

Research on the Judicial Confirmation Procedure of Civil Mediation Agreements

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ABSTRACT

After the revision of the Civil Procedure Law of the People's Republic of China in 2021, the scope of application of judicial confirmation has been expanded, but the effective application of this procedure has not been increased from the actual effect. As a non litigation procedure, it plays an irreplaceable role in the context of the reform of complex and simple separation and the establishment of a sound and diversified dispute resolution mechanism. However, since its establishment, this procedure has been controversial in terms of its nature, effectiveness, and other issues. Although it was ultimately included in the Civil Procedure Law as a non litigation procedure, there are still many shortcomings in its legal norms in terms of application subjects, initiation methods, review standards, etc. Analyze the inherent legal support and practical difficulties of these issues, and improve the connection between moral governance, rule of law, and social governance. The trinity of judicial confirmation procedures maximizes the release of the value of judicial confirmation procedures, which is of great significance for promoting the development of mediation systems, thereby promoting the governance of litigation sources to alleviate court litigation pressure, and improving diversified dispute resolution mechanisms.

KEYWORDS

Mediation Agreement; Judicial Confirmation; Review Criteria; Remedial Measures.

1. INTRODUCTION

The establishment of judicial confirmation procedures is to achieve the value goal of providing parties with diverse dispute resolution mechanisms and optimizing the allocation of judicial resources to improve judicial efficiency. However, the judicial confirmation procedure itself has many problems in terms of application deadlines, review methods and standards, and remedies. Therefore, conducting in-depth research and learning based on this topic has certain theoretical and practical value.

In the theory of civil litigation law in our country, the ways to resolve disputes are divided into litigation channels and special channels, and there is a prominent contradiction of more cases and fewer people in the litigation channels. Therefore, the establishment of a judicial confirmation procedure by the state is of great significance for promoting the development of special dispute resolution channels. Improving the judicial confirmation procedure is conducive to expanding the application of special channels. Diversified dispute resolution also promotes the improvement and development of China's civil litigation law theory, which has important theoretical significance in exploring the value goals of diversified dispute resolution and improving judicial efficiency.

2. OVERVIEW OF JUDICIAL CONFIRMATION PROCEDURE FOR CIVIL MEDIATION AGREEMENTS

2.1. Concept

Because the object of judicial confirmation is the mediation agreement reached by the applicant and the parties to the dispute, it is necessary to first clarify the concept of civil mediation agreement. After the amendment of the Civil Procedure Law in 2021, the scope of mediation agreements that can be applied for judicial confirmation will be expanded to mediation agreements made by legally established mediation organizations. This mediation agreement is a voluntary agreement reached by the parties to the dispute through mediation organizations using persuasion, persuasion, and other means. From this, it can be inferred that judicial confirmation of a mediation agreement is a procedure in which the parties who have reached the above agreement in advance apply to the court with jurisdiction in accordance with the law to confirm the effectiveness of their mediation agreement. The court reviews whether it has been confirmed. Once confirmed, if one party refuses to perform, the other party can apply to the court for compulsory execution.

2.2. Nature

The Intermediate People's Court of Dingxi City, Gansu Province, for the first time, implemented a judicial confirmation procedure for civil mediation agreements, which was officially established in the 2011 People's Mediation Law. Based on this, it can be inferred that the judicial confirmation procedure is a non litigation system that does not resolve substantive disputes, but rather a civil special procedure that reviews the effectiveness of the mediation agreement reached by both parties to the dispute, and then decides whether to confirm it or not.

In addition, with the professionalization and continuous improvement of the mediation system, as well as the development of the economy and society, the application of judicial confirmation procedures has become increasingly necessary. Therefore, the legislative positioning of judicial confirmation procedures has become clearer. The Civil Procedure Law passed in 2012 officially stipulated it in the chapter of special procedures, giving it an authoritative legal status as a non litigation procedure.

3. THERE ARE PROBLEMS WITH THE JUDICIAL CONFIRMATION PROCEDURE FOR CIVIL MEDIATION AGREEMENTS

3.1. Limitations of the Applicant

By examining the current effective Article 201 of the Civil Procedure Law (revised in 2021) and Article 33 of the People's Mediation Law, both require both parties to jointly apply to the people's court with jurisdiction for judicial confirmation of the mediation agreement. In the revised civil litigation interpretation in 2022, the applicant added agents other than the parties involved. There are two issues to pay attention to: first, the parties involved, and second, the parties involved. The concept of "joint application" has caused great controversy in the theory and practice of civil litigation. Some people believe that its establishment is reasonable, while others believe that the conditions for the use of "joint" are very strict and generally difficult to apply. In addition, with regard to the initiation of existing judicial procedures, there is no procedural provision that requires the consent of all parties to initiate, even in the case of non litigation procedures. I believe that there are some areas that need to be improved in the application subject conditions of the judicial confirmation procedure for civil mediation agreements.

3.2. Incomplete Review Standards for Civil Mediation Agreements

Although judicial interpretations have detailed provisions on situations of non confirmation, I believe that this provision is not sufficient to meet the legislative spirit of the judicial confirmation system. The ultimate expectation of parties applying for judicial confirmation is often their expectation for the compulsory execution agreement to ensure that the mediation agreement can be executed normally in the future. Therefore, in the field of private rights disputes, consensus has been reached between both parties under the auspices of the mediation committee. Therefore, the people's court should mainly focus on the content of the agreement applicable to compulsory execution that is reached in the future in the corresponding review, rather than the content of the review of the people's mediation agreement. The people's court's review of the validity of the people's mediation agreement is essentially a confirmation of the existence of private rights by the people's court, which goes beyond the scope of non litigation procedures.

3.3. Incomplete Relief Measures

According to Article 10 of the Several Provisions, if an outsider believes that the mediation agreement confirmed by the people's court has infringed upon their legitimate rights and interests, they may apply to the people's court that made the confirmation decision to revoke the confirmation decision within one year from the date they knew or should have known that their rights and interests had been infringed. However, if the parties or interested parties fail to raise objections within the statutory time limit and the people's court finds that there are errors in the ruling made by applying the judicial confirmation procedure, the people's court has not made any provisions on how to handle it, and the judicial interpretation has not made any provisions. This makes the operation of the program not better cover various situations in judicial confirmation practice, which has certain deficiencies in protecting the interests of rights holders and to some extent limits the application of judicial confirmation procedures, thereby hindering the process of the reform of the separation of complex and simple civil cases and the construction of a diversified dispute resolution mechanism. In the future, the provisions for relief procedures should be refined in the form of legislative revisions or judicial interpretations.

4. SUGGESTIONS FOR IMPROVING THE JUDICIAL CONFIRMATION PROCEDURE OF CIVIL MEDIATION AGREEMENTS

4.1. Optimize the Initiation Method

In the process of the reform of the judicial confirmation procedure, in order to save judicial resources, improve the efficiency of dispute resolution, and meet the needs of the parties for convenient and low-cost dispute resolution, we advocate that the mediation agreement before litigation is reached through mediation appointed by the people's court, and after the consent of both parties, the mediation organization or mediators directly transfer it to the court for judicial confirmation, without the need for the parties to apply for judicial confirmation separately. Because there is a very close relationship between appointed mediation and the court, mediation organizations and mediators often receive training from the court and guidance during mediation. Directly transferring to the court for judicial confirmation will not only not increase the burden on the court, but also reduce the number of litigation cases in the court. After the consent of both parties, the mediation results can be consolidated in a timely manner by directly transferring them to the court for judicial confirmation, making the judicial confirmation mechanism more efficient and convenient.

4.2. Improve the Review Standards

In the reform of judicial confirmation procedures, many courts have explored, generally focusing on written review with hearings as a supplement. This reflects the characteristics of non litigation procedures in judicial confirmation procedures. Due to the lack of universally established social integrity, some parties to disputes may use false mediation agreements and judicial confirmation procedures to harm the interests of outsiders or achieve other improper purposes. To prevent the judicial confirmation of false mediation agreements, when the people's court accepts cases of judicial confirmation of mediation agreements, it shall inform the parties of the legal consequences of applying for judicial confirmation of false mediation agreements and require the issuance of a commitment letter. When reviewing a mediation agreement, if the people's court deems it necessary, it may adopt methods such as a hearing. The people's court may also investigate and collect relevant evidence according to its authority to verify the legality of the mediation agreement.

4.3. Add Provisions on Relief Procedures for Erroneous Court Rulings

According to Article 374 of the Interpretation of the Civil Procedure Law, if the parties or interested parties believe that there is an error in the judicial confirmation ruling of the mediation agreement made by the people's court, they may raise objections within the prescribed period. If the people's court deems the objection to be valid after examination, it shall make a new ruling to revoke the original ruling. But if the parties or interested parties fail to raise objections within the statutory time limit, and the people's court finds that the ruling made by applying the judicial confirmation procedure is indeed incorrect, the people's court that made the original ruling shall refer to the relevant content of the trial supervision procedure in the Civil Procedure Law and make a new ruling to revoke the original ruling.

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