procedure is in the position of gravity of the whole program system on the basis of fact finding. Practice shows that if the substantiation cannot be realized in the trial, the operation of all other judicial proceedings will become meaningless "idle", and the procedure justice will never be started, which will inevitably lead to the wrong case. On the other hand, if we can attach great importance to the substantive function of the court trial, the fact evidence can be truly investigated in the court, the conviction and sentencing debate is in the court, and the result of the judgment is formed in the court, these can lay a reliable foundation for the fair judgement.

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