

The Path to Improving the Right to Relief in Small Claims Procedure

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Abstract: With the rapid development of the economy and society, civil legal relations have also exhibited a diversified trend of development. The number of civil cases handled annually has rapidly expanded, placing considerable pressure on courts at all levels. To alleviate the pressure on courts and effectively allocate judicial litigation resources, China established a small claims procedure in 2012. However, the application rate of the small claims procedure in practice is far from the legislator's original intention. There are difficulties in its application, especially for parties seeking rights relief in the application of the small claims procedure, which requires further development and improvement. This article is divided into five chapters. The first chapter clarifies the basic concept and scope of application of the small claims procedure by comparing it with the summary procedure. The second chapter elaborates on the current status of relief in China's small claims procedure, points out the main reasons for parties to small claims to apply for retrial, and discovers that the existing problems in the application of rights relief for parties to small claims in China include the single channel for rights relief in small claims and the insufficient civil procuratorial supervision of small claims. The third chapter compares and analyzes small claims procedures outside China. Based on the summary of the previous three chapters, the fourth chapter proposes practical paths for rights relief from a practical perspective. The fifth chapter is the conclusion, summarizing the main conclusions of the article and pointing out the deficiencies and limitations of the research content.

Keywords: Small claims litigation, right to relief, appeal, retrial.

1. Overview of Small Claims Procedure

1.1. The Concept of Small Claims Procedure

The small claims procedure is a special summary procedure, initially written into the Civil Procedure Law during the 2012 amendment. According to Professor Qi Shujie, "The small claims procedure is a special procedure applied by the people's court or specialized small claims court for civil cases with simple circumstances and small claims." [1] The small claims procedure is currently the simplest litigation procedure for resolving simple monetary payment civil disputes with minor disputes among citizens.

1.2. The Difference Between Small Claims Procedure and Summary Procedure

Some scholars argue that, broadly speaking, there is no clear distinction between small claims procedures and summary procedures. The only difference between the two lies in the size of the subject matter. However, beyond the amount requirement, there are strict distinctions between the two in terms of scope of application and prescribed trial duration. For example, small claims procedures are only applicable to simple civil cases involving monetary payment where the facts are clear, the rights and obligations of the parties are unambiguous, and the dispute is minor. Cases involving personal relationships and property rights confirmation are not eligible for small claims procedures but can be handled using summary procedures. Small claims procedures implement a system where the first instance is final and cannot be appealed, whereas summary procedures allow for appeals.

1.3. The Value Orientation of Small Claims Procedure

Japanese scholar Takeshi Kojima believes that "small claims procedures are designed to cope with complex socio-economic environments, and they should fully safeguard the interests of citizens, with specialized institutions applying and adjudicating them." His viewpoint is based on the legislative philosophy of small claims procedures, pointing out the relationship between efficiency value and fairness value [2].

The establishment of small claims procedures aims to ensure that all parties can obtain judicial relief in a convenient and cost-effective manner, thereby safeguarding fairness and justice. [3] Therefore, the value orientation of small claims procedures should lie in both efficiency and justice, as well as inclusiveness. It seeks to achieve a more optimized allocation of limited public resources, so that the allocation results can benefit more citizens [4].

2. The Current Status of Relief in China's Small Claims Procedure

2.1. The Main Reasons for Parties in Small Claims Litigation to Apply for A Retrial

Based on a summary and analysis of cases involving the application of small claims procedure on the website of judicial documents, it is found that the parties involved in small claims applications for retrial mainly have the following three reasons:

(1) The parties are dissatisfied with the applicable procedure of the court of first instance

The vast majority of China's litigation procedures adhere to a two-tiered system, with the second instance being the final one. The concept of "if you don't accept the verdict, you can appeal" is deeply ingrained in the minds of citizens. Some

courts, when applying small claims procedures, fail to provide clear explanations and instructions to the parties regarding the specific processes and trial levels of these procedures. This leads to the parties being unable to recognize the uniqueness of small claims procedures, resulting in them believing that the court has applied the wrong procedure and thus advocating for a retrial.

(2) The court's judgment did not provide sufficient reasoning

The small claims procedure is applicable to cases involving simple and straightforward monetary payments, where the facts are clear. In such cases, the court provides a brief reasoning in the judgment. For objections raised by the litigants, the judgment document merely responds by listing the applicable legal provisions, or briefly summarizes it as "the application of the small claims procedure is not improper" or "the application of the small claims procedure is in compliance with legal provisions". This often leads to litigants filing a retrial petition due to their lack of understanding of the court's reasoning in the judgment.

(3) The original intention of enabling efficient and convenient litigation for the parties has not been achieved

The original intention of establishing and applying the small claims procedure is to facilitate litigation for the parties while alleviating the adjudication pressure on the people's courts. According to the discussion in Chapter 1, although there are strict distinctions between the small claims procedure and the summary procedure in terms of scope of application and prescribed trial time limits, in practice, there is no significant simplification difference between the two in the application of the small claims procedure in the court of first instance. On the contrary, the small claims procedure restricts the parties' right to appeal. This leads to the parties believing that they have chosen litigation as a means, but have not obtained corresponding rights or achieved corresponding effects, resulting in a low sense of identification with the application of the small claims procedure and subsequent applications for retrial.

2.2. The Relief Channel for Small Claims Rights Is Single

Based on the discussion above, we find that the small claims procedure, due to its original intention and value orientation, restricts the right of appeal of litigants. On the one hand, the establishment of the small claims procedure actually places greater emphasis on the efficiency or effectiveness value of justice, advocating for a quicker and more efficient resolution of civil disputes, even if this convenience comes at the expense of some litigants' rights to litigation supervision or relief, that is, restricting their right of appeal. On the other hand, this neglect of the protection of litigants' rights also gives judges significant discretionary power. In judicial practice, both litigants and judges are unwilling or even afraid to choose the small claims procedure due to its first-instance finality and the extremely high rejection rate of retrial applications, which is 80%. Instead, they opt for summary procedures to handle cases. [5] Therefore, using retrial as the sole relief channel for the small claims procedure is inevitably too singular.

2.3. Insufficient Civil Procuratorial Supervision in Small Claims Litigation

The inadequacy of civil inspection and supervision in small claims litigation is primarily manifested in two aspects:

Firstly, the existing protest system is not conducive to the parties' right to protest. In China's existing protest system, the procuratorate and the court are actually placed in an opposing position. When the procuratorate files a protest, it means that it believes there are obvious errors in the court's judgment. The court, on the other hand, uses the protest rate as a standard to evaluate its work achievements. Therefore, in practice, the protest filed by the procuratorate may lead to a conflict mentality of "you protest your case, I judge mine" in the original trial court. Moreover, the ease with which a protest can be filed to a higher court is also a waste of judicial resources, contrary to the establishment of the procedure, and it also leads to a low pass rate for retrial applications.

Secondly, the procuratorial suggestions made by the procuratorate lack sufficient rigidity. Compared to directly filing an appeal, the procuratorial suggestions made by the procuratorate at the same level are clearly lacking in strength. The essence of the procuratorate's proposal to the original court is to have the court negate its own judgment. Due to cost and efficiency considerations, the original court is likely to have conflicting suggestions with the procuratorate. Once the court rejects the procuratorate's procuratorial suggestions, and the procuratorial suggestions are not statutory grounds for retrial, the possibility of restarting the trial procedure is extremely low.

3. Comparative Analysis of Small Claims Procedures Outside the Mainland

We can compare and distinguish the relevant systems of small claims procedures among various countries mainly in the following aspects. First, whether there is a small claims court. Both the United States and the United Kingdom have established small claims courts, while Germany has not set up a separate small claims court, nor has it established a separate small claims procedure. Second, the right to choose small claims procedures, which mainly falls into three categories. One is for the parties to choose whether to apply, as in the United States. Another is for the court to compulsorily prescribe whether to apply small claims procedures, as in Germany, where small claims adopt a hybrid model, stipulating that judges have the right to choose small claims procedures. [6] Japan stipulates that the parties must apply small claims procedures when filing a lawsuit for the first time. [7] The last is a compromise model, which combines both compulsory application by the court and application by the parties, such as in Taiwan, China. Third, whether appeals are allowed after applying small claims procedures. Japan explicitly stipulates that appeals are not allowed but objections are permitted. Germany and Taiwan, China, stipulate that appeals are allowed but with certain restrictions. [8] The United Kingdom has a special strict appeal model, while various states in the United States adopt different models according to their own regulations, while retaining the system that allows the parties to counterclaim.

Therefore, we can conclude that litigants have a significant degree of choice in deciding whether to apply for small claims procedures. Countries allow litigants to appeal or apply for relief through means such as objections, which provides some reference for the legal regulation of China's small claims procedures.

4. The Path to Improving the Relief Rights of Parties in Small Claims Litigation

(1) Establish the "dual relief" standard

Based on the comparative analysis of small claims procedures outside the region in Chapter 3, we can conclude that the trial levels of small claims procedures in various countries mainly fall into two modes: one-trial finality without appeal and limited appeal. The first mode is the current mode in China, which has been found to have defects in practice. The second mode can be directly understood as "allowing appeal" in a certain sense, but this "allowing appeal" does not conform to the original intention of China's small claims legislation, cannot alleviate the pressure on court judgments through convenient litigation, and does not align with China's national conditions.

I agree with the viewpoint of adopting Japan's system of "not allowing appeals but allowing objections" and establishing a "dual relief" standard in China. That is, to establish an objection system in China's small claims procedure. After the court hears the case, if the parties object, they can raise objections within a specified time. The court shall conduct a formal review. If it believes there are indeed objections, the case can be transferred to ordinary or summary procedure for trial. If it believes there are no objections, the court shall make a judgment and close the case according to law.

(2) Strengthen the role of procuratorial organs in initiating retrial proceedings

First, strengthen the review of retrial cases by superior procuratorates. The superior procuratorates should rigorously review the effective judgments of lower courts and make a decision on whether to lodge a protest based on the legitimate judicial rights and interests of the parties. Second, establish a system for reviewing civil procuratorial suggestions. Courts should attach importance to procuratorial suggestions made by procuratorates at the same level. The court's case-filing department can first issue a review result, which will then be submitted to the judicial supervision department for a decision on whether to retry the case.

5. Conclusion

This article discusses the basic concept of small claims

procedure, points out the main reasons for parties in small claims litigation to apply for retrial, analyzes the current situation of the single channel for rights relief in China's small claims procedure and the insufficient civil procuratorial supervision, and compares the legislation of small claims systems abroad. It proposes a path for improving the right to relief by establishing a "dual relief" standard and strengthening the role of procuratorial organs in initiating retrial.

Due to space limitations, this article does not present a detailed summary process for some data conclusions, and the discussion of various points, especially extraterritorial institutional experiences, is superficial and not deep enough, which imposes certain limitations on the research of the article.

References

- [1] Shujie Qi. Discussion on Several Issues Concerning the Establishment of Small Claims Procedure. *Journal of the National Procurators College*. 2012, Issue 1, p. 126-134.
- [2] Xiuming Liu. Commentary and Enlightenment on Japan's Small Claims Procedure System. *Western Law Review*. 2013, Issue 5, p. 112.
- [3] Ying Fang. Research on the Gradual Expansion of Welfare-Oriented Small Claims Litigation - Taking 'Litigation Source Diversion' as the Starting Point. published in "Law Application". 2020, Issue 9, p. 24.
- [4] Rui Huang. Research on procedural safeguards for parties in small claims litigation in China [D]. South China University of Technology, 2023.
- [5] Yusheng Chen. Reflection and Improvement Path of Small Claims Procedure in China [D]. Guizhou University, 2023.
- [6] Chunlan Yuan. A Comparative Analysis of Small Claims Procedures in the Two Major Legal Systems. *Hebei Law Journal*, Vol. 4, 2005, p. 136.
- [7] Xiuming Liu. An Analysis of Japan's Small Claims Procedure and Its Implications. *Western Law Review*, Vol. 5, 2013, p. 113.
- [8] [Taiwan] Liangong Qiu. *Modernization of Justice and Procedural Law*, San Min Book Co., Ltd., 1992 edition, p. 263-267.