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硕 士 学 位 论 文

小额诉讼程序研究

Research on Small Claims Procedure

赵淑明

指导教师姓名: 齐树洁 教授

专业名称: 法律硕士

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内容摘要

在法治国家,民众的利益无大小。小额事件如何处理决定了人民对司法的信赖程度以及法院的公信度。在当今世界性司法改革的浪潮中,简化诉讼程序,提高诉讼效率是各个国家民事诉讼发展的共同趋势。小额诉讼程序以低成本、高效率的诉讼方法解决了大量的小额纠纷,保障了人民接近司法。其产生是民事诉讼改革的必然要求。

笔者在借鉴国内外小额诉讼程序已有研究成果的基础上,论述了小额诉讼程序的基本涵义、特征及它的产生发展,对小额诉讼程序存在的法理基础进行探讨,并比较分析世界各国小额诉讼程序的立法例,在阐述我国构建小额诉讼程序必要性的基础上,对我国构建小额诉讼程序提出了一系列具体设想。除引言和结语外,全文分为四章。

第一章:小额诉讼程序概述。首先,介绍小额诉讼的概念与特征,产生与发展;其次,通过对小额诉讼程序与简易程序的比较分析,得出小额诉讼程序是本质上不同于简易诉讼程序的诉讼程序,二者不具有替代性;最后,论述我国设立小额诉讼程序的必要性。

第二章:小额诉讼程序之法理基础。司法权利是公民的基本权利,但当事人实质上获得司法救济受到了障碍,当事人面对的是诉讼程序繁琐、诉讼费用高昂等问题,小额诉讼程序的存在为公民接近司法提供便捷之路。利用小额诉讼程序审理小额纠纷,是对司法资源恰到好处的合理使用,也符合诉讼经济性原则。

第三章:小额诉讼程序之立法例。本章从比较法的角度,介绍美国、英国、 日本及我国台湾地区小额诉讼程序的立法概况,并比较分析其共性及差异性,得 出小额诉讼程序的基本规律,为我国构建小额诉讼程序奠定了基础。

第四章: 我国建立小额诉讼程序之探讨。首先,介绍我国部分基层法院简易程序改革的实践经验并结合两个小额诉讼案例进行对比分析;其次,论述我国建立小额诉讼程序的可行性;最后,提出构建我国小额诉讼程序的具体设想。

关键词:小额纠纷;小额诉讼程序;简易程序

ABSTRACT

People's interests are very important in legal society. The way to deal with small claims disputes determine the extent of people reliable to justice and court .Simplifying of the procedure and rising of the litigation efficiency is the result of the development trend that simplifies continuously of the civil procedure. The legal procedure of small claims can solve a great quantity of small claims disputes with low cost and high efficiency and guarantee the ordinary citizens able to access to justice. The produce of this procedure is the requirement of reform of civil jurisdiction.

The author, based on the analysis of the studies of small procedure both at home and abroad, expounds the basic concept, features and process of the legal procedure of small claims; studies the legal principles of small claims procedure, and introduces the legislation of small claims procedure of other countries. At last the thesis puts forward the suggestion about the establishment of small claims procedure in our country. The thesis is constituted by preface; text and conclusion, except preface and inclusion, there are four chapters in the text.

The first chapter: the introduction on small claims procedure. Firstly, it demonstrates the concept and the features of small claims procedure and briefly introduces the origin of small claims procedure .Secondly, through comparing small procedure and summary procedure, we conclude that small claims procedure is a unique procedure, different from summary procedure and the summary procedure can not take place of small claims procedure.

The second chapter: the basic principle of small procedure. This part makes clear of basic principle of small claims procedure. The author mainly illustrates petition rights of judicial protect, theory of corresponding fees and principle of proper allocation on judicial resources and principle of trial within reasonable time. Making good use of small claims procedure is proposal to employ judicial resources and conform to principle of economical.

The third chapter: The legislation of small claims procedure. This part adopts the methods of comparative analysis introducing the legislations of American, English, Japanese and Taiwan district respectively; then, we get common conditions and

different conditions of them, so this part is a base on which to establish small claims procedure in our country. At last the author demonstrates the issue on theories about small claims procedure.

The fourth chapter: The studies of establishment of small claims procedure in our country. This chapter is divided into four parts. part one, introduces the practice experience of civil summary procedure in our country; part two, the author analyzes two small claims cases, then point out that it is possible to design small claims procedure in our country; part three, the author analyzes the feasibility of establishing the small claims procedure in our country; part four, some suggestion which based on the advanced experiences of other country and the states of our country are put forward on how to design the small claims procedure in our country.

Key Words: Small Claims Disputes; the Legal Procedure of Small Claims; Summary Procedure

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引言

现代法治社会,司法救济在诸多救济途径中处于最为重要的地位。司法救济应当公平。所谓公平,不仅要求救济程序上的公平,更重要的是指司法救济程序能为所有人之所接近,不能存在利用上之不平等。"如果只有富人才能付得起钱,利用这种制度,那么即使用公式精心保障的司法制度也基本上没有什么价值可言。"^①小额诉讼程序作为一种便民的司法救济程序能为所有需要之人所用,体现司法救济之公平公正原则。

小额诉讼程序的产生是各国为适应社会发展变化,满足新的社会要求而在司法改革中创立的一种新型程序。在国外,小额诉讼程序的发展较早。第二次世界大战后,西方社会迅速发展,诉讼数量与日剧增,特别是 20 世纪 60 至 70 年代,西方社会进入了案件增长的高峰期,原有的诉讼制度已无法满足新的社会需求,面对堆积如山的案件和高昂的诉讼成本,西方各国纷纷采取对策解决这一矛盾,设置了专门的小额诉讼程序。小额诉讼程序以其合理的内在结构和"便捷、高效"的诉讼理念受到了各国的欢迎。作为一种新型的程序,小额程序所追求的是一种非诉化的效果,而且比简易程序更为简便、快捷、灵活,能够迅速地审结案件,节省当事人和法院的诉讼成本。有利于实现司法的大众化,使小额纠纷的当事人能够"接近正义"(access to justice),获得法律救济。^②

各国设立小额诉讼程序将小额民事案件从普通民事案件中分离出来,以利于小额民事案件适用高效,快捷的诉讼程序,使一般的普通民众普遍能够得到有程序保障的司法服务。小额诉讼程序通过对司法资源的合理配置,有效地解决了大量的社会纠纷,同时又具有对传统民事诉讼程序补偏救弊的功能。正因如此,才备受当今世界各国的重视。

在我国,随着社会经济的快速发展,社会主义法制理念深入人心,人们的权利意识日益增强,即使是小额权利纠纷当事人也希望能通过司法程序来加以解决,由此导致了人们对司法的需求日益增多。由于我国简易程序自身存在着固有

① [意]莫诺·卡佩莱蒂. 当事人基本程序保障权与未来的民事诉讼[M]. 徐昕译, 北京: 法律出版社, 2000. 40.

② 齐树洁. 民事程序法研究[M]. 北京: 科学出版社, 2007. 174.

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