

Research on Online Asynchronous Trial Mode

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Abstract: Online asynchronous trial mode, as a new trial mode developed in the Internet era, refers to a process where judges, plaintiffs, defendants, and other litigation participants log into the internet court's online litigation platform within a prescribed period but at times of their own choosing, completing the litigation asynchronously. Academics for online asynchronous trial of this emerging thing attitude mixed. The author argues that directly applying the online asynchronous trial mode to judicial practice without in-depth justification inevitably creates a jurisprudential conflict with traditional trial procedures; however, we cannot reject it solely because such conflict exists. This paper begins by reviewing the concept and characteristics of online asynchronous trials, then analyzes the current risks associated with online asynchronous trial mode, and finally proposes a path for improving online asynchronous trial mode based on the aforementioned risks.

1. Overview of online asynchronous trials

1.1. The concept of online asynchronous trials

Online asynchronous trial refers to the trial mode in which the judge and the plaintiff, the defendant and other lawsuit participants log on to the Internet court online litigation platform within a specified period of time according to their respective choices to complete the litigation in an asynchronous manner. Online, that is, through the Internet court online litigation platform such a virtual network platform to complete the litigation. Asynchronous, that is, at different times and in different spaces on the same case, emphasizing the non-synchronous nature of the participants in the litigation. The online asynchronous trial mode mainly includes three basic elements: asynchronous evidence exchange, asynchronous trial and asynchronous mediation.

1.2. Characteristics of online asynchronous trials

First, the asynchronous nature of the hearing of a case in terms of time and space. Under the online asynchronous hearing mode, the parties can freely choose the appropriate time to log on to the platform to express their opinions within a specified period of time, while the other party is not required to log on to the platform at the same time to respond. The online asynchronous trial mode allows for a certain delay in the litigation activities within the same litigation session, and also allows for a certain interval between different litigation sessions, so that the entire trial process presents the characteristics of discrete.

Secondly, the case hearing mode of written. In the online asynchronous trial mode, firstly, the parties mainly through the text, picture form for the defense, evidence, cross-examination, statement of opinion and other litigation activities. Secondly, the platform will intelligently guide the parties to complete the process of proof, cross-examination, defense, etc. By means of the case information provided by the parties, the platform can generate relevant reports and introduce electronic dossiers to facilitate judges' access. After the parties interactively complete the corresponding litigation links, the judge can review the electronic file automatically generated by the platform for trial and finally make the corresponding judgment.

Third, the limitation of the scope of applicable cases. In the current judicial practice, although the court for online asynchronous trial applicable case scope is not a unified standard, but generally adheres to the concept of limitation. This concept of limitations in line with the current judicial practice online asynchronous trial role positioning, that is, online litigation exception form, at the same time means that the vast majority of cases are still to be applied to the synchronous trial mode.

Fourth, the convertibility of the case proceedings. According to the system design, the application of online asynchronous trial of the case in accordance with the statutory conditions can be converted to online synchronous trial. Allowing for conversion to synchronized hearings under statutory conditions provides the possibility of procedural relief for asynchronous hearings and helps to safeguard the functional equivalence of the different procedures.^[1]

2. The pitfalls of online asynchronous trials

2.1. Impact on the principle of direct speech

The online asynchronous trial mode has changed the traditional “face-to-face” trial mode, in which the judge is unable to visualize the expressions and body movements of the participants. Although the law stipulates that the trial shall be conducted by video, but the video can only see a part of the participants, and there may be the situation of image lag. Moreover, in the current judicial practice, the court is still mostly in the form of text and pictures, which is obviously for the principle of words to weaken, but also on the formation of the judge's evidence to have a certain impact. Secondly, in the online asynchronous trial, the evidence provided by the parties to the electronic form, the judge can not access the evidence in kind online trial evidence in electronic form, the parties only need to take pictures or scan the evidence, and then uploaded to the online litigation platform. This not only violates the principle of direct speech, to a certain extent, affecting the judge's judgment on the authenticity of the evidence, but also violates the provisions of the Civil Procedure Law on documentary and physical evidence should be submitted in the original.

2.2. Impact on the principle of open court hearings

The openness of court hearings, which focuses on urging the production of a just outcome in a case, is the essence of an open trial and the focus of judicial openness. Online asynchronous trial mode of court hearing is mainly through the online litigation platform in the interactive dialog box non-synchronous submission of relevant evidence, debate, questioning, etc. China's current online asynchronous trial mode of court hearing openness there are still many problems:

First of all, at the legislative level, our country has not online asynchronous trial to realize the public trial of the relevant provisions of the way, also did not online asynchronous trial of how to dock the Civil Procedure Law on the trial process of the public explanation; in the judicial level has not appeared in the online asynchronous trial of the case of the relevant practices. Secondly, due to the uniqueness of the online asynchronous trial process, the trial is not conducted continuously in the courtroom, which makes it difficult for the public to simultaneously observe the trial, and the

dispersion of the trial also cuts off the public from participating in the whole process of public trial. Thirdly, there is currently no platform in China that can display the transcripts of court hearings, which to a certain extent restricts the realization of open court hearings.

2.3. Increased risk of information leakage of case data

The risk of data and information leakage in online asynchronous trial cases is much higher than in traditional trial modes because of the lower technical security of the current online litigation platform. Unlike the court intranet, the online litigation platform is open to the public, and the materials related to the cases applicable to the online asynchronous trial mode are stored in the form of data, and the materials related to the cases contain a large amount of identity information of the parties and user data, which has a very high utilizable value, and unscrupulous elements may try to take advantage of the technical loopholes to obtain this part of the information on the basis of the economic value contained in it, which will result in a large amount of information leakage of citizens' personal information, seriously threatening the security of citizens' personal information. Moreover, based on the characteristics of online asynchronous hearings that leave traces, case-related information is more likely to be obtained by others than in traditional hearings, which objectively increases the scope of leakage of case information.

2.4. Difficulty in guaranteeing the authenticity of evidence

In an asynchronous trial, the parties submit electronic evidence mainly by scanning the original evidence, and the judge in the asynchronous trial can only see the evidence in the form of pictures or data, and cannot have actual contact with the evidence as in a traditional trial. Under such circumstances, it is difficult for the judge to verify the original evidence, and the authenticity of the evidence submitted by the parties cannot be guaranteed. Although the “online litigation rules” to give electronic evidence materials “to make the original” legal effect, and provides for the court to the parties as evidence submitted by the electronic materials and electronic data for review, but did not specify the specific procedures for review, in practice, the authenticity of the evidence is still more difficult to review.^[2] At present, most courts in China have not constructed the relevant electronic depository platform, the electronic evidence submitted by the parties may be tampered with, and the judge's review of the authenticity of the evidence based on past litigation experience may also have greater omissions.

3. Improvements in online asynchronous trials

3.1. Reinterpreting the principle of direct speech

In essence, the relationship between online asynchronous hearings and the direct speech principle is not incompatible. Online asynchronous hearings do not negate the direct speech principle, but change the mode of its realization. The principle of direct trial implies two core elements, one is to attach importance to the judge's personal experience and homogeneity,^[3] and the other is to emphasize that the judge should make decisions based on direct evidence. In the current social context of the rapid development of Internet technology, the use of high technology makes it easier to implement and realize the principle of direct speech. The verbal principle emphasizes orality in court investigations, evidence presentation, cross-examination and court debates, aiming to overcome writtenism. Whether or not the proceedings are conducted in a verbal manner is judged by whether or not the judge and the parties are able to present a full picture of the case through real-time questioning and additional statements. In the online asynchronous trial model, the parties

are still mainly involved in oral statements, but their statements are transmitted through electronic technology to the judge and the parties who are in a different space and time, and the judge can still ask questions about the statements of the parties, so the asynchronous trial is only in the technical aspect of the enrichment of the principle of direct speech.

At the same time, from the value of the trade-off, asynchronous trial pursuit of litigation justice and litigation efficiency of the consistency of the scope of application, there are limitations, for the more evidence, the facts of the complex case itself naturally does not apply to the online asynchronous trial mode. Therefore, while ensuring the fairness of the case, the pursuit of litigation economy and efficiency is indisputable.^[4]

3.2. Exploring disclosure methods compatible with online asynchronous trials

At present, none of the legal norms relating to online asynchronous trials make any reference to the publicity of court hearings, and there is a gap in the provisions on whether the traditional rules on the publicity of court hearings are also applicable to online asynchronous trials. Admittedly, by the technical and institutional constraints, asynchronous trials in the current difficult to meet the requirements of the traditional public trial. But this does not mean that we should avoid the problem. We should try to seek the legitimacy of online asynchronous trial within the framework of the existing technical and legal system.

Because asynchronous trial is difficult to synchronize and real-time disclosure, so after the fact disclosure is also a feasible path. The most prominent feature of asynchronous trial is “non-simultaneity”. Although online asynchronous trial disclosure and real-time disclosure compared to the loss of transparency, but this point in the content and form of disclosure are fully able to make up for. From the formal point of view, the parties and the judge's transcript of the conversation is fully qualified to be disclosed. Even in the traditional public trial, the public in person can only understand the parties and the judge's verbal communication content, and because it is limited to the physical field, the spectator to get the public information of the trial, often with the nature of non-retrospective.

In contrast, the online asynchronous trial mode of public conversation transcript practice is more transparent. In short, it is to recognize that openness is not justice per se, and does not necessarily equate to justice, and that non-disclosure does not necessarily mean injustice. The core of open court hearings does not lie in openness per se, but in justice. When an asynchronous trial cannot be made public, resorting to ex post facto disclosure can also manifest justice and safeguard fairness.

3.3. Clarify the procedure for reviewing electronic evidence

Theoretically, there are two main ways of reviewing electronic evidence materials: access review and hearing review. Access audit refers to the review of electronic evidence uploaded by the parties through the litigation platform by court staff, and the determination of whether the evidence meets the qualifications for access based on the results of the audit. Hearing and examination refers to the participation of both parties and their respective views under the auspices of the court staff, who need to consolidate the views of all parties in order to make a decision on the examination of the electronic evidence materials. These two methods have advantages and disadvantages. The process of review and examination does not require the participation of the parties, and the judge directly accesses the electronic evidence material and makes a decision on it after reviewing it. This approach can largely streamline evidence review time, but it has certain drawbacks. On one hand, parties cannot express their opinions regarding the authenticity of electronic evidence, resulting in inadequate due process safeguards. On the other hand, in a hearing-based review, judges must fully hear all parties' cross-examination arguments before deciding on evidence admissibility, which

inevitably extends the review time.

The author believes that the review of electronic evidence materials should be heard by the court to review the main. And in the specific procedural design, the hearing audit should be completed in the online evidence exchange link, so as to maximize the continuity of the trial. If the parties to the electronic evidence in the form of authenticity has no objection, and the court determined that the electronic evidence to meet the specific requirements, the court may determine that the electronic evidence has the effect of the “proposed original”.

References

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