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硕士学位论文

民事庭前会议制度研究

Research on the Civil Pretrial Conference System

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内容摘要

纵观全球民事诉讼领域近二十年的发展状况，面对爆发式增长的民事案件与原有民事诉讼制度存在的诸多问题，各国都在积极推动民事诉讼制度改革。自进入 21 世纪以来，我国先后于 2007 年与 2012 年对《民事诉讼法》进行了修正，加强对民事审判方式的改革，强调庭前准备程序作用的发挥，注重提高庭审的公正性与效率性。民事庭前准备程序的有效运行是提升庭审质量与效率的前提，但我国一直未形成完善的庭前程序。直至 2015 年《最高人民法院关于适用〈中华人民共和国民事诉讼法〉的解释》（以下简称《民诉法解释》）颁布后，精细化的民事庭前准备程序——民事庭前会议制度才得以确立，这对于促进我国民事审判公正与效率的全面提升将发挥积极作用。

第一章主要阐明民事庭前会议的概念、通过进行新旧法对比与总结司法实践经验，介绍庭前会议的形成背景，同时明确其价值与功能定位。民事庭前会议的价值主要表现为正当性与效率性，且具有导向庭审、程序分流、争点整理、固定证据、化解纠纷等方面的功能。

第二章通过对美国审前会议制度与德国民事庭前准备程序的考察，探索可供借鉴的经验做法和理念，进而分析出有利于我国民事庭前会议制度完善的启示。为实现庭审的集中化审理，在兼顾诉讼效率的同时注重司法公正的实现，许多国家的民事诉讼立法中，都设有较多与庭前会议功能类似的审前程序。由于受国情与司法语境等不同因素的影响，各国对类似于庭前会议的审前程序的规定存在一定的差异。

第三章主要是对《民诉法解释》第 225 条进行规范性解读。民事庭前会议制度的功能具有高度应然性，为最大限度地发挥庭前会议的应然性功能转变为现实性功能，必须对《民诉法解释》关于庭前会议的规定进行深入研究解读。了解庭前会议的功能是怎样的，应当如何实现这些功能，并探究审判实践中可能存在的问题，进而提出切实可行的完善方案。

第四章通过对司法实践的考察，指出我国民事庭前会议制度在保障当事人诉权的行使、凸显程序价值、规范司法行为、缓和社会矛盾等方面的

成效，以及在案件适用范围、主持者身份、可操作性、启动方式、相关配套措施等方面存在的问题。

第五章在明确民事诉讼庭前会议制度定位的基础上，本章针对第四章所提出的民事庭前会议适用范围不明确、职权主义色彩过重、可操作性较差、易造成法官预断等问题，提出相应的完善建议。

关键词：民事诉讼；庭前会议；审前程序；制度完善

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ABSTRACT

Throughout the development of global civil procedure in last twenty years, in the face of the many problems with the original civil litigation system and the explosive growth civil cases, many countries are actively promoting the reform of civil procedure. Since entering the 21st century, the Civil Procedure Law was amended to strengthen the reform of civil trial way in 2007 and 2012 in China, emphasizing the function of pretrial procedures, to improve the fairness and efficiency of the trial. Effective operation of civil pretrial procedure is the premise of the trial to enhance the quality and efficiency, but the perfect pretrial procedure has not been formed in China. Until 2015, Civil Pretrial Conference System was established by the Supreme People's Court on the application of People's Republic of China Civil Procedure Law interpretation (hereinafter referred to as Civil Procedure Law Interpretation) , which will play a positive role in promoting the comprehensive upgrade of the fairness and efficiency about the civil trial.

Chapter 1 This chapter is mainly to clarify the concept of Civil Pretrial Conference System, by comparing the old and new law and summary of judicial practice, forming the background of Pretrial Conference, while clearly positioning its value and function. Value of the Civil Pretrial Conference System is mainly for the legitimacy and efficiency, and it also has the function of directing the trial, the diversion program, finishing point of contention, fixing evidence, resolving disputes and other aspects.

Chapter 2 According to investigating the American pretrial conference system and the German Civil pretrial procedure, to explore the experience for reference practices and ideas, and then analyze useful inspiration to improve Civil Pretrial Conference System. To achieve centralized hearing of the trial, focus on the efficiency of proceedings and the realization of justice, many countries have set pretrial proceedings in civil procedure law. Due to the impact of conditions and contextual of justice, there are some differences on

the provisions of pretrial procedure between these countries.

Chapter 3 This chapter is mainly on describing the Article 225 of Civil Procedure Law Interpretation. The function of Civil Pretrial Conference System has a high degree about ought, to maximize the Pretrial Conference ought function into reality features, we must understand what should be the functions of Pretrial conference, and how to achieve these functions. What we should is to explore the possible problems in trial practice and then put forward practical refinement of the program.

Chapter 4 According to investigating the judicial practice, point out the performance in Civil Pretrial Conference System, such as protect the exercise of the right to appeal the parties, highlight the values of the program, norm of judicial conduct, ease social conflicts and so on.

Chapter 5 On the basis of positioning Civil Pretrial Conference System, For the problems in last chapter, such as the scope of Civil Pretrial Conference System is not clear, the inquisitorial color is too heavy, poor operability, and so easy to cause the judge to prejudge problem issue, and then corresponding some suggestions .

Key words: Civil Procedure; Pretrial Conference; Pretrial Procedures; System Improvement

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