

The Application of Free Evaluation of Evidence in the Litigation Process

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Abstract: As one of the methods for judges to hear cases during the litigation process, free evaluation of evidence is widely used by adjudicators. It can connect the facts of the case with real - life situations, achieve the unity of legal and social effects, and avoid the rigid and dogmatic characteristics of trials. With the development and evolution of the judicial proof model, corroboration has gradually differentiated from the principle of free evaluation of evidence and has been favored by adjudicators. Through practical verification and academic research, the conclusion is that the perfect integration of corroboration and free evaluation of evidence is the future of China's judicial proof model. However, at the same time, we cannot deny the defects of this system. This article will start from the dilemmas faced by the principle of free evaluation of evidence and formulate measures to ensure the better implementation of the system.

1. Overview of Free Evaluation of Evidence

In the specific application process, free evaluation of evidence mostly shows multiple meanings. Combining the relevant legal provisions of civil law countries to define the concept, it usually refers to a concept opposite to the principle of legal evidence. It is stated as follows: The law does not prescribe in advance the probative force of all evidence, as well as the acceptance, rejection, and application of evidence. Instead, judges make free judgments based on their conscience and reason, and determine the facts of the case based on the inner conviction formed thereby. This is an evidence system. [1] Inner conviction is the inner certainty that an adjudicator can reach based on evidence. Although free evaluation of evidence gives relevant subjects the right to judge the probative force of evidence, there are clear restrictions on whether evidence can be finally adopted. The principle of free evaluation of evidence does not allow adjudicators to determine the facts of a case based on vague subjective feelings.

Free evaluation of evidence is a basic method for achieving proof in the litigation process. Looking at the history of proof in litigation, it has roughly gone through three methods of proof: proof by divine will, legal proof, and free evaluation of evidence. Free evaluation of evidence is a rational method of proof that has gradually emerged in social development and is commonly used in various countries. It can effectively adapt to and, to a certain extent, reflect the various logical relationships between evidence and facts. It reveals the complex reasons that affect the judgment of

facts during the litigation process. Most importantly, it fully trusts the rational ability of adjudicators in fact - finding. At the same time, due to differences in evidence application principles among countries, the specific application of free evaluation of evidence varies, and the degree of "freedom" of judges also differs greatly. The common law system does not inherit the same legal principles as the civil law system, and it does not use a legal concept equivalent to free evaluation of evidence. However, the criteria for judging the probative force of evidence in the two are interlinked. The common law system also adopts the principle of inner conviction mainly based on subjective judgment, but it is usually called "beyond a reasonable doubt".[2]

The objectification of free evaluation of evidence has gradually become the pursuit in the litigation process. The objectification of free evaluation of evidence means that when applying the principle of free evaluation of evidence, appropriate objective standards are introduced into subjective judgments, so that the subjective judgments of adjudicators match objective facts, and then scientific trial results can be obtained. Compared with other countries, the application of free evaluation of evidence in China currently lacks specific standards, and the corresponding guarantee measures are not perfect. In order to ensure the objectivity and fairness of the judicial process, the concept of "objectification of free evaluation of evidence" has been proposed. It requires that adjudicators' judicial judgments conform to the rules of experience, be evaluated from the perspective of an ordinary and reasonable third - party in terms of their legality and rationality, and should withstand relevant inspections.[3]

2. Free Evaluation of Evidence and Corroboration

In 2004, Professor Long Zongzhi summarized the method of evidence in fact - finding as the "corroborative proof model", and pointed out that it also belongs to China's free evaluation of evidence system, but there are significant differences between them. The successful application of corroboration requires meeting two requirements: sufficient evidence quantity and mutual support among evidence. Finding directly supportive corroborative evidence is the key to adjudication. It emphasizes the externality of proof and restricts its introspection.

2.1. Characteristics of Corroboration

A single piece of evidence is not sufficient to convict. It needs to be supplemented by evidence with information identity to the previous piece of evidence. For example, a witness testimony alone is not enough; confessions or other physical evidence, documentary evidence, etc. are also required to meet the requirements of judicial justice. Another example is in the case of bribery and acceptance of bribes, which are reciprocal crimes. Only when there is "one - to - one" evidence between the two parties can a conviction be made. No matter how much evidence there is from either party, a conviction cannot be made without the support of evidence from the other party.

Corroboration emphasizes the quantity of evidence. Its "externality" requires additional supporting evidence besides a single piece of evidence, while the restricted "introspection" in corroboration emphasizes the inner impression that evidence leaves on adjudicators. According to the interpretation of "inner conviction" in the principle of free evaluation of evidence, as long as the evidence satisfies the judge's inner conviction, it can be adopted as the basis for adjudication. Therefore, the principle that "a single piece of evidence cannot be used to convict" is obviously not applicable to the general principle of free evaluation of evidence. China's criminal proof emphasizes an objective and neutral stance, which is different from the subjective proof standards of "inner conviction" and "beyond a reasonable doubt" emphasized in the application of free evaluation of evidence in foreign countries. However, the process of objective judgment actually also belongs to a kind of subjective proof. Therefore, the basis for judging "externality" can also be determined from

its source of experience. Corroboration values collective experience that is widely accepted, while free evaluation of evidence is more based on the judgment of specific individual feelings. The sufficiency of the quantity of evidence is very important for criminal adjudication.

The standard to be achieved by corroboration is relatively high, and flexible evidence - collection means can be adopted when necessary. When determining the facts of a case based on evidence, if the mutual corroboration of evidence cannot be achieved, it will be determined that the evidence is insufficient. In addition, due to the defense rights granted to suspects by law, the acquisition of evidence by the prosecution is greatly restricted, which also hinders the application of corroboration in the litigation process to a certain extent. Therefore, in order to meet the requirements for the quantity of evidence, investigators often adopt more flexible methods, and illegal acts such as illegal searches and inducement of confessions are inevitable.

2.2. Adjustment of the Criminal Judicial Proof Model

Although the corroborative proof model belongs to the category of the principle of free evaluation of evidence, because it emphasizes the objectification of judicial proof more, it gradually deviates from the free evaluation required by the principle of free evaluation of evidence. It often faces dilemmas in practical application. Therefore, many scholars have put forward adjustment suggestions: advocating a return to the classical free evaluation of evidence model, promoting the implementation of corroboration under due process, and promoting the organic combination of the best explanation and corroboration. These three theories are all admissible. However, considering the complex current situation of China's judicial practice, there is still a lack of a practical and feasible environment.

2.2.1. The Evolution of Theories of the Corroborative Proof Model

The typical free evaluation of evidence model is the long - term goal pursued by China's judicial practice. During the court trial process, adjudicators are required to have sufficient information to support the process of forming inner conviction. However, in fact, the witness appearance rate is low, and it is difficult for the prosecution and the defense to form a truly confrontational premise. Therefore, adjudicators usually determine the facts of the case through the method of reviewing written materials outside the court. In addition, the cross - examination system is not fully utilized in the litigation process, and it is difficult for the court investigation to conduct in - depth review and evaluation of evidence, which is not conducive to the application of the principle of free evaluation of evidence by judges. Furthermore, the second - instance court overturns the facts determined in the original judgment, which makes the free evaluation of evidence system ineffective. Finally, the widespread existence of judicial administration restricts the survival space of the free evaluation of evidence model. In judicial practice, judicial power often coexists and cooperates with administrative management power. Adjudicators tend to consult the adjudication committee on issues such as fact - finding and legal application. Even in the trials of some cases with great social influence, in order to achieve the unity of social, judicial, and political effects, it is common for the investigation, prosecution, and trial departments to cooperate. This not only damages the principle of judicial direct experience but also weakens the authority of judicial independence to a certain extent.

Efforts are being made to create a new proof model that fully guarantees the free judgment of adjudicators on the basis of due process. [4]A legal procedure can enhance the persuasiveness of corroboration and escort the proper use of free evaluation of evidence. However, in judicial application, this model also faces some tests. In the process of evidence collection, if the balance between rights and power cannot be achieved, the objectivity of the evidence system will be

questioned. China's procedural law clearly stipulates that the defense has the obligation of evidence disclosure during the investigation stage, but does not stipulate that the defense enjoys the right to collect evidence at this stage. The premise of evidence disclosure is undoubtedly the implementation of investigation and evidence collection, which makes it difficult for this model to operate.

Incorporating the principle of the best explanation into corroboration is the embodiment of the ideal result of justice. The principle of the best explanation in fact - finding is manifested as follows: the prosecution and the defense respectively construct their ideal hypotheses based on the evidence they have mastered, and then refute what the other party has stated. Finally, the judge reasonably evaluates the above - mentioned information and obtains his own ideal construction. The principle of the best explanation plays a very important role in testing corroboration, explaining single pieces of evidence, and strengthening inner conviction. It is often used to make up for the drawbacks of the corroborative proof model. [5]In China, there is currently no environment for the operation of the principle of the best explanation. It requires relying on direct verbal testimony and cross - examination to obtain sufficient information through the testimony of witnesses in court. Therefore, the application of this model in China still needs time.

2.2.2. Considerations for the Adjustment of the Criminal Judicial Proof Model

China's criminal judicial proof model is influenced by factors such as human cognitive levels, judicial mechanisms, and procedural systems, and has now entered the era of free evaluation of evidence. Litigation truth has always been the pursuit of judicial justice. The proof model is also based on the above - mentioned systems and ultimately serves the proof goal.

Litigation truth requires that the facts of the case determined by adjudicators are consistent with the objective situation. The current judicial system determines that judges must review the facts within the legal framework, and it is difficult to fully present the whole picture of the facts of the case. Therefore, in order to ensure the quality of evidence for adjudication, legislators have clearly stipulated the proof standard of "clear facts of the case and reliable and sufficient evidence". In addition, adjudicators are also required to minimize the risk of overturning the original judgment conclusion and create a good environment for the application of free evaluation of evidence.

The judicial system affects the establishment and development of the proof model, and the proof model guarantees the smooth operation of the judicial system. At present, the process of judicial proof in China is more characterized by static and written forms, and there is still room for improvement in the quality of evidence. The absence of the right to silence and the right to have a lawyer present for criminal suspects during the investigation stage makes them tend to make involuntary confessions. In addition, in the application of the leniency system for guilty pleas and accepting punishment, prosecutors often fail to fully explain the specific content to criminal suspects. Coupled with the shortage of on - duty lawyers and the large number of service targets, criminal suspects often receive inadequate legal assistance and hastily sign plea - bargaining statements.

In short, in China, where the pursuit of judicial objectivity exists but the judicial system still needs to be improved, the existence of the corroborative proof model is necessary. It is not mutually exclusive with the principle of free evaluation of evidence. On the contrary, it provides more analytical methods for adjudicators to apply free evaluation of evidence. The perfect integration of corroboration and free evaluation of evidence is the future of China's judicial proof model.[6]

3. Dilemmas of Free Evaluation of Evidence in the Litigation Process

However, the free evaluation of evidence system has not been well implemented in China, and

there are still many unreasonable aspects in the implementation process.

First of all, when judges reconstruct the facts of a case through their own inner conviction, there is a lack of a unified identification standard or scale. Relying solely on the moral qualities and professional knowledge of adjudicators makes it inevitable that subjective and irrational factors are involved in the establishment of inner conviction. Eventually, parties have to bear the litigation risks brought about by the differences in the qualities of adjudicators to a certain extent.[7]

Secondly, free evaluation of evidence mainly acts on the determination of the probative force of evidence and the facts of the case, and to a large extent determines the success or failure of the litigation. If it is not applied properly, it will cause evidence surprise to the parties, trigger their doubts about judges, and thus be not conducive to the establishment of judicial authority.[8]

Furthermore, as a macro - ideological concept, free evaluation of evidence lacks specific procedural designs for further clarification during the implementation process. For example, the ambiguity of the ex - post relief link makes judges reluctant to actively apply it in case handling. Some scholars have conducted a statistical study on 100 randomly selected civil cases. The results show that for cases with unclear facts and uncertain authenticity, judges are more inclined to apply the evidence principle to make one of the parties bear the burden of proof for failure to provide evidence, rather than making determinations on the facts of the case and the probative force of evidence through free evaluation of evidence. In the process of the research and development of the free evaluation of evidence system, more and more judges have been influenced by academic viewpoints and gradually began to attach importance to the exertion of subjective initiative. However, there are still many problems in the specific application process: the process and results of inner conviction are not fully disclosed, the rules of experience are not applied properly, and the objects of application of inner conviction are wrong, etc. In addition, some judges have a biased understanding of the doctrine of free evaluation of evidence. They believe that the discretionary power granted by the inner conviction system can arbitrarily define the facts of the case and the probative force of evidence, ultimately leading to unjust, false, and wrong cases.[9]

4. Guarantee for the Realization of Free Evaluation of Evidence in the Litigation Process

In view of the drawbacks of modern free evaluation of evidence in the practical process, the author will discuss how to guarantee the implementation of the free evaluation of evidence system from the aspects of clarifying the definition of the system, constructing the judge team, disclosing the inner - conviction link, ensuring the independent trial of judges, and providing ex - post relief and supervision.

4.1. Clarifying the Interpretation of the Free Evaluation of Evidence System

In judicial practice, judges' misinterpretations of the free evaluation of evidence system often lead to the abuse of discretionary power, and litigation justice cannot be achieved. Therefore, tracing back to the origin, we find that the definition of free evaluation of evidence in China still needs to be clarified. At present, China has not introduced an independent evidence law. The evidence rules applied in case trials are relatively scattered. The relevant provisions on free evaluation of evidence only exist in the judicial interpretations of the Supreme People's Court, lacking detailed and unified normative guidance. As a result, many judges are reluctant to apply it easily.

Therefore, it is necessary to clearly define the free evaluation of evidence system. In addition, its relevant supporting systems should be improved to enable judges to better apply it in judicial practice. This specifically includes further refinement of subjective proof standards, rules for the disclosure of inner conviction, rules of experience, and relief rules for the inner conviction

system.[10]

4.2. Implementing the Principle of Direct Verbal Testimony and Creating Conditions for the Application of Inner Conviction

The prerequisite for applying free evaluation of evidence is that adjudicators review and cross-examine the original evidence. Therefore, the appearance of witnesses in court has become a hard requirement for applying the principle of free evaluation of evidence in case-handling, especially in cases with great public opinion disputes. Adjudicators need to judge the reliability of the facts related to the case. Secondly, the discretionary power of the adjudication committee should be restricted. Unless they directly participate in the case hearing or attend the court session as observers, the collegial panel should still control the case results. The adjudication committee only retains the right to give suggestions on policy application. Forming a scientific inner conviction is the significance of the principle of free evaluation of evidence.

4.3. Strengthening the Professional Ethics of the Judge Team

As a country ruled by law, the level of judges' case-handling directly affects the process of governing the country according to law.

Personality rationality is a necessary quality for judges when hearing cases. It can be further analyzed into three parts: having a sense of justice, possessing professional knowledge, and reasonably applying judicial experience. [11]First of all, adjudicators should try their best to avoid subjective judgments, treat all parties equally with a neutral attitude, and avoid bringing personal preferences into judicial trials. Secondly, excellent professional qualities are necessary conditions for having a rational consciousness, which are mainly reflected in wisdom in aspects such as the object of proof, the allocation of the burden of proof, evidence investigation, and cross-examination. Finally, judges' trial experience also provides ideas for solving difficult cases. In trials, as independent individuals, adjudicators have differences in cognition and apply different rules of experience. Therefore, when hearing cases, judges should minimize their individuality and pay more attention to their sociality,[12] so as to more reasonably evaluate the probative force of evidence and make appropriate fact-finding. A qualified adjudicator needs to have an upright character, rich judicial experience, and the ability to correctly judge the facts of a case. Therefore, establishing a perfect judge selection and collegial panel operation system has become the main condition for the application of the principle of free evaluation of evidence.

4.4. Ensuring the Full Disclosure of All Links of Inner Conviction

The disclosure of inner conviction involves the disclosure of reasons, processes, and results. The more inner conviction is disclosed, the more transparent the trial is, and the better the rights and interests of the parties can be protected.[13]

In order to ensure that the process of adjudicators forming inner conviction is scientific and reasonable, it is essential to disclose the judge's inner-conviction process in the judgment document. This disclosure not only includes the disclosure of the relevance and conflict points of evidence but also requires a full explanation of important evidence with insufficient. The public can have a better understanding of the development of a case through the online publication of legal documents. Therefore, it is necessary to improve the public disclosure system of judgment documents. Judges present their mental verification process and reasons through the reasoning in the documents. This not only facilitates the supervision of superior courts but also enables the parties involved to understand the judges' thinking during the review and judgment process. To a

certain extent, it deepens the public's trust in the judiciary and urges adjudicators to pay more attention to the reasonable review of evidence, thus achieving the purpose of making mental verification public. This helps to prevent judges from making arbitrary decisions and forming surprise judgments.

4.5. Ensuring Adjudicators Have Independent Adjudicative Power

Judicial independence can ensure that judges' case - handling is not influenced by extra - legal factors and avoid excessive subjectivity in the formation of their inner convictions.

When adjudicators have independent adjudicative power, to a certain extent, the formation of inner convictions during the case - handling process will not be interfered with, and judges have no concerns about the results of their inner convictions. In the system of free evaluation of evidence, the prerequisite for "inner conviction" is "freedom". However, in judicial practice, situations where judges' case - handling is interfered with often occur. Therefore, it is urgent to strongly implement measures to ensure the independence of judges' case - handling. In this regard, judges should not only maintain independence externally and not be interfered with by other organs, but the same principle also applies within the court. The rule of "forbidding interference in cases handled by others" should be strictly enforced. The cases independently handled by judges and the judgments made by collegial panels should not be interfered with by other leaders or people outside the case. This creates a sound judicial environment for adjudicators to exercise their discretionary power.

4.6. Improving the Remedy System for Free Evaluation of Evidence

By searching for the reasons of retrial and appeal cases, we find that currently, no cases directly cite the incorrect application of inner conviction by the original trial court as the reason. Most appeals and retrials are filed on the grounds of unclear case facts and insufficient evidence. In addition, among the 13 retrial reasons stipulated in Article 200 of the newly revised Civil Procedure Law in 2017, the situation where the judgment result is inconsistent due to incorrect inner conviction is not listed, which, to a certain extent, hinders the realization of the litigants' right to litigation relief. [14]

Therefore, the following measures should be taken for the remedy of free evaluation of evidence. First, in legislation, wrongful judgments caused by incorrect inner conviction should be separately listed as a reason for appeal or retrial. Second, improve the system of accountability for wrongful cases to reduce unjust, false, and wrong cases caused by judges' subjective and arbitrary decisions. Third, establish a scientific supervision mechanism for the results of inner conviction and make it public, combining social supervision with legal supervision, achieving a reasonable division of powers, and accelerating the realization of judicial justice.

5. Conclusion

Free evaluation of evidence is of great significance in the litigation process. It closely connects the facts of a case with social life and strongly promotes the unity of legal and social effects. Although it currently faces many dilemmas such as the lack of standards, vulnerability to doubts, and imperfect procedural designs, these problems are not insurmountable. Through a series of measures, including clarifying the definition of the system, strengthening the construction of the judge team, disclosing the links of free evaluation of evidence, guaranteeing judicial independence, and improving the relief system, a solid foundation can be laid for the effective implementation of free evaluation of evidence. In the development of China's judicial proof model, we should promote

the in - depth integration of corroboration and free evaluation of evidence, continuously improve relevant mechanisms, enable free evaluation of evidence to give full play to its role in judicial practice, and help achieve judicial justice and safeguard social fairness and justice.

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