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Analysis of China's Civil Litigation in the Electronic Service System

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Abstract

With the increasing legal awareness among the public, the number of court cases has soared, leading to a rising demand for process serving. The traditional service method struggles to meet the current demand for document service in today's legal landscape. Electronic service offers efficiency and convenience, overcoming traditional limitations. However, due to the country's historical focus on physical entities over procedures, there is still inadequate study of litigation procedures. The electronic service system faces challenges that hinder its progress. China's electronic service system has entered a new era of development, indicating that future electronic services will further enhance the system's development. The enhancement of the electronic service system should align with our country's service system, adapt to new developments and requirements, and optimize system specifications to maximize the benefits of electronic services.

Keywords

Electronic service, procedural options, system improvement, remedies

1. Background of Electronic Service System

The rapid development of Internet technology provides an important technical guarantee for electronic service, as a necessary link in civil litigation, service plays a pivotal role in the whole judicial practice. In recent years, people's awareness of using the law to protect their rights has been increasing, and the number of civil cases accepted by the courts across the country is rising, accordingly, the number of court services is also increasing, and will be accompanied by a number of problems, including the "difficult to serve" problem has aroused widespread concern.

The traditional way of service is time-consuming and labor-intensive, and electronic service with its efficient and convenient advantages to obtain the domestic and foreign civil judicial field of affirmative attitude. "The People's Republic of China Civil Procedure Law" in 2012 after the completion of the revision of the electronic service was formally established as one of the legal provisions of the mode of service, the revision of the "Civil Procedure Law of the People's Republic of China in 2021" to re-establish the scope of application of the electronic service.

At present, although the application of the electronic mode of service increased, because the specification has not been refined, the electronic mode of service still exists in certain application problems.

2. The problems of electronic service system

2.1 fails to protect the served person's right to choose the procedure

China's current application of electronic mode of service is mainly used "express" and "implied" combination of ways. However, whether the parties express consent or implied consent, their right to choose is only limited to the question of whether to apply, the parties can not choose to use what kind of electronic mode of service. In addition, if the

parties choose to apply the electronic mode of service in the first trial, its meaning can be retroactive to the second trial is not clear (Hu Xuefeng et al., 2022).

2.2 Failure of service of relief has not been perfected

Although the electronic mode of service compared to the traditional mode of service has a significant superiority, but due to the objective factors or the technical factors of the service personnel, still can not rule out the possibility of failure of service.

Combined with the existing provisions of the relevant provisions, the use of electronic service of process, arriving at the system designated by the person to be served for the date of service, arriving at the system date and the people's court system records are inconsistent after the person to be served by the system to arrive at the date of the system shall prevail after proof of the claim. However, the above rules only address the relief of the time of service, but there has not yet been a relevant system provision on how to provide relief for the loss of rights caused by the person served without fault (Mei Aohan et al., 2021).

In addition, if the electronic version of the litigation documents has been tampered with or due to system failure and other reasons caused by the missing part of the document, there is no clear way to relief available.

2.3 The order of application of the electronic service process is not clear

According to the relevant provisions of the Civil Procedure Law, among the methods of service of process, direct service should be the first choice. But from the perspective of electronic service of efficient and convenient advantages to consider, electronic service should be prioritized over the traditional way of service, however, China does not yet have relevant clear provisions. Accordingly, in the process of service of process, should be applied first direct service, when the direct mode of service is really difficult, after the served person agrees to the case, can be applied to electronic service. Obviously, the application of the service of process is very cumbersome, but not conducive to the development of electronic service.

In addition, should also be in the electronic mode of service of the internal order of the types of reasonable order, so that the practice of service of process has a law to follow, giving full play to the advantages of electronic service.

2.4 The lack of complete technical security facilities

In 2017, China established a unified electronic service platform, which facilitates litigation, but there are still many security risks in the service of litigation documents through the electronic platform.

First of all, the instability of the Internet technology itself is subject to the constraints of information network signals; secondly, the existence of network hacker groups also threatens the normal court workflow to a certain extent, such as intercepting the case file materials and tampering with the content of the litigation documents; finally, due to the technical conditions, at present, China's electronic service platform needs to cooperate with a third-party company, which involves the security risks of information leakage (Chen Jinbo et al., 2020).

2.5 Lack of a complete and professional service team

The construction of the team of service of process relates to the litigation documents can be quickly and completely sent to the hands of the person to be served, service of process not only to have legal expertise but also to have a corresponding understanding of the electronic computer technology, in order to better complete the work of service of process. At present, our country all over the court is facing "more cases, fewer people" pressure, and most of the work by the clerk, the judge's assistant to complete this kind of personnel, busy work will often squeeze the operation of the electronic system of time, so there will likely be operating errors, and there is no corresponding audit, and even affect the parties to the litigation of the severe rights, therefore, it is necessary to establish a professional unified service team.

3. The improvement of electronic service system recommendations

3.1 Fully give the person to be served the right to choose

Service address confirmation notice can not make the served person understand the specific content of electronic service, more can not make clear the difference between electronic service and the traditional way of service, therefore need to clearly agree to accept electronic service at the same time, inform the served person of the application

of electronic service, the effect of the corresponding consequences of the served person in clear information and then make a choice of whether to agree to the application of electronic service, fully safeguard the person informed of the relevant information, and then make a choice. Fully safeguard the served person's right to know and procedural participation and choice.

The Supreme People's Court's Several Opinions on Further Strengthening the Work of Civil Service issued in 2017 stipulates that "the address of service confirmed by the parties in the confirmation of the address of service applies to the first-instance procedure, the second-instance procedure and the execution procedure. If the parties change the address of service, they shall inform the People's Court in writing. If the parties have not changed in writing, the address confirmed by them shall be the address for service." However, the provisions of this article for the parties did not refine the effectiveness of the provisions, in practice, the courts around the understanding are not the same. Some courts believe that "individual consent", that is, the consent of the person to be served only in the first instance, while some courts believe that "generalized consent", that is, the effect of the consent of the person to be served and the entire litigation process (Chen Shanbin et al., 2019).

Based on the protection of the party's right to choose the litigation procedure, the consent here should be recognized as "individual consent", that is, the served person in the first trial procedure agrees to the electronic service of the meaning of the expression of the effect of the first trial, when the case into the second trial or retrial, should be reconfirmed, thus protecting the freedom of the parties to the litigation, and maximize the display of the parties' Improve the effect of the failure of service.

3.2 Improve the relief measures for failure of service of process

First, the court has been sent and the parties did not receive the corresponding legal documents, such cases should be established to enable the parties to timely feedback information channels, the parties to the court when they learn of objections and request the court to re-send. In order to further improve the efficiency of the litigation, the period of time during which the parties may object should also be limited, and a reasonable period should be established, with the parties deemed to have waived their right to relief if they fail to object after the deadline (Zhang Xingmei et al., 2019).

Second, the review and relief after the party receives the legal document. In March this year, the electronic service of documents of more than 3,500 courts nationwide supported the online verification of electronic service of documents on the Internet judicial blockchain platform or the People's Court online mini-programs, ensuring the authenticity and authority of every electronic service of documents in the digital age and better protecting the litigation rights and interests of the parties (Hao Han et al., 2019). On this basis, the remedies in case of inconsistency of legal documents should be formulated, and the period of relief for defective documents not caused by one of the parties should be excluded from the period of litigation of the parties to fully safeguard the litigation rights of the parties.

3.3 Clarify the applicable precedence of electronic service of process

First, it should be clear that the application of electronic service and the traditional mode of service is in order. The people's court for the same case, can only choose a way of service, that should be carried out in different circumstances, the advantages and disadvantages of electronic service and traditional means of service comparison, the development of the corresponding norms, more convenient to deal with the choice of different cases (Cai Lidong et al., 2017). In the different stages of the case, we should realize the flexible conversion of the mode of service. The civil litigation part of the case trial cycle is long, the party's objective situation may change, therefore, should be heard at different stages of the party's application, flexible transformation of the mode of service, to protect the party's right to participate in the litigation, and improve the efficiency of the litigation.

Secondly, it should be clear that the different modes of service within the electronic service of the application of the order of precedence, and the development of supporting norms (Wang Fuhua et al., 2016). To uphold the authority of the law, a unified electronic service platform should be established as the primary mode of service, with telephone, text message, and WeChat programs serving as supplementary channels for order applications. In individual cases, special circumstances and factors of the parties should be fully considered.

3.4 Strengthen the electronic service of technical safety and security

In the process of electronic service, all the relevant information involved in the case is in the electronic service platform, and it is easy to cause the leakage of private information. Therefore, for subjects outside the court who have access to the parties' private information, a privacy agreement should be signed or the work should be handed over

to a specialized team to narrow down the scope of information that may be exposed and to ensure the privacy of the information (Shi Chunlei et al., 2015).

3.5 Training to establish a complete and professional service team

The establishment of a team of personnel specializing in electronic service, within the team is divided into the electronic service platform system maintenance of technical personnel and responsible for the service of documents of the service of two types of personnel, respectively, with their focus on different training. In addition, we should establish the professional service team's work norms and sign a privacy confidentiality agreement, to maintain the privacy of the parties and the authority of the law.

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