

Research on Judicial Trial Practice Issues of Internet Courts in China

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Abstract: Since 2017, China's three Internet courts have been established one after another, which is an innovation of trial mode for traditional courts to actively adapt to the development of the Internet. With its convenience and effectiveness, it not only reasonably solves the long-term contradiction between the expansion of social demand for judicial services and the scarcity of judicial resources, but also provides more convenient judicial services for the public. However, as a 'newborn' in the reform of the judicial system, the Internet court is in trouble in its trial development in practice, especially in the integration with the traditional litigation legal system and procedural rules. Based on this situation, this paper searches all the judgment documents made by the three Internet courts since their establishment, empirically analyzes the problems existing in the judicial trial of the Internet courts, and puts forward possible paths for their existing problems, so as to clarify the due position of the Internet courts in China, get rid of the existing judicial trial dilemma, and further promote the positive role of the Internet courts in playing the trial function.

1. Introduction

Based on its own usefulness and effectiveness, Internet technology fits the contradiction between the judicial needs of the public in contemporary society and the scarcity of judicial resources. Internet courts were born in this context. However, while excessively pursuing judicial efficiency, the Internet court trial also has institutional dilemmas, ignoring that the Internet court should bear the responsibility of professional trial, which is contrary to the original intention of the establishment. It is urgent to find solutions to make the Internet court return to the positioning of professional trial, and truly explore the litigation system and procedural rules required for the professional trial of the Internet court.

2. The current situation of judicial trials in China's Internet Court

Through cluster analysis of the "China Judgments Online" website, using advanced search, the search keywords "Hangzhou, Guangzhou, Beijing Internet Court" are used for the court name, "civil cases" for the case type, and "first instance" as the limiting condition for the search.

2.1 Hangzhou Internet Court judicial trial status

Since the establishment of the Hangzhou Internet Court, the judgments and mediations that have made substantive processing have accounted for about 38 % of the total number of adjudicative cases, and the procedural processing of the cases accepted by the ruling has accounted for about 62 % of the total number of adjudicative cases. It is not difficult to find that the final judgment of the case is obviously unbalanced. The ruling mainly includes the ruling of jurisdictional objection, dismissal of prosecution, inadmissibility and withdrawal of prosecution. The main reason for inadmissibility is that the actual connection of the case is not within the jurisdiction of the Hangzhou Internet Court or the type of case that does not belong to its jurisdiction; this is also the primary reason why the Hangzhou Internet Court accepted the least cases involving the Internet in the three Internet courts. The ruling made by the withdrawal is divided into two categories, that is, the court allows the plaintiff to withdraw and the court handles the withdrawal in accordance with the withdrawal. The court allows the plaintiff to withdraw mainly because the plaintiff disposes of his rights and applies for withdrawal. Due to other procedural problems, the court handled the case in accordance with the withdrawal, that is, the plaintiff did not pay the litigation costs within the statutory period and the plaintiff was legally summoned by the court, and refused to appear in court without reasonable reasons to participate in the proceedings, the court handled the case in accordance with the withdrawal. At present, the Hangzhou Internet Court mainly accepts various types of civil disputes involving the Internet in Hangzhou. The cases are mainly handled procedurally. It is difficult to issue the professional trial function of the Hangzhou Internet Court.

2.2 Guangzhou Internet Court Judicial Trial Status

The cases handled substantively by the Guangzhou Internet Court only account for 39 % of the total number of referee cases, while the cases handled procedurally account for nearly 61 % of the total number of referee cases. The Guangzhou Internet Court's ruling method is single, and its rulings that are handled and handled are dominated by the rulings that deal with the withdrawal and allow the plaintiff to withdraw. The ruling on the dismissal of the prosecution is due to the fact that the prosecution of the parties does not meet the conditions for prosecution and does not belong to the jurisdiction of the Internet court. In addition, the correlation between the cases accepted by the Guangzhou Internet court is unusually prominent. The case was finally closed with the plaintiff's withdrawal, and Beijing Panoramic Vision Network Technology Co., Ltd. filed more than 100 lawsuits to the Guangzhou Internet court as the plaintiff. Based on the lawsuits filed by other subjects, there are only 284 rulings made by the court, accounting for less than 4 % of the total number of ruling cases. The implication is that since the establishment of the Guangzhou Internet Court, except for the lawsuits filed by China Post and Beijing Co., Ltd. from April to May 2019, the number of cases accepted by the Guangzhou Internet Court in other time periods in 2019 was less than 14 per month on average, and the number of cases handled fluctuated extremely unstable and the type of procedural handling was withdrawn.

2.3 Status of judicial trials at the Beijing Internet Court

The establishment of the Beijing Internet Court to make substantive treatment of the case accounted for 46 % of the total number of cases, and the case of procedural treatment with the ruling accounted for 54 % of the total number of cases. The way of adjudication of the case is basically balanced compared with the other two Internet courts. The cases in which the public ruling is inadmissible are mainly due to the fact that the connection point of the case is not within the jurisdiction of the Beijing Internet Court or whether it is not a type of jurisdiction of the Internet

Court. The ruling of jurisdictional objections is mostly the actual connection. The decision is not in Beijing or other jurisdictional agreements that are legally valid for the parties and are diverted to other courts for acceptance. Compared with the other two Internet courts, the number of cases accepted by the Beijing Internet Court ranks first among the three Internet courts. In addition, the court's case adjudication method is more comprehensive, and the procedural and substantive processing is basically consistent. The types of rulings made by the court are relatively diverse, and the types of rulings for procedural processing of cases are involved. Correspondingly, the development of the court is more mature, which is conducive to the effective play of professional trial functions.

3. China's internet court judicial practice problems

3.1 The handling of the case to procedural settlement of the case, did not actually solve the problem of dispute

The three Internet courts deal with cases procedurally by adjudication, accounting for more than 60 % of the total number of cases settled by the three Internet courts, while the substantive handling of cases by judgment and mediation accounts for about 40 % of the total number of cases settled. Compared with the number of cases handled procedurally, the number of cases handled substantively is about more than 20 %. Furthermore, among the three Internet court rulings, the vast majority of the rulings are withdrawals, which are basically divided into two categories: First, the court allows the plaintiff to withdraw the complaint. The main reason is that the parties reach a settlement on the dispute and withdraw the complaint or the plaintiff applies for withdrawal; the second is to deal with the withdrawal, mainly because the plaintiff did not pay the litigation costs within the specified period, nor did it submit an application for relief of litigation costs, and the court withdrew the prosecution in accordance with the plaintiff. The Internet court is a new thing that has emerged in the combination of traditional courts and the times in China. It has been placed with the high hopes of the state, society and the public. As a professional court for accepting Internet-related disputes, the original intention of its establishment is to truly realize the professional trial of "online cases." The judicial responsibility of the trial, however, the number of cases in which the substantive handling of Internet-related disputes is judged and mediated is slightly weak, and most of the cases are handled procedurally. The type of judgment is absolutely dominant, which reflects that the Internet court has adopted a euphemistic 'evasion' method in solving the disputes of Internet-related cases. This approach has damaged the rights and interests of the parties to a certain extent, and there is no need to talk about the realization of the same function as the traditional offline court in protecting the rights of the parties.

3.2 The case of relevance features prominently, inconsistent with the existing civil litigation system

Compared with traditional civil and commercial transactions, civil and commercial transactions involving the Internet have a significant advantage in breaking through time and space constraints. Domestic and foreign trading entities can freely use any online trading platform as a communication channel to freely establish, change or terminate civil legal relationships with other potential trading objects on the platform at their selected locations. While greatly increasing the convenience of individuals engaged in civil and commercial activities, disputes caused by the large number of trading objects have also followed, especially many disputes are inextricably linked. The same subject has a litigation relationship with many people, mainly manifested as 'one to many' or 'many to one', and the subject matter of similar cases is the same type. There are similarities in facts,

evidence and legal relations in online shopping contract disputes and all judgments. On the surface, the court seems to make many judgments, but in fact, it only needs to copy and paste the full text, and modify it in some key parts. Most of the judgments of the three Internet courts do not involve the innovation of Internet rules, and no defendant has even appeared in court. The network-related cases heard by the Hangzhou Internet Court have clear facts, clear legal relations, and lack of professionalism and technicality. They are derived from civil law cases in the Internet field and do not conform to traditional professional courts. At the same time, it also reflects the negativity and shortcomings of the Internet court's application of the traditional civil litigation system in China when dealing with civil disputes involving the Internet, that is, the relevant rules of ordinary joint litigation and representative litigation. It also further reflects the conflict and integration between the Internet court and the traditional civil litigation system and procedural rules.^[1]

3.3 The dispersed handling of cases is obvious, not conducive to the unified decision

The relevance of cases accepted by the Internet is obvious. In particular, the same plaintiff sues different defendants, which can easily lead to the following two dilemmas. First, in the dispute of infringement cases, multiple defendants have multiple residences and hundreds of infringements. There may also be false infringements in individual cases. A plaintiff has to sue different Internet courts and different traditional courts for the same type of case. Imagine that the courts with essential differences (traditional courts and Internet courts) have made judgments or mediations on similar cases after trial, and whether their multiple judgment results can achieve a balance between the judgment results of similar cases. Secondly, restricted by the existing jurisdiction rules of civil litigation in China, half of the cases that are not accepted by the three Internet courts are not accepted or rejected by the Internet courts because the actual connection of the disputes is not within the jurisdiction of the Internet courts or does not belong to the jurisdiction type of the Internet courts, and then diverted to the ordinary courts, so that similar cases are distributed online and offline. In this case, how can the Internet courts and the traditional courts achieve the unity of the adjudication of similar cases ? The main reason for the diversion of Hangzhou Internet Court cases is that the defendant 's jurisdiction objection is established and the case is transferred to other courts. In some areas, the parties exclude the Internet courts from jurisdiction by pre-agreed jurisdiction or signed arbitration clauses and arbitration agreements, and transfer some Internet-related cases to other traditional courts, and most of the cases have been supported by the courts, which is also one of the reasons why some Internet-related cases are diverted to other non-Internet cases, increasing the decentralized handling of similar cases. Decentralized handling of class cases not only increases the cost of judicial relief for network users (mostly plaintiffs), but also leads to mutual wrangling and ' kicking ball ' between Internet courts and non-Internet courts with jurisdiction. More importantly, decentralized handling of class cases is not conducive to the unification of judicial rules and the realization of professional trial effectiveness of Internet courts..^[2]

4. The possibility of the Internet court judicial dilemma of the path of reality

4.1 Clear Internet court jurisdiction

The clarity of the jurisdiction of the Internet court directly affects the function of the Internet court. First, clarify the scope of the Internet court. 'Network-related cases ' is a holistic and abstract concept. It is clear that 'network-related cases ' need to be determined both procedurally and substantively. The cases heard in the procedure must match the trial mode of the Internet court litigation. Starting from the nature of the case and the form of evidence storage, the disputes fit the

online trial, and the cases in which the formation and fixation of evidence are online are included in the scope of the Internet court. On the entity level, the cases accepted by the Internet court must highlight the 'Internet' feature, which requires that the relevant disputes accepted are conducive to promoting the application of substantive rules and realizing the special jurisdiction of the Internet court. At the same time, it is necessary to weaken the traditional territorial jurisdiction in order to improve the Internet court. Second, flexibly determine the connection point of Internet case jurisdiction according to the actual situation. The jurisdiction connection point of the existing Internet court breaks through the shackles of the original civil procedure rules. It is necessary to uphold the stability of the connection point, the principle of facilitating the parties and the court, and the balance of the workload of the court. From the perspective of solving the actual connection of disputes, the jurisdiction connection point is limited and applied to solve the current situation of China's Internet courts using legal loopholes to create virtual or connection points.^[3] Third, improve the agreement jurisdiction rules. The Internet platform signs relevant agreements with consumers, and determines the court of jurisdiction by improving the rules of agreement jurisdiction, allowing the parties to choose the court of jurisdiction for the civil case agreement involving the Internet, which has a certain positive effect on making up for the defects of the Internet court in China in terms of jurisdiction, reducing the phenomenon of tug of war between the two places and the unnecessary extension of litigation time due to the unclear jurisdiction boundary, and reducing the litigation burden of the parties.

4.2 Give the parties the right to choose the procedure

The right of the parties to choose what kind of litigation procedure is an important weight to solve the current Internet court problem, and it is also the premise for the Internet court to obtain recognition and respect. In Internet-related disputes, the complexity of the parties' online transactions makes it difficult to determine their IP addresses. The administrative regions and even countries to which the parties belong are different. The application of the traditional 'plaintiff is the defendant' principle has clearly failed to meet the social needs. It is a necessary change for social development that the plaintiff and the defendant have equal jurisdiction. The plaintiff can file a lawsuit against any court in the online or offline jurisdiction of the court where it is located according to its own conditions, without the limitation of order. After the Internet court hears the relevant dispute, the parties have the right to decide whether one or several trial stages are conducted online, giving the parties the right to choose. At the same time, the corresponding personnel instructions to inform the work, especially the court's responsibilities in this regard. The parties should strictly fulfill the obligation to inform. When the parties encounter professional problems in the litigation, lawyers, legal advisers and other professionals fully explain the online trial matters to the parties, so that they have a certain understanding of the online trial, and ensure that the parties' choice is made on the basis of understanding the relevant rules. The premise of this practice should be that the electronic litigation adheres to the principle of functional equivalence, that is, the procedural interests enjoyed by the online and offline parties are equal, and will not be detracted by the choice of online. Finally, create a disciplinary mechanism. Allowing the parties to carry out procedural transformation and providing flexible online and offline transformation mechanisms is not to give the parties the space for abuse of rights.

4.3 Specialised Positioning of the Internet Court

The main regulatory object of the Internet court is cyberspace, which has its particularity in the way of governance and legal application. Finding the proper position of the Internet court, that is, the professional court trying specific cases, is the fundamental way to break through the current

dilemma of the Internet court. First, implement a supporting system that matches the Internet court. The "Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Cases by the Internet Court" only stipulates the basic aspects of the litigation process and trial mode of the Internet court. The urgent problems of regional jurisdiction and the scope of accepting cases have not yet been clarified. Legislation should provide institutional guarantee for the Internet court. The legislative form involves judicial interpretation, decision or notice, etc., in order to make up for the absence of current law in this field. ^[4]Secondly, explore the rules of Internet court litigation. The realization of the professional trial function of the Internet court in the practice process is difficult. Based on this, modern technology can be used to make up for the shortcomings of the litigation system and procedural rules, such as promoting the online 'reengineering' of the whole process of litigation. Furthermore, the Internet court does not directly "move" the traditional court to accept the case online, it is a parallel online court with the traditional court to govern their respective cases. In other words, the Internet court is not the online version and substitute of the traditional court. Its purpose is not only to realize the electronic, networked, informational and intelligent civil litigation, but also a special court with unique functions. ^[5]Therefore, it is necessary to clarify that the cases under the jurisdiction of the Internet court are involved in the whole process of the Internet, that is, the disputes and the evidence supporting the disputes occur on the Internet. The parties' choice of the jurisdiction of the Internet court can break through the limitations of the physical location, break through the 'strange image' of the traditional litigation rules and procedures matching the Internet court, and explore the jurisdiction system with the characteristics of the Internet court. From the macro legal norms to the micro jurisdiction case standards, it returns to the expected position at the beginning of the establishment of the Internet court in China.

5. Conclusion

As a sample of the reform of the judicial system, the Internet court bears the attention of both domestic and foreign countries in the way of trial and the time of establishment. However, reviewing the current judicial status of the Internet court, it does not realize the same function as the traditional offline court in the number of cases, the way of judgment and the application of the rules for the protection of the rights and interests of the parties, nor does it really realize its professional trial function as a special court. Based on the current situation, the Internet court should be specifically positioned to clarify its litigation jurisdiction and the relevant rights of litigants, and promote the in-depth application of China's Internet courts in practice.

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