Study on Argumentation Ability of Judicial Adjudication

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Research achievement of the young people subject "Study on Occupational Ability of Grass-root Judges" in *Qujing Normal University (Project NO: 2009QN002)*

Abstract

Argumentation of judicial adjudication is an important means to acquire approval of a client and improve acceptability of a judgment. However, the judicial adjudication in China still has a lot of disadvantages in terms of adjudication of determination of fact, collection of evidence and application of law. Hence, it has been increasingly urgent to enhance the argumentation ability of judicial adjudication from the perspectives of macro system and micro argumentation technique.

Keywords: Judicial adjudication, Affirmation of fact, Evidence, Application of law

Carrier of argumentation of judicial adjudication is the adjudicative document, which contains court decision and adjudication. At the end of the 80s and at the beginning of the Twentieth Century, China made judicial trial reform. However, its reform on judicial adjudicative document started in 1998. Especially, "The First Five-Year Reform Outline for the People's Court" that was promulgated in 1999 definitely proposed accelerating the pace of reform in adjudicative document and improving quality of adjudicative document. In the past few years, courts at all levels have made instructive explorations in reform of adjudicative document, such as, holding a class of training for adjudicative document, conducting activities of evaluation on quality of adjudicative document and binding together the court verdicts of a court in a entire year in a book form, etc. After the year 2000, the Supreme People's Court tried to publicize excellent court adjudicative documents in such publications as "People's Court Daily", "Gazette of the Supreme People's Court of the People's Republic of China" and "Reference and Guide to Civil Trial". Nonetheless, from an analysis of quality of the judicial adjudication argumentation in China is still low and the ability of judges in argumentation of judicial adjudication still needs to be intensified, especially grass-root judges.

1. Disadvantages of the Ability of Argumentation of Judicial Adjudication

Argumentation of judicial adjudication falls within the scope of study of the concept of legal argumentation in its narrow sense and is argumentation of a judge in the judicial process to apply to the law, affirm the fact of a case, determine the evidence and make a final judgment, with the purpose of pursuing validity and legitimacy of the verdict outcome of a case. Argumentation of judicial adjudication has its own particularity in terms of subject (judge), object (fact of a case, evidence, application of law and verdict outcome) and time of occurrence (the judicial verdict process). A legal norm has the features of universality, abstractness and principle. The trial work of a judge is to apply these legal norms into specific cases that differ in thousands of ways. Hence, a judge needs to make judgment and confirmation on the fact and evidence of a case and make a justified judgment and publicize the reasons for the judgment on the basis of correct application of legal norms so as to acquire approval of the client involved and the societal community, reduce appeal or complaint and enhance judicial efficiency. For the time being, argumentation of judicial adjudication in China is manifested in the following several aspects.

1.1 Insufficient argumentation of fact

Argumentation of judicial adjudication in the part of fact has not received enough attention. The court has

subjective tendency and limited objective evidence in the part of determining a fact and the argumentation in not determining a fact is not sufficient. In an adjudicative document, a judge often firstly lists the statement of the client about the fact and then explains negation of the court on the fact of the case. The part of fact of a judicial adjudication adopts the following expression model "It is ascertained after the hearing that...". This expression model is not clear in representing the dispute focus of the fact, lacking in response to proposal of the client and is difficult to express the logical correlation between determination of the fact and the evidence.

1.2 Insufficient argumentation of evidence

Evidence is an important foundation for a judge to make the final outcome of judgment and is one of the important targets in legal argumentation of judicial adjudication. In a judicial adjudication, it is often that determination of evidence is not paid enough attention and in most cases, the pattern of listing content of evidence is adopted. Usually, the adjudicative document does not argue about the reasons for the evidence determined and relationship between the fact to be verified and the evidence as well as the probative force is not explained. So far, the client only knows about the outcome of a judgment and has no way to know about the reasons for whether the evidence is adopted or not, making nothing of the function and probative force of a specific evidence in a case. As in Paper of Civil Judgment of People's Court in Gulou District, Nanjing, China, 2007, the expression pattern of judicial practice in determining the evidence is stated as follows, "The above fact is stated by the clients of both of the two sides, including admission note and medical fee bill presented by the plaintiff, court testimony of Chen as the witness applied by the defendant, electronic document and transcription materials about record of interrogation of the plaintiff and record of interrogation of the defendant submitted by the local police station, authentication report about the authentication entrusted by the court, report of conversation of the court, report of the court holding a court and affirmation of the evidence." In this way, the evidence proves what the fact is and what functions it performs in determination of adjudication and fact, but the clients can make nothing of the logical relationship between the evidence and the outcome of the judgment.

1.3 Insufficient argumentation of application of law

Application of law is the central aspect of judicial adjudication. The law here not only refers to rules of law, but also contains principles of law and spirit of law, etc. For those cases with easy case details, the application of the law has no dispute or has little dispute. However, as for those cases in which application of law has controversy, the judge has to demonstrate the reasons for his application or non-application of a certain legal norm. For instance, "The procuratorate believes that Zhang ganged up with Zhu to cheat Wang (actually, an ambisexuality) in the excuse of travelling to sell her down in Lixin County, Anhui Province. The behavior of the two has violated details (trafficking of women) in Item One Article 240 of "Criminal Law". Yet, the lawyer believes that the behavior of Zhang is not consistent with the legal characteristics of constitutive requirements for the crime of trafficking of women, so the crime of trafficking of women is not established." (Zhang Zhicheng, 2005) Thus, the judge ought to offer sufficient argumentation for application of a legal norm according to the dispute focus of a case. However, the patterns of a judicial adjudication in application of the law are common occurrence to enumerate the articles and items of the law. "According to Article xx of "General Principles of the Civil Law of the People's Republic of China" and Item x of Article x in "Criminal Procedure Law of the People's Republic of China" and Item x of Article x in sothing more than listing sources of the articles and items, lacking in attribute of argumentation.

2. Macro Dimension to Enhance Quality of Argumentation of Judicial Adjudication

In order to enhance acceptability of judicial adjudication, it is necessary to study from the macro and micro perspectives, not only focusing on factors of the system and people, but also paying attention to training about micro argumentation skills and methods.

2.1 To cultivate the concept of argumentation of judicial adjudication

One of the motives for the theory of argumentation in judicial adjudication to get vigorously in a global sphere is that it is based on change of knowledge in the role of the judges and it acknowledges value judgment of the judges and the legal status of filling up the legal loophole. However, "It is a fact that the courts in China were isolated from the modern Yamen, so it has relatively deep color of authoritarianism... They not only are unable to argue, but they are unaccustomed to arguing." (Hu Minmin, 2004) In addition to formal transcripts of court verdict in the case file stored in the courts in China, there is also a report on settling a lawsuit. This report contains detailed introduction to handling of a case and has relatively detailed argumentation analysis about reasons for the court verdict. According to such a report, the actual ability of analysis and argumentation of grass-root court judges who have relatively low culture and business level is much stronger than the ability of the grass-root court judges judged according to the existing court verdict. (Zhu suli, 2001) With development of judicial reform and the economic society in China and with deepening of consciousness of democracy and rights,

demand of the society on argumentation of judicial adjudication is highlighted day by day. Thus, we have to take into sufficient consideration of the potential of the judges' ability of argumentation in judicial adjudication, change the traditional concept of the judges in argumentation of judicial adjudication through training and publicity, get a clear understanding of the importance and necessity of argumentation in judicial adjudication and mobilize the subjective initiative of judges' argumentation in judicial adjudication.

2.2 To make separation of a case

In argumentation of judicial adjudication, we should distinguish argumentation standards between an easy case and a hard case. As for those cases in which the fact of the cases is easy, there is little dispute and application of law is definite, there is no need to make argumentation with great trouble. On the contrary, as for those cases with great disputes, judges ought to make detailed argumentation on the focus of disputes so as to eliminate controversies among the clients. At present, both grass-root and intermediate court judges almost handle simultaneously multiple cases each day which include both easy cases and hard cases. There are even some judges who handle 100 cases each year and sometimes even more than 100 cases. Therefore, it is unlikely to realize to make sufficient and detailed argumentation on every adjudicative document. So far as the adjudicative document of Gazette of the Supreme People's Court, it is some hard cases that can reflect the sufficient capacity of argumentation level. Hence, work of the judges ought to be separated and judges who handle easy cases and hard cases ought to be distinguished. One sort of project may distinguish in a holistic way within the court those judges who handle easy cases and hard cases and take into full consideration of the amount of work and business capacity of judges, altering the judges at any time if necessary and enabling those judges who possess high argumentation ability to have the opportunity to enter the team of handling hard cases. As for those judges who are a newcomer in the court, they should, first of all, undergo exercise for handling ease cases. Another project may distinguish judges within the collegiate bench who handle different cases. At the same time, this project may make a different between different judges in terms of the promotion opportunity and allowance. This may help judges to develop towards the direction of elite. Besides, establishment of the system of law clerk should be promoted vigorously.

2.3 To strengthen social supervision

Adjudicative document is the carrier of argumentation in judicial adjudication of the judges and is the medium for the clients, lawyers and social community to supervise together on the adjudication behavior of the judges. "Today when is the era of network, a task which was unlikely to be fulfilled in the past becomes extremely easy to finish, namely, to publicize timely and without polishing on the network the full text of all court verdicts (of course, except for those that are explicitly stipulated by the law not to publicize) of all courts at all levels across the whole country." (Southern Weekend, 2003) With development of network technology, quite a large number of courts all over the country have made efforts to upload the court verdict, but the number is limited. Argumentation of judicial adjudication embodies the quality of conversation and debate of the courts. Until now, judicial reform has been carried out for more than 30 years, the argumentation level of the judges has been greatly improved and public adjudicative document has had definite foundation. However, so far, vigor of announcement of adjudicative document of the courts has been still limited. All courts across the country select some legal precedents to upload to their website so long as they have one. Simultaneously, there has never been a court that has uploaded all the court verdicts of all cases without any modification. (Zhu Suli, 2000) For the time being, except for Gazette of the Supreme People's Court and some network which select adjudicative document after screening and processing, most books about study of judicial adjudication do not display the true features of adjudicative document. Thus, in order to construct the society with rule of law, it is a must to strengthen supervision of the society on behaviors of judicial adjudication of judges and enlarge vigor of publicity of judicial adjudication document.

3. Micro Route to Enhance Quality of Argumentation of Judicial Adjudication

Law is an occupational technique with strong expertise. Hence, it is a realistic choice for enhancing quality of argumentation to improve the micro skills of the judges in legal argumentation.

3.1 To reinforce pertinence of argumentation

Argumentation is the important content in judicial adjudication. Thus, in addition to argumentation on the fact, evidence and legal outcome of a case, detailed argumentation is required for the dispute focus of a case according to specific situation of a case to reflect the logical relationship between the fact, evidence and the verdict result and reflect the relationship between proposal of the clients and affirmation outcome of the court. Reinforcement of pertinence of argumentation ought to pay attention to selection of the argumentation proposition and argumentation method, namely, to distinguish the main idea and difficult point of fact argumentation, evidence collection argumentation and legal argumentation. Specifically speaking, fact

argumentation has to be conducted around elements for confirming a legal relationship and should avoid, by all means, undiscipline. Argumentation of evidence affirmation should respond to attribute of the evidence and argumentation should be conducted from the perspectives of evidence source, evidence form, probative force and its relationship with the fact to be affirmed. By contrast, argumentation of application of law should be conducted from the legal norm and subsumtion of face of a case. Especially in application of law in a hard case, argumentation should respond to the dispute focus of the clients on the application of law and explain reasons for application of the law.

3.2 Argumentation should be sufficient

Sufficient argumentation is the necessary requirement to enhance quality of argumentation. Legal argumentation of judicial adjudication ought to be sufficient, while sufficiency should be based on requirement of a proposition. The standard of sufficient argumentation means that it can satisfy requirements for affirming the evidence and exclude fuzziness in affirmation of the evidence; it can realize standard of fact affirmation in that it is able to prove through investigation the fact, discern between the right and the wrong; it can explain reasons for application of law in that it can reveal correlation between the fact of a case and application of law, give explanation for determination on the nature of the verdict, measurement of penalty and punishment and exclude suspect in legitimacy of the verdict result. Of course, there is no direct correlation between sufficiency of argumentation and the number of words. Even in an extreme situation, redundancy of words may, instead, become an impediment which restrains understanding. Thus, it can be found that argumentation sufficiency is for the target (proposition) of argumentation and deems the comprehension ability of the common people as the scale of measurement.

3.3 To strengthen logicality of argumentation

Judicial adjudication document is the carrier of the result of handling a case by a court. Therefore, argumentation ought to specify the language, avoid mistakes in language and prevent ambiguity. On one hand, legal argumentation has to apply legal technical terms to give explanation to a legal issue. On the other hand, legal argumentation should take into account of the reading group of adjudicative document, being both popular and standard. Meanwhile, meticulous logical deduction by reasoning is the necessary basis for arguing of judicial adjudication and the essential attribute of judicial document. Explanation of the verdict reason per se is a meticulous logical deduction by reasoning. In the first place, the proposition ought to be clear and explicit. Argumentation of law is the process to seek for legitimacy and validity of the proposition. In the process of argumentation, the implication expressed by the proposition has to be clear and explicit, since only if the proposition is clear and definite, can we have a definite object in view. In the second place, the proposition has to be unified. Otherwise, it may give rise to the mistake of clandestine change of argumentative issue or transfer of the argumentative issue. In the process of argumentation, it violates unification of the proposition not to demonstrate the original proposition, but, instead, to demonstrate a certain judgment with more or less assertion than the original proposition. In the third place, argumentation should be in order and of definite hierarchy. Generally speaking, the claim of the plaintiff should be prior to that of the defendant and the third party and action in chief is prior to the counterclaim and the same is true in writing the major body of a verdict (He Liangbin, 1999) In the meantime, we ought to deal with hierarchy of argumentation in a flexible way according to the specific situation of a case and should absolutely not rigidly adhere to the set pattern. In the fourth place, we ought to pay attention to the logical relationship of the argumentation in the context holistically, with natural and close connection which reveals the logical relationship between the fact, evidence, legal norm and verdict outcome of a case, avoids rigid and mechanical argumentation in a set pattern so as to strengthen persuasive force of argumentation.

References

He, Liangbin. (1999). On Reasons for a Court Decision. People's Judicature, (12).

Hu, Minmin. (2004). Law Demonstration in the Court Verdict. *Journal of Henan Administrative Institute of Politics and Law*, (4).

Paper of Civil Judgment of People's Court in Gulou District, Nanjing, China. (2007). NO. 212 Yichuzi of People's Court in Gulou District, Nanjing.

Southern Weekend. (2003). May 8.

Zhang, Zhicheng. (2005). Logical Thinking and Judicial Practice. Beijing: Peking University Press, 229.

Zhu, Suli. (2000). Status Quo, Causes and Way out for Professionalization of Judges in Grass-root Courts. *Journal of Comparative Law*, (3).

Zhu, Suli. (2001). Behind the Court Verdict. CASS Journal of Law, (3).