

Civil proceedings with foreign participants in china - from the perspective of digital technology

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Abstract. This article takes the legal rules of digital civil proceedings with foreign participants in China as the research object, and studies the structure and content of the civil digital litigation rule system from the present situation of the foreign-related civil digital litigation rules. The purpose of this article is to study how China constructs the foreign-related civil litigation legal system under the Internet thinking, and how to establish a digital judicial system centred on the litigants. This article discusses from two aspects: the use of digital technology to promote the settlement of foreign-related civil litigation cases, and the characteristics of new foreign-related civil litigation cases produced by digital technology.

1 Introduction

Since the 1990s, as the product of digital technology innovation, digital technology and the Internet have developed rapidly all over the world. The network has the characteristics of borderless and virtual, and digital technology also has unparalleled work efficiency. From the perspective of technological progress, through the rational use of these characteristics, complex legal problems that were difficult to solve in the past can be solved effectively. But things have two sides, new legal problems related to digital technology and the Internet also emerge in endlessly. The above situation is particularly obvious in foreign-related civil disputes [1].

2 Methods and Methodology

The methodology of this research is based on general theoretical analysis, abstract analysis, concrete analysis, logical analysis and functional analysis. The scientific novelty of this study lies in a comprehensive study of the legal provisions on digital litigation in China, and an analysis of the advanced nature of the relevant legislation.

The main regulatory framework of the current research is The Civil Procedure Law of the People's Republic of China and the judicial interpretations of the China Supreme People's Court [2].

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3 Results

The World Bank's report "Doing Business"[3] is a globally recognized standard for the quality of a country's business environment. Among the first-level indicators, "court automation" is an important index representing the quality of judicial procedures. It mainly evaluates the system construction and application of digital filing, digital service and digital payment in civil proceedings. It can be considered that the digital civil litigation, especially the development of digital technology in foreign-related civil litigation, plays a more and more obvious role in improving the quality and efficiency of civil proceedings, optimizing the business environment and participating in the global exchange economy.

3.1 Effort to promote digital technology in civil proceedings with foreign participants in China

Driven by China's policy, the Five-year Development Plan for Informatization Construction of People's Courts (2016-2020) [4] puts forward that "the implementation of digital litigation is an important part of the construction of intelligent courts".

The "Opinions of the Supreme People's Court on Accelerating the Construction of Smart Courts" [5] further makes it clear that "to build a litigation mode of online and offline access, internal and external network interaction, and popularize online mediation, online evidence exchange, online cross-examination, and online court holding functions. Build an Internet litigation platform that supports the full business process."

The second plenary session of the Informatization leading Group of the Supreme People's Court in 2017 proposed to "further promote the development of digital litigation and enhance the scope of application and service level of digital litigation."

Through the investigation, it is found that whether it is the judicial policy of the Supreme People's Court or related meetings, speeding up the implementation of digital litigation and the extensive application of artificial intelligence and big data have been the development goals of China's judicial construction.

In the fifth item of the Wuzhen Declaration of the World Internet Rule of Law Forum, the Supreme People's Court of China proposed to study the impact of the application of digital technology on the litigation process and litigation system [6].

Based on the judicial practice and legal systems of various countries, improve the online litigation system, explore the establishment of online litigation rules such as online trial, digital evidence, digital service and digital files, and promote the improvement of the litigation system in the information age. To a certain extent, this indicates that China will further promote the use of digital technology in foreign-related civil litigation [7].

3.2 The influence of Digital Technology on the components of Foreign-related Civil Litigation cases

The introduction of digital technology into litigation can recombine all parts of civil litigation activities, so as to make the litigation process more logical and develop new and more efficient litigation rules.

From the point of view of the parties in foreign-related civil litigation cases, traditional civil litigation usually has regional and time restrictions, which is not conducive to the settlement of foreign-related civil disputes, while digital litigation effectively solves this problem. it provides great convenience for the litigants. Because of the different legal status, the foreign-related parties will encounter varying degrees of obstacles in the civil proceedings in different countries [8].

Article 5 paragraph 1 of Civil Procedure Law stipulates that foreigners, stateless persons, foreign enterprises and organizations in China have the same litigation rights and obligations as citizens and legal persons of the PRC. Therefore, in addition to the individual identity proof procedures stipulated in articles 523 and 524 of the CPL. In China, the parties to foreign-related civil cases can equally protect their civil rights by means of digital litigation.

From the perspective of litigation rights in foreign-related civil cases, the right of claim for adjudication, as the basic right of litigation procedure, is the highest idea of the civil litigation system of various countries, including the right of access to justice and the right of claim for a fair trial. Seeking judicial decisions through digital technology, especially in foreign-related civil cases, is a more cost-effective way.

For the realization of a fair trial, digitization helps to ensure that the parties can quickly obtain a fair judgment, remote testimony reduces the cost of witnesses to testify, and changes the situation that it is difficult for witnesses to appear in court.

From the perspective of the dispute nature of foreign-related civil cases, digital litigation is more suitable for property litigation. Based on the emphasis on the protection of the personal rights of the parties, the common principles in China are similar to those of other countries in the world. The litigation on personal rights is generally not applicable to digital litigation.

Therefore, if we take the complexity of the case as the judgment standard, as well as the use of digital evidence, at present, the main cases focus on cases with simple facts and less controversy, that is, cases related to digital commerce.

From the point of view of the trial stages of foreign-related civil cases, digital litigation has a certain impact on the filing, court document service, mediation, pre-trial procedure and trial stages. Taking the pre-trial procedure as an example, the function of the procedure is to determine the contentious points of the trial through the full discussion between the judge and the parties, so as to ensure the concentration and efficiency of the trial procedure.

Although there is a judgment on the ability of evidence and other matters in the pre-trial procedure, it is lower than the procedural guarantee of the trial procedure, and it is not a real trial, and the application of digital arrangement of disputes does not violate the principle of direct speech. Therefore, digital litigation helps to improve the efficiency of pre-trial procedure and fully reduce the cost of parties' participation in foreign-related civil cases. The application of digital technology to the trial procedure, which is the core of the civil procedure, is an important symbol of the digital judicial reform.

The Supreme People's Court of China promulgated "Provisions of the Supreme People's Court on Several Issues concerning the Establishment of International Commercial Courts" in June 2018. According to the Organic Law of the people's Court of the people's Republic of China and the Civil Procedure Law of the people's Republic of China, and combined with the practice of judicial work, this judicial interpretation stipulates in detail the issues related to the establishment of the International Commercial Court of the Supreme People's Court. The Article 10 says, an international commercial court may collect evidences and organize cross-examination by using audio-visual transmission technologies or through other information networks [9].

This marks the attitude of the Supreme People's Court towards foreign-related civil cases, through the international commercial court may provide litigation convenience for litigation participants through the electronic litigation service platform, the trial process information disclosure platform or other litigation service platforms, and support case-filing, payment, consultation of case files, exchange of evidence, delivery or opening of a court session through the Internet.

However, the trial procedure of foreign-related civil cases by means of digital litigation has been accompanied by controversy in the process of implementation. The trial of foreign-related civil proceedings is usually conducted by video. the query about this way is mainly

reflected in that the foreign-related parties "participate in the trial" through the network video system, in view of the interaction between the court and the foreign-related parties in the course of the trial, as a result, the judicial behaviour of the domestic trial court touches the objective appearance outside China's border, which is easy to cause the question of "infringing upon the judicial sovereignty of the country in which it is located".

In the "Notice of the General Office of the Supreme People's Court on Issuing the Working Rules of the International Commercial Expert Committee of the Supreme People's Court (for Trial Implementation), 2018", the Supreme People's Court further stipulated that, Mediation may be conducted through videoconferencing or on-site [10].

In order to facilitate foreign-related parties to resolve international disputes through the International Commercial Court of the Supreme People's Court, the 1751st meeting of the Judicial Committee of the Supreme People's Court examined and approved "The Procedural Rules for the China International Commercial Court (CICC) of the Supreme People's Court (for Trial Implementation)" on October 29th, 2018 [11].

Article 4 stipulates that: The CICC shall support acceptance, payment of costs, service, mediation, reviewing case files, evidence exchange, pre-trial preparation, and court session via the Internet, marks that the parties to foreign-related civil cases can complete the various processes of dispute resolution through CICC's official website cicc.court.gov.cn, which really achieves a "one-stop" solution to foreign-related civil disputes, and provides a complete set of legal norms for the settlement of foreign-related civil cases.

3.3 New legal disputes related to the Internet and the Establishment of Internet Courts

As mentioned above, the high efficiency of digital technology and the freedom of the Internet have brought about changes in the judicial system, but they have also given rise to many new legal issues with network characteristics [12].

Compared with the general infringement, the infringement of foreign-related intellectual property rights is more complex. Through the Internet, intellectual property rights circulate around the world, enterprises can accumulate goodwill through the dissemination of trademarks, and works such as literature and art can be spread around the world. Similarly, with the spread of intellectual property rights on the Internet, the infringement of intellectual property rights has led to global damage, these problems make the rights protection activities of the right holders become extremely difficult.

For example, although litigation in the defendant's domicile is beneficial to the plaintiff's rights, this advantage is greatly reduced in the context of network infringement, because the defendant's residence may be far away from the plaintiff.

Secondly, if the defendant's domicile does not have a notarized and reliable judicial system, then the ability to protect intellectual property rights will be very low. In addition, in the network infringement of intellectual property rights, the defendant may not even commit the infringement at his domicile. Therefore, in the context of the Internet, how to determine the jurisdiction of the court over such cases is particularly important.

However, it is a pity that there are no special provisions on the jurisdiction of infringement of foreign-related intellectual property rights in China at present.

China's Law on the Application of Law on Foreign-related Civil Relations has set up a special chapter on the legal application of intellectual property rights. Article 50 stipulates that the liability for infringement of intellectual property rights shall apply the law of the place of protection requested. The parties may also choose to apply the law of the court after the infringement occurs.

This provision seems to indicate that Chinese courts can exercise jurisdiction in the face of foreign-related intellectual property infringement, but because there is no clear provision,

so far no court has claimed jurisdiction over foreign-related intellectual property network infringement cases through this provision.

Article 265 of China's Civil Procedure Law is about the jurisdiction of foreign-related contracts and other property rights and interests disputes, but the expression of this article is very broad, and in judicial interpretation and other provisions, it is not clear whether "property rights disputes" include foreign-related intellectual property disputes.

Therefore, generally speaking, with regard to the court jurisdiction of foreign-related intellectual property network infringement cases, China does not have special legislation and a clear legal basis that can be applied. In fact, at present, the subjects of disputes in intellectual property cases heard by Chinese courts are still mostly intellectual property rights registered or registered in China, especially about patents and trademark rights. It can be said that at present, China has not taken the initiative to regulate foreign patents and trademarks.

In order to effectively resolve the above-mentioned intellectual property rights, as well as Internet-related civil litigation cases related to digital commerce, network services, network finance, and so on, China creatively set up "Internet courts" in Hangzhou, Beijing and Guangzhou for the first time.

On September 3, 2018, at the 1747th meeting, the Judicial Committee of the Supreme People's Court examined and approved the provisions of the Supreme People's Court on several issues concerning the trial of cases by the Internet Courts, and formally formulated a series of norms for the litigation activities of the Internet Courts. As of August 31, 2020, Internet courts have accepted a total of 2487 foreign-related cases and concluded 2320 cases, with a subject value of 240 million yuan, involving transnational intellectual property protection, cross-border e-commerce, international domain name dispute handling and other types [13].

It has taken an important step in protecting the legitimate rights and interests of the parties and other participants in the proceedings, and provided a new choice for the settlement of special foreign-related civil disputes [14].

It is worth noting that at present, the current three Internet courts have no special provisions on foreign parties, so it can be presumed that foreign parties in litigation through Internet courts still follow the provisions of Chapter IV of the CPL and relevant judicial interpretations. The confirmation of identity, the conditions of entrusted lawyers the way to participate in litigation, the choice of trial language and so on are consistent with the standard digital litigation.

4 Discussion

Through the methods of historical research, comparative analysis and summary, it can be said that the current legislation on digital litigation and foreign-related civil litigation in China meets the needs of the current social development.

However, the problem of transnational digital copyright infringement has not been obviously solved at present. As an important part of economic activities, "finance" is still in its infancy in China. The article "The Financial Technologies Boom in China: Prospects and Barriers" (Amiantova I.S., Protopopova O.V., Rusakova E.P., Kairgaliev D.V., Iamalova E.N.) makes a detailed analysis of the opportunities and obstacles that China will encounter in the development of its financial industry in the future [15]. So it still takes time to test whether the use of digital technology and the establishment of Internet courts can effectively deal with foreign-related financial disputes.

5 Conclusion

At present, countries all over the world are committed to introducing digital technology into judicial procedures. China has adopted two strategies on this road, one is to replace part of the original judicial system with digital technology, and the other is to aim at special types of cases. that is, cases involving the Internet, the establishment of special Internet courts. These two models have achieved certain results and promoted China's judicial reform.

In recent years, the Chinese government attaches great importance to the application of digital technology in the administration of justice, and makes every effort to promote the application of digital technology in the process of judicial reform. In foreign-related civil cases, digital technology has a profound impact on the case, which has changed the previous way of handling cases to a great extent. And in Internet-related cases, China has even creatively established Internet courts.

Especially in the foreign-related civil litigation, the digital litigation is reflected in: facilitate the parties to participate in litigation; save judicial resources; reduce the litigation costs of the parties; improve trial efficiency; strong replicability, there is the possibility of large-scale promotion.

References

1. E.P. Rusakova, E.E. Frolova, A.I. Gorbacheva, *Advances in Intelligent Systems and Computing* **1100**, 665 (2020)
2. The Civil Procedure Law of the People's Republic of China (2017 Amendment), available at: http://www.moj.gov.cn/Department/content/2018-12/25/357_182594.html
3. The World Bank, *Doing Business* 2020. <https://www.doingbusiness.org/en/reports/global-reports/doing-business-2020>
4. The Supreme People's Court of PRC, *Five-year Development Plan for Informatization Construction of People's Courts (2016-2020)*, Date Issued : 07-2015, Effective Date : 17-2015
5. No. 12 [2017] of the Supreme People's Court, *Opinions of the Supreme People's Court on Accelerating the Construction of Smart Courts*, Date Issued : 04-12-2017, Effective Date : 04-12-2017
6. The official website of the Supreme People's Court, *Wuzhen Declaration*, available at: <http://www.court.gov.cn/zixun-xiangqing-206221.html>
7. E. Rusakova, E. Frolova, L. Arzumanova, *Modern Global Economic System: Evolutional Development vs. Revolutionary Leap*, 1541 (2021). DOI: 10.1007/978-3-030-69415-9_170
8. E. Rusakova, E. Frolova, *Modern Global Economic System: Evolutional Development vs. Revolutionary Leap*, 1598 (2021). DOI: 10.1007/978-3-030-69415-9_176
9. Interpretation No. 11 [2018], SPC, *Provisions of the Supreme People's Court on Several Issues concerning the Establishment of International Commercial Courts*, Date Issued : 06-27-2018, Effective Date : 07-01-2018
10. No. 14 [2018] of the General Office of the Supreme People's Court, *Notice of the General Office of the Supreme People's Court on Issuing the Working Rules of the International Commercial Expert Committee of the Supreme People's Court (for Trial Implementation)*, Date issued: 11-21-2018, Effective Date: 12-05-2018
11. No. 13 [2018] of the General Office of the Supreme People's Court, *Notice of the General Office of the Supreme People's Court on Issuing the Procedural Rules for the China*

- International Commercial Court of the Supreme People's Court (for Trial Implementation), Date issued: 11-21-2018, Effective Date: 12-05-2018
12. W. Guangyingzi, *Open J. of Legal Science* **8(2)**, 264 (2020)
 13. E. Rusakova, A.Inshakova, E. Frolova, *Modern Global Economic System: Evolutional Development vs. Revolutionary Leap*, 1515 (2021). DOI: 10.1007/978-3-030-69415-9_167
 14. E.P. Rusakova, *Integration of modern digital technologies into the judicial process of the people's Republic of China and Singapore*, State and law, Federal State Budget Institution "Russian Academy of Sciences", 102-109
 15. I.S. Amiantova, O.V. Protopopova, E.P. Rusakova, D.V. Kairgaliev, E.N. Iamalova. *The Financial Technologies Boom in China: Prospects and Barriers*