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硕士学位论文

家庭暴力司法救济研究

——以福建法院为例

Research on Judicial Relief of Domestic Violence

—Take the Fujian court as an example

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摘要

在中国几千年的传统文化礼教里，对“家”这个概念的理解通常只是认定为是私域管理空间不可受外来力量窥视。这也可以解释我国为何长期缺乏一部针对家暴的专项立法。而去年三月起出台的《反家庭暴力法》改变了这一现状，表明了我国保障公民基本人权、肃清家暴隐疾的决心，也代表着我国依法治国向前迈进的一大步。而新法的出台只是第一步，要想检验反家暴法是否有效最终还要从其救济效果来看，尤其是法院的司法救济。在当前家暴形势严峻而民众又对司法救济有强烈渴望时，加强对法院救济方式、特征、途径等的研究，为完善法院的反家暴司法救济工作提供一套可行性方案，具有重要的现实意义。

本文分为引言、正文（四章）及结论，主要内容如下：

第一章主要为家庭暴力司法救济的概述。首先从主体、客体、行为方式三个方面对我国家庭暴力的定义进行阐述并介绍了我国《反家庭暴力法》的特征；其次，介绍了我国法律对家暴的救济规定，包括三部分：第一、在《反家庭暴力法》尚未出台前的各类别及阶位的法律、司法解释，第二、《反家庭暴力法》对家暴不同类型救济的规定，第三、新法出台后地方法立法中针对家暴救济的相关规定；再者，介绍了法院的司法救济在反家暴工作中的必要性；最后，介绍了家庭暴力司法救济的原则。

第二章主要为福建法院在处置家庭暴力案件的经验做法。首先，从试点创新反家暴审判机制、建立反家暴外部联动机制、建立反家暴内部联动机制、加大反家暴普法宣传力度这四个方面介绍了福建法院开展反家暴司法救济工作的经验做法；其次，佐以图表对城厢法院涉家暴案件审理情况的现状进行了介绍，并对目前法院在审理涉家暴案件中常遇到的争议焦点进行分析。

第三章主要为法院在开展反家暴工作中存在的困难和不足之处。主要从反家暴审判机制不健全、立法不完善、家暴案件取证难、人身安全保护令执行难、法制宣传不到位这几个方面进行问题分析。

第四章主要对我国反家暴的司法救济工作提出相应的建议和对策。主要从健全反家暴审判机制、完善立法、完善证据制度、完善人身安全保护

令、加强法制宣传这几个方面进行探讨并提出对策。

关键词：家庭暴力；审判机制；司法救济；

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ABSTRACT

In the traditional culture of thousands of years in China, the understanding of the concept of "home" is usually only identified as private domain management space can not be peep by external forces. This can also explain why our country lacks a specific legislation for domestic violence for a long time. The Anti-Domestic Violence Act, which was introduced in March last year, changed the situation, demonstrating the determination of our country to protect the basic human rights of citizens and to eliminate the domestic crisis. It also represents a major step forward in the rule of law. The introduction of the new law is only the first step, in order to test whether the anti-domestic violence law is ultimately effective from its relief effect, especially the judicial relief of the court. In the current situation of domestic violence and the public has a strong desire for judicial relief, to strengthen the court relief, features, ways to study, to improve the court's anti-domestic violence judicial relief work to provide a feasibility program, with important Practical significance.

This article is divided into introduction, text (four chapters) and conclusions, the main contents are as follows:

The first chapter is mainly an overview of judicial relief for domestic violence. This paper introduces the definition of domestic violence in our country from the three aspects of subject, object and behavior, and introduces the characteristics of our country's anti-domestic violence law. Secondly, it introduces the remedial provisions of our country's law on domestic violence, including three parts: First, in the "anti-domestic violence law" has not yet before the introduction of the various categories and steps of the law, judicial interpretation, second, "anti-domestic violence law" on the different types of domestic violence relief, third, the new law after the introduction of the method The necessity of the judicial relief of the court in the work of anti-domestic violence is introduced. Finally, the principle of judicial relief of domestic

violence is introduced.

The second chapter is mainly for the practice of Fujian court in dealing with cases of domestic violence. First of all, from the pilot innovation and anti-domestic violence trial mechanism, the establishment of anti-domestic violence external linkage mechanism, the establishment of anti-domestic violence internal linkage mechanism, increase anti-domestic propaganda propaganda in four aspects of the Fujian court to carry out anti-domestic violence judicial relief work The author analyzes the status situation of the case involving the domestic violence in the Chengxiang court, and analyzes the controversial focus of the current court in the case of the case involving the domestic violence.

The third chapter is mainly for the difficulties and shortcomings of the court in carrying out anti-domestic violence. Mainly from the anti-domestic violence trial mechanism is not perfect, the legislation is not perfect, domestic violence cases difficult to obtain evidence, personal safety protection order is difficult to implement, legal publicity is not in place these aspects of the problem analysis.

The fourth chapter mainly puts forward the corresponding suggestions and countermeasures to the judicial relief work of our country's domestic violence. Mainly from the sound anti-domestic violence trial mechanism, improve the legislation, improve the evidence system, improve the personal safety protection order, strengthen the legal publicity of these aspects to explore and put forward countermeasures.

Keywords: domestic violence;Judicial mechanism; Judicial relief

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