

## Analysis on the Integration of Judicial Identification Model and Expert Witness Model

Xinhua Lv

University of Political Science and Law, Shandong Provincial Key Laboratory of Evidence Identification in Colleges and Universities, Jinan, Shandong, 250014 China

E-mail: lxh3002@126.com

**Abstract.** China is a country governed by law, and it is also a people-oriented and developing country. Therefore, the formulation of our judicial appraisal system should be based on the protection of human rights, and taken into account our national conditions to promote the continuous improvement of the national judicial system. Judicial system involves many levels, so we need not only to change the system according to the changes of the country itself, but also to learn from some successful and excellent models of expert testimony and expert witnesses, which are suitable for our own conditions and needs. And the model of judicial identification and expert witness will be effectively integrated to promote the continuous improvement and deepening reform of our criminal judicial expertise system.

**Keywords:** Judicial Identification, Expert Witness, Reference

At a certain level, we can say that our country is a country ruled by law. The law guarantees human rights and sanctions illegal elements to safeguard the stability and security of the country, society and the people. The legal system of a country is constantly rectified according to the changes of the country and society, so that it can better protect the legitimate rights and interests. However, there are still some problems left behind in the macro structure and micro technology of the judicial system that need to be solved. Solving these problems in time and filling the existing loopholes are the only way to promote the perfection of judicial expertise. Only when these remaining problems are better solved can we promote the smooth progress of our judicial work.

### 1. The Basic Principles to be Followed in the Reform of Criminal Judicial Expertise System in China

#### 1.1 Principles Centered on Protection of Human Rights

There are formal provisions on the protection of human rights in our country's constitution, and in many of the party's reports, the human rights issues of citizens have also been elaborated. It can be seen that the concept of protection of human rights has gradually spread in China and has continuously penetrated into all aspects of social life. Therefore, judicial identification, as part of the judicial system, requires continuous reform with the protection of human rights as the core. The judicial expertise procedure has been used in more than 50% of criminal cases in China, and the results of judicial expertise have an extremely important influence on the relevant persons of the case. However, due to the influence of our existing system, the defendant's right to know in this case is generally difficult to be guaranteed. Therefore, the formulation and improvement of the judicial expertise system needs to conform to the development of the state and society, and the content of the reform is carried out with the protection of human rights as the core, so that the human rights can be reflected in the national judicial expertise model

#### 1.2 Principle of Gradualism

The way of reform can be divided into two methods, that is, radical method and progressive method. Radical method refers to the complete denial of the original relevant institutional system and the re-establishment of a new institutional system on a zero basis. It can completely remove the drawbacks existing in the original system, but the risks and costs are relatively large. Progressive method refers to the targeted and planned improvement of existing vulnerabilities and shortcomings on the original infrastructure. Although the risk and cost are relatively small in this way, the process will be longer and the practice will be more difficult. However, after partial reform of judicial appraisal in China in 2005, it has not been able to solve all existing problems, but the reforms that have been proved by practice have alleviated the contradiction between the judicial identification system and the litigation system to a certain extent. It also reduces the cost of reform and conforms to the general rules of reform. Therefore, in the reform of judicial identification in China, the adoption of the gradual reform method is correct and is in line with the development of the judicial system in China.

### 2. The Integration of Judicial Identification Mode and Expert Witness Mode

There are essential differences in the system structure between the model of judicial expertise in continental law system and that of expert witness in the Anglo-American legal system. Experts of judicial expertise in continental law system are regarded as "assistants of judges", emphasizing that judges have absolute control over matters related to expert expertise, while special experts of expert witness model in common law system are regarded as "expert

witnesses"; the ordinary witness is a "professional witness", emphasizing the initiative to pass the relevant matters of identification to the relevant parties. It can be seen that the judicial identification mode of continental law system is completely different from the expert witness mode of the Anglo-American law system. However, since the twentieth century, the trend of the integration of the two legal systems has become increasingly obvious. No matter what kind of model, there are its own shortcomings, and it is difficult to really overcome them completely. In order to solve these problems, we need to dissect existing judicial identification model in China seriously and boldly introduce the effective factors of the expert witness model of Anglo-American legal system into our country, to continuously improve our judicial identification model. And what will be the relationship between the judicial expertise model of continental law system at the structural level and the expert witness model of Anglo-American law system at the technical level? Is there an efficient integration? These two questions will be answered below.

### **2.1 Main Relationship between the Judicial Identification Mode and Expert Witness Mode**

First, for a program or system, the structural level and the technical level together form a holistic approach. The structural level and technical level are not two stages of institutional reform or improvement, but they are carried out at the same time and are the indispensable part of the process of perfecting the judicial identification system. Only in the process of perfecting the judicial identification system, can they play their intrinsic role at the same time, and can the reform or improvement of the system be more content. Secondly, in the process of the integration of judicial identification mode and expert witness mode, it is necessary to improve the judicial identification mode and supplement the expert witness mode, because the judicial identification model of the civil law system is related to a series of macroscopic concepts such as the level of criminal proceedings and the judicial tradition. However, it does not mean that the integration of the expert witness model in the Anglo-American legal system does not have much to do with it. But the reference and integration of the expert witness model has a certain overcoming effect on the shortcomings in the judicial identification model. Therefore, whether it is the judicial identification mode or the expert witness mode, it is necessary to learn from the excellent factors and integrate the excellent factors to overcome each other's shortcomings. Finally, since all the positive factors are absorbed, for the expert witness model, we should introduce the related concepts of the parties' confrontation into the model of judicial expertise, so that the model of judicial expertise can make better use of the effective results of the confrontation system, and maximize the integration of the advantages of the model of judicial expertise and the model of expert witness. Therefore, the fusion of these two modes is not simply a simple addition of the two systems, but an organic combination of institutions.

### **2.2 Reasons for Drawing on the Expert Witness Model of the Anglo-American Legal System**

First of all, from the perspective of the inheritance of the system, since the establishment of the judicial appraisal system in China, it has been regarded as "the assistant of the judge", which is consistent with the basic positioning of the judicial identification mode of the civil law system. According to relevant judicial appraisal regulations in China, whether it is the judicial interpretation specifically for judicial identification matters or the current civil procedure law and criminal procedure law, the judicial identification matters are positioned to serve the judges in the trial of the case. From the point of view of the conclusion of the appraisal, the identification conclusion can be regarded as a kind of evidence in the civil law system, but this method is mostly the judge's own information collection, which will make the judge have self-subjective judgment and highlight the impartiality. Therefore, it can be seen that the identification system in China is formulated based on the judicial identification model of the civil law system. Second, from the perspective of litigation structure, formal litigation in China is based on civil law litigation. In the judicial system of the judicial identification mode of the civil law system, in the court, the referee has an absolute strong position in the litigation right, and the judge controls the entire content and rhythm of the entire trial. The relevant parties to the complaint are in a secondary position in the trial, especially the right for the defendant to run the right to appeal is narrow. In the case of the expert witness model of the Anglo-American legal system, lawyers accusing the two parties are often lingering. From the above two reasons, we can know that we can't rush to introduce the expert witness model of the Anglo-American legal system. Instead, we should gradually learn from the positive factors in the expert witness model to promote justice on the basis of the judicial identification model of the civil law system to promote the gradual integration of the judicial identification model and the expert witness model.

## **3. The Feasibility of Drawing on Expert Witness Model of Anglo-American Legal System**

Whatever the legal system, there will be some "gap". This "gap" does not refer to the loopholes in the legal system, but refers to the existence of excellent factors that can accept other laws to better improve themselves. From the trend of integration of judicial identification model and expert witness model, we can see that although the two models are quite different, they leave a gap for each other and prepare the space for their better integration. First of all, there are values such as respect for the protection of human rights and procedure in both the model of judicial expertise in continental law system and that of expert witness in the Anglo-American legal system. Such a concept, in fact, has been in line with each other. Further analysis shows that there is not much difference between the model of judicial expertise and the model of expert witness. The two models are not the opposite, but the value used is different, instead of the difference in concept. The fusion of patterns provides a basis. Secondly, nowadays, the trend of integration of judicial identification model and expert witness model is becoming more and more obvious, and both them will have their difficulties and shortcomings in operation. Therefore, through the integration of judicial identification model and expert witness model,

we can learn from each other's strengths, make use of each other's strengths, and combine their own strengths to overcome their own problems. Finally, from the reform of the legal system in China, we can see that the mode of judicial expertise is constantly improving. Since 1996, China has made some changes in the pattern of judicial expertise, and actively introduced the confrontation mechanism of expert witness pattern, which has a certain role in promoting the pattern of judicial expertise.

### 3. Conclusion

It can be concluded from the above explanation that we need to fully grasp the relationship between judicial identification mode and expert witness mode. Under the circumstance that the judicial identification mode is the main mode and the expert witness mode is the supplement, the basic mode structure of the judicial identification mode is guaranteed to remain unchanged, and the positive factors of the expert witness mode are actively introduced, so that the two modes can be combined organically, and the better development of the integration of the judicial identification mode and the expert witness mode can be promoted. Especially in recent decades, the trend of the integration of the judicial identification model and the expert witness model has become increasingly apparent. Therefore, to correctly grasp the relationship between the two modes, we can continue to develop on the right path in the right way.

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