

Direction and Value of the Judicial Identification Reform

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ABSTRACT When the reform wave sweeps the old judicial expert system, the cause of our judicial expertise is led to a new era. The direction of the reform arouses the thinking of the value of judicial evidence, which is of great significance to the clear identification of the nature of justice, promotion and improvement of judicial system and the proceedings, and to solution to the difficulties it faces. Judicial activities is an activity of litigation. Its scientific nature makes it different from the general litigation activity, therefore judicial expert evidence has dual attributes, which are scientific and legal. Judicial fairness is of primary value in judicial expert activities, which aims to symbolize and pursue justice and fairness. Judicial efficiency is the inevitable content in the judicial value, and trying to minimize the cost in time, economy and ethical activities is another pursuit of judicial expert service. At present, in present Chinese judicial system reform, the drawbacks of judicial expert system are the main reasons for the system disorder. To solve the real problems fundamentally in the reform of the judicial expert system and management system, it is necessary to construct a new order system in purpose of fairness and efficiency, to protect the neutrality, independence, objectiveness, and science of judicial expert evidence, which is the manifestation of scientific value. Reasonable allocation of resources and establishment of nonprofit are the requirement of efficiency of the judicial expert activity.

KEY WORDS Expert evidence; Judicial justice; Judicial efficiency; Judicial order.

I. INTRODUCTION

With the deepening of the reform of the judicial identification system in China, the discussion on the judicial identification system has once again become a hot topic for legal scholars. Firstly, systematically exploring the deep-seated concept of judicial identification activities and systems—value pursuit and balance is rare; secondly, this paper proposes that the coexistence and balance of multiple values are the proper meaning of judicial identification order, and it is original to talk about it combined with the judicial identification of real problems. By constructing a relatively systematic and complete research system of judicial appraisal value, this paper attempts to use the multi-value pursued by judicial appraisal as the theoretical framework, and analyzes the legal theory and value basis of forensic appraisal based on the research results of domestic and foreign judicial identification models and systems. Based on the objective problems and real cases in China's judicial practice, the paper explores the value orientation that China's identification system should adopt, that is, how to construct an appraisal legal order from the perspective of value, hoping to provide some theoretical basis for judicial appraisal legislation and institutional reform. It is of great

significance to clarify the nature of forensic identification, to promote the improvement of the judicial system and litigation procedures, and to solve the practical problems faced by current judicial identification activities. Judicial appraisal activities as a kind of litigation activities, its scientific nature makes it different from the general litigation activities, so judicial appraisal has the dual nature of science and legal.

With the deepening of the reform of judicial authentication system in China, the discussion on the judicial identification system has once again become a hot topic for legal scholars, but the value pursuit of judicial identification hidden behind the judicial identification system has fundamentally solved the reform objectives of the judicial identification system and direction problem. It is of great significance to study the value of forensic identification, and the nature of judicial identification activities is closely related to its value pursuit.

2. THE SIGNIFICANCE OF STUDYING THE VALUE OF JUDICIAL APPRAISAL

It is necessary for the author to solve the problem whether it is necessary to weigh the value of the identification activity. There are some practical problems in the existing identification system

and order, such as multi-head identification, repeated identification, conflicting identification conclusions, and unclear identification of identification institutions, etc., which are more or less related to the identification value orientation. Therefore, the discussion of the value of identification is of great significance to the regulation of judicial authentication system reform and judicial identification activities.

2.1 Helping to Clarify the Nature of the Identification Activities and the Positioning of the Identification Body

At present, China's appraisal activities tend to be absolute and authoritative in judicial practice, but at the same time they are changing to the party's confrontation mode. A correct understanding of the value objectives of judicial appraisal activities can promote the development of identification reform to pursue justice and balance efficiency, effectively avoid superstition, rely too much on appraisal activities and time-consuming and laborious, waste judicial resources. At the same time, the reform measures such as the neutralization of the appraisal institution and the separation from the authority department are also to better realize the value objective of the party's free and fair appraisal. The clear goal of this goal is to help solve the role of the appraisal organization and avoid the abuse and over-extension of the appraisal rights. The practical direction of pursuing economic interests.

2.2 Helping to Promote the Reform of the Judicial System and Litigation Procedures

Xu Jingcun (2005) holds that judicial appraisal has always been regarded as one of the investigations in China's Criminal Procedure Law and the judicial identification has always been a privileged field of the investigation, so that the investigation agency's 'self-examination' obtains a legal package. The original provisions of the judicial system and procedures have been unable to adapt to the nature and value pursuit of judicial appraisal. The reform of the judicial appraisal management system reflects the value pursuit of judicial justice and litigant rights. On the other hand, it also proposes the revision and improvement of the related Criminal Procedure Law. As Wang Junmin (2006:143) holds, without perfect litigation legislation and without sense of procedural justice, strengthening the management of judicial appraisal in the judicial appraisal activities can only be reduced to the form reforming, but cannot improve the quality of judicial appraisal and ensure the real judicial justice. The value concept behind the judicial appraisal system has far-reaching significance for promoting the reform and improvement of the judicial system and litigation procedures.

2.3 Helping Solve Many Practical Problems of Forensic Identification

Judicial authentication systems and procedures currently have many practical problems. In the reform and implementation of judicial identification, we must face these problems and clearly deal with them, and we must consider the root of the actual

problems. In fact, many of the existing problems are based on the ambiguity of the identification value target. For example, Huang Yin (2007:2) thinks that, the original multi-system, multi-level and relatively independent judicial appraisal institutions, due to the different functional departments of the governance, the different scale of the judicial appraisal institutions, different technical equipment, different identification strength, different scope of appraisal and procedures, and different charging standards, easily encounter problems of dispersal of personnel, insufficient funds, low level of appraisal, mutual suspicion and wrangling, and the occurrence of false and wrong cases; it is easy to cause scope and regulations for judicial appraisal. The misunderstanding of the article." It is precisely because of the neglect of the efficiency value of the identification activities that results in the waste of judicial identification resources such as manpower, material resources and financial resources.

3. THE BASIC ATTRIBUTES OF JUDICIAL IDENTIFICATION

3.1 Judicial identification being a combination of legal and scientific attributes

The basic attribute of judicial appraisal activities is the fundamental nature of the judicial appraisal activities and other activities, which determines the value pursuit of judicial appraisal. Different scholars have different interpretations on the nature and characteristics of forensic identification, but the main points of view focus on two different aspects of understanding: First, the judicial appraisal activities are regarded as part of judicial activities (litigation activities), emphasizing the law of judicial appraisal nature. For example, the traditional criminal litigation legal opinion often regards the judicial appraisal activity as part of the investigation activity. Chen Guangzhong (1999:299) believes that the appraisal is described as: "the investigating agency assigns or hires an expert with expertise to carry out research and scientific identification and identification of findings of identification in order to ascertain the case in certain circumstances of the case. Li Yuhua & Yang Junsheng (2005:6) hold another view that judicial identification is a scientific activity, emphasizing that science is the most fundamental attribute of identification activities. For example, some scholars believe that the methods and means of judicial appraisal are scientific; the conclusions are that they can withstand scientific tests; judicial appraisal only solves a certain specific fact problem, and does not solve legal problems. The point of view, whether it is considered that the judicial appraisal activity is a purely scientific activity, or whether the judicial appraisal is regarded as an independent judicial activity or administrative activity, is not enough to summarize the essential characteristics of the judicial appraisal activity, and there is a certain one-sidedness.

The essential characteristics of judicial appraisal should combine the above two. That is to say, judicial appraisal has the

dual attributes of science and law, which is the unification of the two. Holding this kind of viewpoint is more conducive to analyzing the characteristics of judicial appraisal, revealing the essential laws of judicial appraisal, thus clarifying the value pursuit of judicial appraisal activities, and establishing the reform direction of judicial appraisal system. Professor Huo Xiandan (2005:60) believes that judicial identification is neither an administrative act nor a judicial act, but a technical protection and technical aid behavior for judicial activities. Dr. Xu Jinghe (2005:92) believes that scientific and legal nature are the basic attributes of judicial appraisal, and other attributes are attributes derived from the basic attributes of forensic identification. Judicial identification still has some characteristics, such as the neutrality and objectivity requirements of forensic identification, but these scientific characteristics can be determined by judicial identification activities. Legal attributes are derivative from the fundamental attribute. In addition, Jiang Lihua (2007:2) said that some scholars believe that the essence of judicial appraisal is an evidence method, and the appraisal conclusion is legislated as a kind of litigation evidence. Then, the court can be judged freely and should be used as evidence method. This definition, directly from the perspective of identifying surface forms, does not reveal the difference between the identification and the general proceedings and the evidence obtained, and is also an external form of the legal nature of the identification activity.

3.2 The Significance of the Duality of Judicial Identification

The basic attributes of forensic identification determine that judicial identification activities are different from general legal activities. According to the provisions of the law, the conclusion of the appraisal is a kind of litigation evidence. Of course, it must conform to the rules of evidence of the law. At the same time, the laws and regulations also have many provisions on the judicial process of the appraisal activity. From this perspective, the judicial appraisal activities are in compliance with the law and the general characteristics of the program. However, in the judicial appraisal activities, the subject of identification as a person with specialized skills does not mean that it is necessary to understand and engage in judicial practice. The process of appraisal activities does not necessarily have a clear operating procedure of law, but follows certain law science.

The basic attributes of forensic identification distinguish judicial identification from general scientific activities. There are big differences between scientific rules and legal rules, and we must find a point of convergence under the law in judicial identification activities. For example, the period of judicial appraisal prescribed by law is two months, but many special problems require repeated experiments, and time cannot be estimated. Zhu Fumei (2005:2) holds that science often provides clear answers to court or other major issues, but some experts provide ridiculous scientific data interpretation or no scientific evidence at all, therefore, science may not be able to resolve

litigation or arbitration disputes as a judicial appraisal. Huang Zhiwei (2006:31) writes, in an Anglo-American legal system, whether scientific knowledge can enter the court in the form of expert testimony is judged by judges according to the rules of evidence. Identification of the applied science is subject to many limitations, such as the statute of limitations, the purpose of the lawsuit, and the conditions for the examination of the materials. Therefore, it is quite different from the general scientific test.

4. JUSTICE BEING THE PRIMARY VALUE OF JUDICIAL APPRAISAL

Justice is the primary value of judicial appraisal, and judicial appraisal activities should reflect and pursue the identification of justice and the identification of fairness. The scientific nature of judicial appraisal activities determines that the justice value of judicial appraisal activities is different from the general litigation activities, but should include the concept of scientific justice. Scientific justice, procedural justice and substantive justice are the three dimensions for identifying the value of justice. There is a conflict and balance between the three. Equity means different levels of equal choice for different subjects participating in judicial appraisal activities, and there are certain mutual restrictions on the choice rights of judges, parties and appraisers. There are major differences between the two major legal systems on the qualification system of appraisers, the initiation method of appraisal activities, and the trial and verification of appraisal conclusions, but these do not prevent the appraisal activities from being part of the judiciary and litigation and intrinsic program requirements. As with all litigation procedures, the legality of judicial appraisal activities is its essential attribute, and it is also the fundamental basis for distinguishing it from other scientific experiments and measurement and identification. The legal provisions of countries for judicial appraisal are largely procedural.

The core of procedural justice in forensic appraisal is the service referee, which is to facilitate the fairness of the referee. This is actually serving substantive justice. Under the guidance of this goal, we should clearly define the direction of judicial reform and the implementation of specific legislative systems, namely, judicial justice. The use of appraisal conclusions is to understand the facts of the case, in order to satisfy the realization of substantive justice, but on the other hand, the application of the appraisal conclusion is also related to the issue of procedural justice. Professor Zhang Weiping (2005:126) of Tsinghua University believes, if the enough focus on procedural justice can not be given in the identification of cases, then the legitimacy of the identification conclusion itself will be greatly affected, and it can be said that the application of identification is mainly procedural issues. Professor He Jiahong (2005:54) of Renmin University of China believes that, the standardization of judicial appraisal reflects the spirit of the rule of law and meets the

development needs of the legal system. In terms of standardization, the author believes that it should contain two aspects, and one is changing forensic identification. This disordered state must perfect the organizational system and procedure system of judicial appraisal, unify the setting of judicial appraisal institutions, and standardize the process and standards of judicial appraisal, that is, procedural justice; playing by rules. There is not much discretion, and there is not much room for 'black whistle', which points to scientific justice.

Therefore, judicial appraisal regards objective justice as the standard, and the purpose of favoring correct and reasonable judgment is to pursue substantive justice. The premise of pursuing substantive justice is that there are perfect procedural rules that meet the requirements of judicial justice, and procedural justice is the legal condition. However, in the process of standardizing judicial appraisal, the above two points are not enough to accomplish the purpose of justice. The justice of judicial appraisal objectively proposes the requirements for the identification of scientificity, and scientific justice is also a necessary factor for appraisal justice. Entity justice, procedural justice and scientific justice are the three elements of judicial justice. They are indispensable.

5. EFFICIENCY BEING AN INEVITABLE STANDARD IN THE VALUE OF JUDICIAL APPRAISAL

Efficiency is also inevitable in the value of judicial appraisal. Minimizing the time and economic and ethical cost of paying is another pursuit of the service referee. The characteristics and experience of different identification systems in the two major legal systems tell us that the fairness and efficiency of identification are sometimes conflicting. How to ensure the fairness of identification and identification, so that the judicial identification activities can be efficient and fair, is the goal of the identification activities, but also the direction of the identification system reform. Multi-head identification and repeated identification cause the waste of identification and litigation resources. While affecting the efficiency of litigation, it also brings about the lack of identification prestige and the disorder of initiation. However, to the identification and value of its existence under certain circumstances, the attitude that should be taken is to further strictly limit the starting conditions for repeated identification. Efficiency is also inevitable standard in the value of judicial appraisal. The identification activity will inevitably lead to the extension of the time limit for litigation. Because the scientific procedures and legal procedures of judicial appraisal all consume time costs, we can refer to some western countries to reduce unnecessary delays in litigation through legislation.

As a part of litigation activities, forensic identification, while its impartial value is the primary pursuit, cannot ignore the efficiency value in the litigation process. Some scholars believe that as a litigation behavior, its value of benefits can be carried out in terms

of time, economy and ethics. Jiang Lihua(2007:41) holds that the identification of beneficial value should obtain as little economic input as possible, and consume as few human, little material and time as possible to obtain objective science. The conclusion of the appraisal not only plays a proper role in the identification and proof of the facts of the case, but also arouses no dissatisfaction among the different parties. The ethical cost mentioned therein mainly refers to the objective People's legal, psychological, and reputational contributions or injuries for litigation.

In judicial appraisal, efficiency value refers to the pursuit of time, economic and ethical costs in the process of pursuing scientific and objective identification conclusions and providing evidence for the referee. The basic elements are time, economic and ethical elements. In specific identification activities, the time limit of identification is sometimes a dilemma. Scientific theory or conclusions can be proved without deadlines and litigation certificates must be completed within a certain period of time, which reflects the efficiency of identification. The identification activities, whether it is the national public welfare institution or the private enterprise identification, require the parties to pay a certain amount of appraisal fees. At present, the domestic appraisal system reform is still in the process of standardizing the appraisal charges, and the charging standards across the country. The gap is large and there is some confusion in the way of charging. In addition, the problem of multiple identification and repeated identification in the identification activities also brings great waste of identification resources, increases the psychological burden of the parties, and weakens the credibility of litigation and identification. All of the above are the categories involved in the identification of the value of effectiveness, and the identification of the efficiency value orientation is conducive to alleviating and solving the problem of time, economic and ethical burden of identification.

At the same time, the pursuit of justice and efficiency of judicial appraisal, so that the judicial identification activities are efficient and fair, is the goal of the identification activities, but also the direction of the identification system reform. The investigation of the identification system of the two major legal systems also reflects the conflicts between the efficiency and the fairness of the identification activities. Therefore, the identification activities should serve both the correct referee and the effective and timely referee, and correctly handle the identification efficiency and identification. A just relationship puts forward a request.

Firstly, the identification efficiency is an inevitable factor in the identification value. Justice as the starting goal of identification, whether it is scientific, or procedural justice or substantive justice, is the ultimate direction of identification activities. However, in the process of pursuing fair value, we cannot blindly pursue the so-called objective truth and neglect the waste of judicial resources in reality, and the muddiness of scientific arguments that are endless and cost-free is not conducive to effective settlement

of disputes, nor meets the requirements of the legal and litigation nature of the judicial appraisal itself.

Secondly, the efficiency of the identification helps to identify a fair implementation. The efficiency value of judicial appraisal not only guarantees the realization of fairness and fairness of results, but also contributes to the saving of judicial resources of the state. Only timely and effective identification activities within a certain period of time can guarantee the legality and equity of the parties. The less social resources spent on the formation of an appraisal conclusion, the more helpful it is to solve the problem of identifying the actual problem in this category. This is why more and more scientific and technological means are used and judicial appraisal to solve more and more litigation problems.

Thirdly, we must establish a balance between the two in the system, that is, we should balance the efficiency value under the premise of fairness and priority. Making the identification activities on the basis of impartiality and more in line with the requirements of the efficiency principle is the inevitable direction for the scientific and rational development of the identification activities. Although justice and efficiency may appear contradictions and conflicts in specific cases, it does not mean that the two are incompatible, and the efficiency value of the identification itself is an important supplement to the fair value. Only by finding a balance between justice and efficiency can it be the most effective way to solve the problem of identification. This balance point can be considered as justice prioritized and efficiency combined.

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