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Research on the connection mechanism under the "one-stop" dispute resolution

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Abstract

One-stop dispute resolution and connection mechanism is the key to the construction of one-stop dispute resolution mechanism. The unique advantages of diversified dispute resolution methods such as negotiation and reconciliation, people's mediation, industrial mediation, commercial mediation, lawyer mediation, administrative mediation and notarization mediation need to give full play to the above unique advantages through the connection mechanism. At present, the one-stop dispute settlement and connection mechanism has the shortcomings of a single dispute settlement method, and the unsolved legal and technical problems such as "first mediation", "first arbitration" and "judicial confirmation". Accordingly, this paper proposes that the notification procedure and priority procedure of one-stop dispute settlement connection mechanism should be established, and the connection mechanism between mediation and litigation and the connection mechanism between arbitration and litigation should be improved to give full play to the benefits of one-stop dispute settlement.

Keywords

One-stop dispute settlement; diversified dispute resolution; connection; mediation and arbitration

1 Overview of the one-stop dispute settlement and connection mechanism and the current situation

The one-stop dispute resolution and connection mechanism aims to build a connection procedure among various dispute resolution means such as mediation, arbitration, litigation and petition, strengthen mutual contact, cooperation and trust, give play to their respective professional and comparative advantages, learn from each other's strengths, and improve the overall dispute resolution ability. To develop a one-stop dispute resolution and connection mechanism, it is necessary to study and integrate key trial points on the basis of dividing the types of civil and commercial litigation, which is consistent with the development of litigation trial. Only in this way can the pre-non-litigation dispute resolution procedure and litigation procedure be organically integrated, and the effective connection of one-stop dispute settlement method can be realized.

"In the current construction of a one-stop dispute resolution mechanism, There are also cases where individual legislative norms are unable to handle disputes, To solve the complexity of the responsibilities, The corresponding functions and functions are not clearly defined, Unbalanced development of dispute settlement channels, Lack of research on legal norms and standards, Thus, the lack of coordination among various dispute settlement systems such as consultation, mediation, arbitration and litigation, Therefore, it is urgent

to improve the procedural connection of the one-stop dispute resolution mechanism, Establish an effective connection mechanism between the pre-non-litigation procedure and the litigation procedure, Make all parties under the one-stop dispute resolution mechanism fully participate and do their part, Integrating the state, communities, enterprises, people and other entities, Reasonable allocation of resources for resolving social conflicts and disputes, And the use of various ways to resolve conflicts and disputes for comprehensive management, Let the increasingly complex economic and social problems can be efficiently, quickly and fully solved.

2 The main problem of the one-stop dispute resolution and connection mechanism

2.1 The lack of the connection mechanism between arbitration and litigation

From the point of view of the law, the one-stop dispute settlement method includes litigation, arbitration and mediation, and the connection mechanism is also between these three dispute resolution mechanisms. Through the analysis of relevant laws and regulations, there is a relatively clear connection between litigation and mediation. However, the participation of the arbitration mechanism is obviously insufficient in the connection mechanism under the one-stop dispute settlement system. The support of litigation for arbitration is optimized on the basis of the original system, and the connection between litigation and arbitration is still limited to the traditional litigation support for arbitration. The connection mechanism for arbitration and mediation is not stipulated at all.

The reason for the above problems is that arbitration is a dispute resolution mechanism with perfect procedural norms and rules, which does not have the flexibility of mediation mechanism. Moreover, after years of development of civil and commercial arbitration in China, the parties put the arbitration mechanism in almost the same position as the litigation, so it is difficult to embed the arbitration mechanism into the litigation procedure, to achieve a wider connection between litigation and arbitration.

2.2 The problem of the system basis and theoretical basis of litigation and mediation connection

The premise of the connection is that the parties to the dispute should mediate first, and then the mediation will be transferred to the litigation procedure if the mediation fails. As an important prerequisite for litigation and mediation, there are still some problems in the institutional basis and theoretical basis of advance mediation in China. In 2012, the Civil Procedure Law incorporated advance mediation into the law. Especially after the implementation of the case registration system, first mediation can play a role in resolving conflicts in advance and play the role of separating the complicated and simple cases brought to the court, thus alleviating the contradiction of "more cases and fewer people" in the court after the implementation of the staffing system. In China, "first mediation" is mainly a procedural arrangement of "mediation before filing" and "mediation before litigation" —— That is to say, the start of mediation in the mediation procedure is not based on the premise of the parties voluntarily, but a mandatory and pre-imposed working procedure initiated by the court according to its functions and powers. The purpose of advance mediation is to establish a "flexible

compulsion" mediation procedure, because this mediation with certain compulsion does not violate the "soul of mediation" —— "voluntary" principle, but only a pre-mediation procedure for some types of cases. The pre-procedure is more manifested in that the judges should start the mediation procedure according to their powers, rather than forcing the parties to accept the mediation.

3 We will improve the one-stop dispute resolution and linkage mechanism

3.1 Smooth the connection and integration mechanism between litigation and non-litigation platforms

The one-stop dispute resolution and connection mechanism requires us to strengthen coordination, combine the actual situation, get out of the fragmentation dilemma, adhere to the use of a variety of conflict and dispute resolution methods, to create a one-stop conflict and dispute resolution mechanism. With dispute resolution as the fundamental purpose of this matter, we will make every effort to build a one-stop platform for resolving disputes and provide a variety of dispute resolution services for the public.

The government, courts, judicial bureaus and other departments should do a good job of unified coordination and create a one-stop dispute resolution mechanism based on the people. The daily management work is undertaken by the Bureau ofustice, adhering to the scientific, standardized and normative construction work, so that the conflict and dispute organization can each in its position, each do its best, effective connection, coordination and coordination, and strive to provide effective and convenient people with all-round public services to resolve conflicts and disputes.

3.2 Establish the notification procedures and priority selection procedures under the connection mechanism

Under the guidance of the concept of "hierarchical and progressive resolution of disputes", the "ideal state pursued by the non-litigation dispute mechanism is that disputes change from more to less, from simple to complex step by step, forming a decreasing resolution structure of 'funnel shape' hierarchy, so that the best solution can be found for all kinds of disputes". The connection mechanism requires all kinds of non-litigation disputes to give full play to the advantages, and build the three lines of defense of "people's mediation is the first line of defense, arbitration, administrative adjudication, administrative reconsideration and other ways are the second line of defense, and justice is the last line of defense", making use of their respective advantages to guide, circulate, break and resolve disputes. At the same time, the advantages of various methods also need to establish a smooth connection mechanism to play the effect of complementary functions, benign interaction and mutual support."Case diversion and procedural diversification have become the general trend of judicial reform since the beginning of this century."To give full play to the role of various dispute resolution way, help the parties choose low cost, high efficiency, and suitable for the characteristics of the dispute dispute way, it is necessary to establish a dispute settlement mechanism of informed procedures, told the parties in addition to litigation way, and reconciliation, mediation and other dispute resolution way, guide the parties to choose the right way to resolve disputes.

3.2.1 set up the notification program

In accordance with the requirements of the Opinions of the two offices, we will explore the establishment of a diversified notification system of conflicts and disputes, requiring administrative organs, courts, mediation organizations, lawyers and other legal workers to inform the parties of multiple channels of dispute resolution when participating in the settlement of disputes for the parties to choose. It mainly includes the following contents:

First, It is a legal obligation to clearly inform the parties of multiple ways to resolve their disputes. For example, the People's Mediation Law stipulates that the grassroots people's courts and public security organs can inform the parties to apply to the people's mediation committee for mediation of disputes suitable for mediation before accepting the dispute. State organs, people's courts, social organizations and legal workers shall take notification and guidance as a necessary part of dispute resolution, and shall have the obligation to inform and introduce other ways to resolve disputes.

Second, The subject of a clear notification obligation. State organs, people's courts, social organizations and legal workers are the main forces involved in dispute resolution. They have a good understanding of the characteristics and working procedures of various disputes, and should give full play to their professional advantages to publicize and popularize them to the public. When committing an administrative act, the administrative organ shall, in accordance with the relevant legal provisions, inform the relative party of the relief ways, methods and channels for disobeying the administrative act, and shall also inform the party administrative organ in which areas can handle civil disputes. The people's court shall, before registering and filing the case, guide the parties to voluntarily choose appropriate ways to resolve the dispute, and provide the parties with explanation and guidance on resolving the dispute through non-litigation means, psychological consultation, litigation risk and other aspects. In particular, the advantages of mediation should be introduced, from the perspective of the parties, and appropriate to resolve the disputes in the first time to avoid the intensification of conflicts, rather than blindly encourage the parties to deal with the disputes through litigation.

Third,Clear notification and guidance of the specific content. There is no restriction on the contents of the notification and guidance for the diversified resolution of disputes, so the nature and types of the disputes involved should be introduced to the parties, and the parties should be guided to make independent choices. For example, for civil disputes, the parties can be guided to adopt people's mediation as far as possible to give full play to the advantages of grassroots people's mediation organizations; for commercial disputes, the parties can be encouraged and guided to choose commercial arbitration and commercial mediation.

3.2.2 set the priority selector

Priority program refers to the dispute, the parties often have many paths to choose from, and sometimes a dispute resolution way may not be able to achieve the purpose of resolving disputes, need to find other dispute resolution, should guide the parties priority to the low cost, relatively weak, to repair the relationship of litigation dispute resolving way, rather than choose litigation at the beginning, so as to reduce the cost and risk of resolving disputes. Generally speaking, non-litigation solutions such as reconciliation and mediation are often weak in antagonism, low in cost, simple and flexible in operation, and easy to properly resolve disputes. And the antagonism of litigation is strong, not win or lose, is not conducive to the repair of the relationship between the two sides. Therefore, the parties are not encouraged to choose the litigation way to solve the dis-

putes at the very beginning.

3.3 Realize the transition from the principle of first mediation to the pre-mediation procedure

As mentioned above, on the institutional basis and theoretical basis of the first mediation, the reformers jumped away from the troubles and found a new way to choose the "pre-mediation procedure reform". On the basis of follow the principle of first mediation, pay attention to the needs of judicial practice and procedures, the mediation front program reform in litigation before the mediation, choose the type for mediation case mediation, for mediation, establish and litigation rapid cohesion mechanism, to prevent "mediation front procedure reform" disguised become limit the parties litigation right, hinder the case registration system reform. At present, the path to carry out the reform of pre-mediation procedure should mainly start from the following aspects: First, the reform of pre-mediation procedure must conform to the legal principles and legal principle provisions. For example, the principle of alignment of procedure; the principle of procedure transfer; the principle of providing more efficient, optimized and practical judicial resources for the dispute resolution. Second, study and determine the types of cases included in the pre-mediation procedure. Although some laws in China have made provisions on the pre-mediation procedure for special types of disputes. Combined with the Supreme People's Court on deepening the reform of multiple opinions and around the development of relevant mediation organization comprehensive consideration, front mediation procedures can be in the family disputes, adjacent relationship disputes, small debt disputes, consumer rights protection disputes, traffic accident disputes, labor disputes, property management disputes. Third, standardize the pre-procedures and deadline for mediation to ensure that the reform conforms to the spirit of the law."The civil litigation system emphasizes the protection of the litigant's right of action, which does not mean that certain conditions cannot be stipulated for the exercise of the right of action. The pre-mediation is only compulsory for the parties to participate in the mediation procedure, and the mediation result is completely decided by the parties. It does not deprive the parties of their right to make judgment, but also expands the way for the parties to achieve justice."Fourth, establish a closely connected working mechanism. For the evidence submitted by the parties in the pre-litigation mediation, the parties confirm that the fact that there is no objection and the focus of the dispute summarized by the mediator can be fixed at the end of the mediation procedure. If the mediation fails, the foregoing can be used in the subsequent proceedings to reduce the litigation burden of the parties. Of course, it should be noted that the concessions and compromise made by the parties in the mediation process, if they are not willing to keep in the litigation process, can not be recognized. At the same time, the contents confidential by both parties in the mediation shall not be used in the litigation.

3.4 Improve the connection between arbitration and litigation under one-stop dispute settlement

The principles and mechanisms of the connection between arbitration and litigation mainly include: first, respect the law of commercial arbitration and the principles of arbitration rules. It is the basic principle for establishing the connection mechanism between arbitration and litigation to respect the private nature of arbitration institutions, the flexibility of arbitration procedures, the quick efficiency of arbitration, and the conclusion of the arbitration result, and to respect the application of different arbitration rules selected by the parties. Second,Timely handle the application for preservation of the arbitration institution. The court supports the

development of arbitration, one of which is to timely handle the preservation application of the arbitration institution, including both pre-arbitration preservation and arbitration preservation; including arbitration evidence preservation, arbitration property preservation and behavior preservation. China's Arbitration Law provides for property preservation, evidence preservation and foreign-related evidence preservation respectively. The Civil Procedure Law in 2012 has made relatively clear provisions on the issues of evidence preservation before arbitration and property preservation before arbitration.

Third, to handle cases of cancellation and rejection of arbitration awards in accordance with the law, and to follow the judicial policy of supporting arbitration. The people's courts at all levels shall, on the premise of supporting the development of arbitration and supervising the arbitration in accordance with the provisions of laws and judicial interpretations, handle the cases of cancellation or rejection of arbitration awards according to law.

4 Conclusion

The construction of a one-stop conflict and dispute resolution mechanism is a new innovation in China's management system. It reflects the important connotation of the modernization of social governance capacity, conforms to the "four all-round" strategy, and is also an important system for handling disputes on domestic and international social issues, which must be resolutely implemented.

The smooth degree of dispute resolution directly affects the fairness, efficiency and convenience of the one-stop dispute resolution mechanism. A well-functioning connection mechanism will also help to achieve the "1 + 1> 2" effect between multiple dispute solutions. The complementary advantages of various ways help to realize the overall coordination and systematization, and can help specific cases to select the best path, realize the substantive settlement of disputes, avoid the prominent shortcomings of a single dispute settlement method, and expand the benefits of one-stop dispute settlement.

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