

“Towards Justice”: Research on the Reform Direction of Substantive Criminal Trial

Lian Liu

Jiangxi University of Science and Technology, Ganzhou, Jiangxi, China

Keywords: Trial-orientated, Trial falsification, Procedural justice

Abstract: Substantive of court trial is the focus of the reform of trial-orientated litigation system. In practice, the phenomenon of court trial falsification exists in a large number. Some judicial concepts such as trial center, procedural justice and open trial have not really been implemented, and the quality of judicial personnel is not high, those are the reasons for the “emptiness of court trial” in our country. Our judicial concept should be changed, make evidence orientated, human rights protected as well as make transparent justice to realize the substantive court trail.

1. Introduction

Promotion of substantive trial, aims to highlight the key role of the trial link in the trial process, is an important part of China's judicial system reform. It closely around the evidence so as to find out the truth closely around the evidence, which not only safeguards the legitimate rights of the accused, but also ensures that the whole trial process and results are monitored by the people.

2. The Current Situation of the Falsification of Criminal Trial Activities

2.1 Formalization of Court Trial is a Common Phenomenon

Nowadays, the phenomena of “cooking” in public security organs, “serving” in procuratorates and “eating” in courts still exist. In addition, the contradiction of “more cases and fewer workers” prevails in grass-roots courts brings enormous pressure to judges to handle cases, therefore, the phenomenon of “opening but not hearing” often occurs. Judges in our country rely too much on the investigation files of public security organs in trying criminal cases. The files not only include documentary evidence, expert opinions, on-site investigation and examination records, but also make the verbal evidence of victims, witnesses, expert witnesses, interrogation contents of investigators and Confessions of defendants written and fixed. In the file, instead of the original evidence, it runs counter to the requirement of the judge's “experience” in handling a case. All these factors lead to the case trial procedure becoming formalization, which severely restricts the litigation rights of the parties, weakens the core function of the trial, and makes it difficult to highlight the independence and autonomy of the judge's trial status.

2.2 The Rate of Sentencing in Court is Relatively Low

In criminal proceedings, the low rate of pronouncing sentences in court is a common phenomenon in China's judicial activities, and there is still a big gap with those developed countries under the rule of law. In the trial activities, both the plaintiff and defendant closely debate the disputed facts, but the judge's judgment process and results are not authenticated and pronounced in court, but given in the form of a “written judgment” after the court, so the hearing personnel only heard the trial process without the corresponding trial results, which brings a sense of “top heavy and not knowing why” leads to a great discount in the social effect of the trial.

2.3 The Rate of Sentencing in Court is Low

In criminal proceedings, the low rate of pronouncing sentences in court is a common phenomenon in China's judicial activities, and there is still a big gap with those developed countries under the rule of law. In the trial activities, both the prosecution and the defense closely debate the

disputed facts, but the judge's judgment process and results are not authenticated and pronounced in court, but given in the form of a “one-paper judgment” after the court, so the hearing personnel only heard the trial process, but did not produce the corresponding trial results. A sense of “top priority, foot priority, not knowing why” leads to a great discount in the social effect of the trial.

2.4 Ambiguous Content of the Pre-Court Meeting

As paragraph 2 of Article 182 of the Criminal Procedure Law stipulated, before the opening of the court, the judicial personnel may call on the public prosecutor, the parties and the defenders, and the litigation agents to understand and hear opinions on questions related to the trial such as avoidance, the list of witnesses appearing in court, the exclusion of illegal evidence, etc. If the substantive trial is conducted in the pre-trial meeting, the defendant's right of cross-examination and self-defense are deprived. Thirdly, it will make the cross-examination of evidence in court become a mere formality.

3. Analysis of the Reasons for the Falsification of Criminal Trial Activities

3.1 Judicial Centralism Has Not Replaced the Concept of Investigative Centralism

In 1979, the Criminal Law clearly stipulated that the three organs of the Public Prosecution Law should perform their respective duties in the process of criminal proceedings. They have both the space for cooperation and the right to restrict each other, which makes the guiding principles of law better implemented. Among them, the Public Procuratorial Law undertakes the functions of investigation, prosecution and trial respectively, but there are also some problems. In practice, in the process of adjudicating a case, the court relies heavily on the indictment affirmed by the procuratorial organ according to the files, which leads to the serious falsification of the judge's trial activities in the whole judicial process.

3.2 Judges Do Not Yet Possess the Professional Ability and Level to Pronounce Judgments in Court

First of all, judges rely too much on pre-trial examination and trial. Once they find problems, they return to the procuratorate for supplementary investigation. After they have a certain degree of confidence in the factual evidence of the case, a court session will be arranged without the habit of thinking of substantive examination. Secondly, many judges have low professional level, lack of competence and cannot control the trial process very well. If only use the trial time, they cannot form psychological conviction, so they dare not adjudicate in court.

3.3 The Effect of Court Hearing is Affected by Factors Such as the Trial Mode of Written Files of Judges and the Uneven Level of Plaintiff and Defendant

Given that the system of witnesses and expert witnesses appearing in court is far from being implemented, some judges have long formed the habit of handling cases relying on investigation files and records. They conduct court investigations by reading witness testimony, victim's statement, defendant's statement and other verbal evidences, and regard them as the basis of judgment. This deprives the defendant of the right to cross-examine in a disguised way. The trial is only a simple confirmation of the investigation files and conclusions.

4. Reform Direction of Substantive Criminal Trial

4.1 Establishing the System of Witness Appearing in Court

In the concept of criminal law, witnesses, expert witnesses, investigators, victims and persons with expertise are called witnesses. Personal evidence and witnesses are different in concept. In general, victims and people with expertise are less willing to testify in court, and the necessity of expert witnesses and investigators to testify in court is relatively low, while witnesses to testify in court is more necessary and feasible. Establishing the system of witness appearing in court is the

most direct and effective way to solve the falsification of trial.

4.1.1 Denial of Pre-Trial Testimony by Witness

Due to the threat of the defendant or the interference of the victim, in some cases, the witness will negate the testimony of the investigator before the court. In this case, the judge should carefully verify the reasons for the reversal of evidence, and make a comprehensive analysis based on the ideological motivation, space-time situation and the legality of the investigators' inquiries when they testify before the court.

4.1.2 Refusal of Testifying in Court by Witness

Given by the lack of a complete system of witness protection in China, witnesses may remain silent because of fear or pressure or falsely claim that they have forgotten for time reason and refuse to testify in court. In such cases, the judge should ascertain whether the witness's pre-trial testimony is supported by other evidence, and the judge can confirm his pre-trial testimony.

4.1.3 Reversal of Testimony Made by Witness

In this case, the judge should strictly grasp the confirmation of testimony. In principle, as long as the witness can reasonably explain the reversal of testimony, the witness's testimony in court should be accepted. Only when the witness's testimony before the court is examined to a certain degree of credibility, and the testimony before the court and other evidence cannot constitute reasonable doubt about the testimony in the court, and other evidence in the case can corroborate each other with the testimony before the court, can the judge accept the testimony before the court.

4.2 Improve the Rate of Judgment in Court

Court judgment refers not only to real-time judgment, but also to the process of public certification. It is the proper meaning of the substantive trial to show the judge's whole process of identifying the focus in the whole trial, convince the public in an open way, from jurisprudence to cleanup, from objective behavior to subjective intent, and analyze the views of the prosecution and the defense one by one. To achieve the above, it is essential to improve the quality of judges. Judges should strengthen learning, implement judicial responsibility system, ensure that judges are responsible for cases for life, and improve judges' sense of responsibility and professional accomplishment.

4.3 Pre-Trial Deliberation Shall Be Transformed from Substantive Deliberation to Procedural Deliberation

The author believes that any substantive review of the facts of the case in the pre-trial meeting is contrary to the legislative spirit of establishing the pre-trial meeting system in the Criminal Procedure Law, and should be denied. Based on the procedural matters involved in the pre-trial meeting, including case jurisdiction, avoidance, witness appearances and exclusion of illegal evidence, the people's court should organize the pre-trial meeting to hear opinions and make resolutions on the procedural issues related to the trial, and should not bring the key substantive issues of the case to the pre-trial meeting for discussion. It should not be a vacuum zone for substantive trial.

5. Conclusion

Due to the limitation of length and academic level, this paper does not fully elaborate on the issues involved, nor does it conduct in-depth analysis and demonstration of the issues already mentioned. However, the author believes that the substantive reform of court hearing must have legal basis, and must be able to maximize the protection of the rights of the parties to equal confrontation. It is hoped that the judicial system reform centered on trial will enable the concept of fair trial to take root, blossom and bear fruit in the process of national rejuvenation in China, so as to truly play a decisive role in court trials and achieve fair justice.

References

- [1] Jiang Wencheng. Analysis of the Path of Substantive Criminal Trial in China. South China University of Technology, 2018.
- [2] Li Ranyi. Research on Substantive Criminal Trial. Southwest University of Political Science and Law, 2017.
- [3] Wu Weijun. Substantive Reform of Criminal Trial: Analysis and Review. Jianghai Academic Journal.No. 06, pp.148-153+239, 2017.
- [4] Zhang Xunhan. Analysis of the present situation and substantive path of criminal trial in the first instance. Legal system and society, No. 03, PP. 93-94, 2019.