

## **The Study of Pronouncing Judgments in Court in Civil Litigation**

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**Abstract:** There are two modes in adjudicating judgments in China's civil procedure act amendment 2012, namely sentencing judgments in court, or after court. The second mode is usually defined to the judges announce judgments on a fixed day in the near future. The above two ways of pronouncing are all have their application in judicial practice, but their application is interactive and in a mutual competition. In a long time, there exists the problem that the rate of pronouncing in court is extremely low while the utilization rate of pronouncing after court is increasingly applied inadequately. In addition, the current law has little concrete stipulations on appointed time of pronouncing, therefore there are some defects in judicial practice. In consideration of above problems, the Supreme People's Court, with local people's court at different levels, has undertaken a series of reform measures to change the current situation. In recent years, the judicial reform of China is under way, which aims to perfect the management system of judicial staff, the judicial responsibility system and improve the professional guarantee of judicial officials and, finally, modify the administration mode of personnel, money and material of courts. All above reform measures are designed to guarantee judicial independence, among which, the management of judges has directly pushed forward the establishment of independent status of judges. Nowadays, some courts are beginning their reform of establishing a more effective trial, among which a very important reform measure is to pursue judgments pronounced in court. Therefore, in the current judicial environment, to perfect the system of sentencing judgments in court is feasible and meaningful, thus the relevant research is worth getting more focus from both academic circle and practice field.

**Keywords:** pronouncing judgments in court, civil litigation, judicial reform, pretrial procedure, public trial, principle of concentrating hearing.

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### **INTRODUCTION**

Trial is the core of litigation procedure, while in a court, the most exciting moment is the pronouncing part of the judgment, which can embody the judicial authority to the maximum extent, too. Sentencing judgments is a crucial part in civil procedure, it is of great importance to realize public trial and legal procedure. Speaking of its definition, it means that a judgment should be announced to the two parties and audience on the same day when the trial is finished [1]. And the day cannot be a new day which is arranged to announce a judgment solely, namely another day different from the day on which court investigation and discussion finished. In practice, to improve the rate of pronouncing judgments in court, some regional courts choose a way to avoid the stipulations. They even count the cases which have been withdrawn and those cases which have reached reconciliation by the two parties in. Currently, neither the practice field nor the academic circle, the system of pronouncing judgments does not getting its deserved diligence. It seems that as long as there is a judgment, then it is insignificant that how it is announced. Be that as it may, in a long time, some scholars are still published a large number of articles to

insist carrying out pronouncing judgments in court, for the reason that they think pronouncing judgments in court is consistent with the spirit of constitution and it can play better role in governing the society. Moreover, the system of pronouncing judgments in court is significant to make the open trial come true and improve the judicial authority as well and so on [2]. Although some scholars are always calling on the perfection of pronouncing judgments in court, in a word, they just can influence the legislation and judicial practice from a very little aspect. Along with the development of the society and the process of the judicial reform, the current judicial environment is nearly enough to carry out the system of pronouncing in court. It will have new meaning in studying the system of pronouncing judgments in court. From another aspect, to establish the system of pronouncing in court can promote the judicial reform and perfect the socialist legal system construction. This text is aimed to analyze the reasons of impeding the system of pronouncing in court and put forward some feasible suggestions to perfect the system.

### **The justifications for perfecting the system of pronouncing judgments in court**

Why is it necessary to perfect adjudicating judgments in court? According to China's current legal rules and practice, there are two modes in pronouncing judgments, namely pronouncing judgments in court, or after court. The two ways of sentencing judgments are all have their range of the application in judicial practice, but their application is interactive and in a mutual competition. The current law in our country has little concrete stipulations on appointed time of pronouncing, therefore there are some defects in judicial practice. To be specific, in a long time, there exists the problem that the rate of adjudicating judgments in court is extremely low while the utilization rate of pronouncing after court is increasingly applied inadequately [3]. This situation demonstrates that adjudicating judgments in court has its own meaning in civil litigation. Theoretically, there are some functions and values to perfect pronouncing judgments in court, they are as follows.

First of all, pronouncing in court is consistent with the regularity of trial. The regularity of trial usually includes the principle of judging cases according to the facts and the relative law, the judges should be neutral, the final judgments can be executed by the nation and so on [4]. According to the ordinary people's general understanding, a result or a judgment should be made after the trial investigation and discussion were finished. Of course, some special cases should be excluded. An open trial includes two aspects, that is public court investigation and discussion, and open pronouncing as well. Normally, after a court investigation and discussion, an open and timely judgment is needed, which is consistent with regularity. The discussion of collegiate bench should be proceeded exactly after the trial, rather than an additional day, a very far day sometimes, which definitely is not a normal phenomenon.

Secondly, pronouncing in court can realize the two values, which are both the justice and the efficiency. On the one hand, pronouncing in court can guarantee the memory of the judges stay fresh and suitable to discuss the case, as a result that only the court trial can influence the verdict of the judges. In addition, adjudicating judgments in court can avoid some intentional intervention from some leaders or acquaintances of the judges. So the justice of the case can be promised from some extent. On the other hand, adjudicating judges in court naturally demand a timely judgment, which should be issued on the exact day on which the court investigation and discussion have been finished. This condition can guarantee the efficiency of the trial. Thus pronouncing in court can realize the combination of both justice and efficiency. Also, in this

way, the timely judgment can reflect the court's authority and the parties will accept the result easier.

Thirdly, pronouncing in court can embody the principle of public trial and the tenet of concentrating hearing. The above two principles are through the whole civil litigation all the time, especially in western countries. In China, the principle of open trial was set up years ago, but the latter tenet is not written into our law up to now. At present, the tenet of concentrating hearing is been propagated in our entire litigation, not only the criminal trial, but also the civil litigation. To be specific, a public trial can assure the parties' right of supervising so that a lot of corruption can be avoided. An open trial is usually a premise of justice so the tenet has been recommended all over the world. Moreover, the principle of concentrating hearing requires a continuous trial. The member of collegiate bench cannot be changed ever or the trial should be started over again. Besides, this tenet also demands that a judgment should be issued as soon as possible once the trial ends. With respect to those relatively simple cases, adjudicating their judgments in court are feasible and necessary [5].

The last but not the least, adjudicating judgments in court can improve the legal consciousness of the visitor's seat for they can watch a whole trial and see the judgment after a complete period. In judicial practice, most judgments will be announced in an unfixed time after the trial, so the visitor's seat hardly know the actual results of those cases, thus the function of spreading law cannot be achieved. In addition, for the two parties, pronouncing judgments in court may lead to some agitation, actually, that is inevitable as a result of failure. But if the parties have rage, the judges can explain the reasons which made the judgment come into being. It is a better way to solve the problem, in which the judge can bring out the analysis of the parties' evidence and their claims before a formal sentence, which can give the two parties some mental preparation, and also, this behavior reflects that the collegiate bench has made the judgment according to their proofs and claims only.

### **The present condition and the reason analysis of pronouncing in court**

As above mentioned, there are two modes in adjudicating judgments in China's civil procedure act amendment 2012, namely pronouncing judgments in court, or after court. In current judicial practice, there exists the problem that the rate of adjudicating a judgment in court is extremely low while the utilization rate of pronouncing after court is increasingly applied inadequately. As to the reasons, in the first place, the relevant regulation is too blurry. Even if a judge intends to pronounce a judgment in court, there are little rules he can apply. Also, the current law system does not give

the judges any encouragement to use it so the judges would not risk announcing judgments in court. Secondly, the pretrial procedure is not mature enough in our country so that a result cannot be formed in court. Generally speaking, in China, a case will go through at least two or three trials because of there are always some new evidence or some intentional measures which are put forward by the two parties to delay the trial. Another reason is that the judicial ability of the judges may be inadequate. Now that the institution of judicial responsibility is been promoted largely, thus the judges would not willing to pronounce judgments in court. They would rather leave the case to be discussed after court and at the same time it can be discussed by more judges. So far, the cases which entered into litigation or courts are increasing more and more, some regional courts even have arranged the trial time to the next year. The judges may not have enough time to organize the evidence-exchange or fix the disputable focuses. Therefore, many supporting systems are needed to build the institution of pronouncing in court.

#### **The introduction about some extraterritorial institution.**

Comparing with foreign regulations from other countries or districts in the two law systems will help to perfect China's system of announcing judgments. In civil law countries or regions, take Germany for example, article 310th of the Civil Procedure Law of Germany stipulates that a judgment should be pronounced on the day which the parties finished discussion or a prescribed day, which in general, cannot exceed three weeks only if there is an essential cause or the case is too difficult to judge. The Civil Procedure Law of Germany also stipulates many other concrete rules to be applied by the judges. Moreover, some other countries or regions like France or Taiwan and Macao district have this kind of items, too. Their stipulations have a common feature, which established two modes of adjudicating judgments and at the same time, there are detailed rules about the two ways. In a word, their rules are more feasible and operable. In common law countries, for example, in America, in their judicial practice, the judges have their rights to decide if a case will be pronounced in court according to the court trial. In America, there exists something special which results in pronouncing judgments in court, which is exactly the jury. Some cases in America will apply the jury to arbitrate the fact then the judges can apply law to sentence. The jury has its characteristics according to its formation and American trial rules. The jury requires that all jurors should be insulated through the whole trial phases until they have made their verdict. This jury system decides that many cases which have applied the jury have to announce judgments in court otherwise the litigation cost will become too high [6]. In Britain and Canada, their rules are similar with America's,

especially in some simple cases, they usually announce the judgments in court.

#### **How to perfect China's system of pronouncing judgments in court?**

From the progress of China's judicial reform, it is possible to pursue pronouncement of judgments in court. However, to enact this institution, many supporting systems are needed. Generally speaking, this system needs a modern and scientific judicial environments, it is an ideal pattern in civil litigation in the near future. To be specific, the following are some measures we should put into effect to establish the system.

##### **1.The precondition is to apply the principle of concentrating hearing and one trial only**

The principle of concentrating hearing and one trial only are the premise and basis of pronouncing judgments in court. These tenets demand that a case should be mature enough to go through a trial. In this trial, all evidences and claims will be judged and analyzed, the two parties cannot put forward some other new proofs or claims. The trial just provides a flat for the judges and the two parties and a conclusion should be made in court. If the trial is discontinuous or concludes too many small trials, the pronouncement of judgments in court cannot be realized.

##### **2.The scope of applying the system of pronouncing judgments in court.**

Obviously, every case has its feature, and the difficulty and complexity are normally of great difference, too. Therefore, not every case is suitable to be pronounced judgments in court. We need to clear and definite the scope of those cases which can apply the system of pronouncement of judgments in court. There are two aspects we should discuss, one is the scope of procedure, the other one is the scope of the cases. Firstly, the second instance being the final instance is China's litigation system. A case will possibly go through two instances as long as one party refusing to obey the first judgment and appeal to the higher court. The main problem here is that whether or not a case which is in the second instance should apply pronouncement of judgments in court because the second instance usually is the final procedure for one case and it seems to need more time and cautiousness. As far as I can see, a case which is in the second instance is not deemed to be more difficult. As the above mentioned, a case will go through two instances as long as one party refuse to obey the first judgment and appeal to the higher court. In practice, the cases in the second instance are not always more difficult, it is not proportional. Therefore, which stance that a case in should not decide whether the case will apply pronouncement of judgments in court or not. As long as

a case has the conditions to be judged, then it can be pronounced in court.

For the scope of cases then, now that not every case should be pronounced in court, we need to decide which cases' judgments are suitable to be announced in court. It is worth noting that there are some documents or judicial interpretation issued by China's Supreme People's Court. They stipulates that there are four kinds of cases should be discussed by judicial committee, namely that their judgments cannot be made only by the collegiate bench. These cases include some cases of new type, some extremely difficult and complex cases and those cases which may trigger big group events and so on. These cases obviously are not suitable for pronouncement of judgments in court for their particularity. Actually, the courts are special judicial institution since all conflicts get together in courts and the courts have to take some extrajudicial factors into consideration, which is beneficial to construction of harmonious society. Except these special cases, other cases' judgments should be pronounced in court. In consideration of the pattern has not been built so far, we can make it come true step by step. A general principle is those cases which are simple or involved in little money should be pronounced in court. Currently, we have established the mechanism of bypass flow of cases, in which those simple and clear cases or cases which are involved in little money are picked out to apply simple procedures, we call them simple procedure or small claims procedure. These cases' judgments should be announced in court as much as possible.

### **3.The other supporting systems of pronouncing judgments in court.**

According to above-mentioned principles of concentrating hearing and one trial only, the first supporting system we need is a relatively well-run pretrial institution. The concept of pretrial procedure is not existed in Chinese civil procedure act amendment 2012, but the law included a chapter which was named the first ordinary trial, in which the preparation before trial was included in Chapter Twelve. From the above rules, we can know that in China's present pretrial procedure in civil litigation, apart from some investigation and review by the court, the rest of pretrial preparation work are all procedural matters [7]. It is hard to guarantee the integrity and continuity of the court trial. A pretrial system must be strong enough to support the trial so that the court trial can proceed continuously. In the pretrial procedure, all evidences and claims should be cleared and put in order, especially the disputable points of the two parties and the evidences they provide. The purpose of the procedure is to get rid of irrelevant matters, analyze and immobilize disputable points. A plummy pretrial procedure can embody the democracy of litigation, and the main function of ending disputes can be realized

and the judicial efficiency can be improved to a large extent. Moreover, pretrial procedure can further improve the judicial efficiency through making full preparation for the following official trial.

To make the system of pronouncing in court become feasible, civil cases in courts must go through a series of diversion system, so a kind of careful and refined classification is necessary. At present, a standard is under way, which acquires that simple cases should get their judgments as soon as possible and those complicated cases should be tried with more cautiousness. Corresponding to this, we have simplified procedure for plain cases and small claims procedure for some cases which involved in little money. For some extremely complex cases or some new type of cases, the judges cannot be required to make a perfect judgment in a short time. The diversion system will not only offer possibility to pronouncing in court, but also improve the judicial efficiency largely.

In my opinion, under China's current judicial environment, the judicial reform is a turning point to establish the trial teams, which is the best way to optimize the judges' judicial ability. In general, a trial team should at least consist of a judge, a judge assistant and an engrossment clerk. In some regional courts, there are two or three judge assistants to help the judge deal with some procedural affairs and a part of facts. With the development of society, many outsourcing stenographers have appeared on the courts. They are employed by some commercial companies but work in courts. The appearance of stenographers has reduced the workload of engrossment greatly so that a court team can devote their time on cases. If there is an excellent court team, the judge will have fewer trivial matters, as a result, he can input his energy totally to his cases.

The last vital point is to establish a more scientific evaluation system for the judges. For the moment, many judges do not dare to adjudicate judgments in court since they are afraid once there are some mistakes in their judgments. For instance, if one case get revoked and demand the retrial procedure, the judge's bonus will be influenced. In fact, some factors which lead to a false case are not always caused by the judge. On the condition that our judges have a low salary, a more scientific evaluation system for the judges should be established.

### **CONCLUSION**

At present, the judicial reform is moved forward like a raging fire and is in process of its full swing. Some previous problems like approval system of cases have been canceled and eliminated. The judicial reform is making the independent status of the judges possible and so many supporting systems like pretrial

procedure and court teams and so on are all laying the foundation of announcing judgments in court. Despite that these supporting system are not mature and perfect enough, we can start with some simple cases and those cases involved in little money, namely our simplified procedure and small claims procedure. Once the judicial reform succeeds, the system of adjudicating judgments in court will be realized in the near future.

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