

Research on the Defects of the Litigation of Economic Law and Its Complement

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Abstract. The litigation of economic law is necessary in economic law. In order to judge the merits and demerits of economic disputes, the litigation subject can appeal to the basic attribute of the main body of judgment. It is the inevitable product of economic conflict, and also responds to economic law the independence and the economic rights of the judicial relief of the reality and possibility. However, the study of economic litigation theory is almost a blank, resulting in Chinese current economic laws and regulations cannot be a large number of phenomena exist, leading to serious dislocation of economic trial function. Therefore, in order to conform to the objective needs of the sustained, healthy and rapid development of the market economy, we should break through the existing concept of the traditional three litigation and create a new litigation model, that is, economic litigation, and give it different from the other three litigation and it is different from the fundamental symbol of civil action.

Introduction

Judicature is the essential element of any legal operation and the most authoritative symbol of any legal dispute judgment. The lack of the right to judicial relief must be fictitious. Economic rights and economic justice between the original natural there are inextricably linked, but the economic law of the prosecution of defects than other substantive law of the complaint is particularly prominent. The theory of economic litigation and litigation theory is not developed resulting in the law of economic law cannot be a phenomenon of widespread and economic trial function of the serious absence. In fact, the particularity of economic conflict determines the suicability of economic law has become inevitable. It is clear that the traditional three litigation system cannot be competent, only in the litigation concept beyond, can only show the economic law in promoting the socialist market economy sustained, healthy and rapid development of the strong vitality.

Analysis of the Value Function of Economic Law

Where there is a lack of judicial relief, there is no right to speak, it will be a rule of law society. If the recognition of the law is the law of the law is necessary in order to determine the social disputes and the dispute can be subject to the main body of the judge to judge the subject of the property, then the economic law of the litigation refers to the economic law The main body of the main body of the judgment can be claimed in order to judge the right and wrong of the economic dispute. Although the subject of the legal judgment function in practice is plural, such as the civil self-governing organization, the mediation organization and the arbitration organization and administrative organizations, but in modern law, in theory, the most impartial authority of the referee is the judiciary. As long as the law is actionable, then the judiciary is the necessary elements of any legal operation and any legal dispute to determine the most authoritative Symbolic in the legislation to sue for the purpose of establishing a complete economic legal system, that is, any economic laws and regulations have a litigation function, so that economic law and procedural law must be linked so that it can clear the economic law can The nature of action, making economic law more operational, but also to litigation and justice as any necessary elements of economic laws and regulations, so that the judicial power the prosecution of economic law can be perfected. The

litigation of economic law is strong and powerful in judicial power, and the existence of other national powers provides a greater possibility that the higher the degree of litigation of economic law wide, the greater the role of judicial power.

The litigation of economic law is the inevitable outcome of economic conflict. The author believes that economic conflicts are manifested in both internal and external economies. Internal economic and economic performance for the loss of confidence in the management of enterprises, management and management confusion, serious economic benefits, the cost is too high, the distribution was unfair and so on. External economic performance is unfair competition, monopoly, sustainable development blocked, negative economic growth, supply and demand serious disjunction, financial crisis and economic crisis and so on. These conflicts are clearly in sharp contrast to civil conflicts. Under the conditions of a market economy, the economic conflict has serious anti-socialism because it poses a direct and potentially fatal threat to the overall economic development. When it reaches certain intensity, it has a certain consequence, which aggravates its antisocial So that the conflict cannot be resolved and resolved by the parties, nor is it allowed or not applicable to the use of mediation and arbitration. Because the intensity of the economic conflict is higher, the greater the difficulty of the resolution, the litigation in the conflict with other means of different special effects, it can be forced to be involved in the main body of the conflict into the proceedings, It cannot avoid the conflict resolution procedures; can also be forced to restore the rights to the original state or give the right to the legitimate rights and interests of the exercise of mandatory protection and compel the obligor to fulfill the obligations or compensation; can also exclude the social identity of the conflict And the difference in power to the conflict caused by the obstacles.

At the same time, to establish the concept of economic law can be conducive to enrich, change and perfect the basic idea of litigation and litigation. It is a big step forward that people have broken the traditional thinking frame that sues succumbing to litigation rights in civil litigation. Is a series of procedural activities where the parties, under the guidance of the specific litigation system, require the judicial organ to resolve its dispute over the substantive rights and obligations of each other or to confirm whether the relevant legal acts and facts are established. According to which person has the main qualification of the litigation, and enjoy the right to sue, the v. "Victims of the complaint" is the most typical of the case, the most able to reflect the spirit of the protection of the rights, the lowest level of protection for the rights and interests. In our country, for the economic legal system and the rule of law, although in theory a lot of people put it high up, talk, but in practice but often put it gently down, avoid talking about. The formation of this situation, there are many reasons, but the economic law of the non-actionability is a decisive cause. To this end, it should be clearly given the contents of the law of action.

The Performance of Economic Law Can Be Characterized by Defects

In Chinese current economic laws and regulations, not a large number of phenomena exist, this is the economic law of the action can be flawed. Most economic laws and regulations list the economic rights and economic functions, and express their opinions on economic obligations. However, the right of remedy, including the right of action, is ignored, there is no right of right and no other rights, and no other relief clause ; Some economic laws and regulations, although clearly defined the terms of the right to sue, but made restrictive provisions, in fact, is to limit the full realization of the right to appeal. Although we cannot deny that any kind of law is judicious, the question is only who to judge. In our country, this judgment is clearly inclined to administration, not justice, which leads to a serious complication of administration and justice, which makes the legal judgment deviate from the judicial track. The transfer of the right to the administrative authority in fact means the decomposition of the judicial power, which clearly dispels the functions and the integrity of the judiciary. In the case of defects in economic law, people cannot resort to litigation, will naturally seek other means to resolve the dispute, whether illegal or good, to find leadership relations, to seek administrative ruling, are right The weakening of the choice of litigation, resulting in social dependence on the judiciary and trust decline. Although the economic life cannot be

separated from administrative management, may lead to administrative disputes, the introduction of administrative reconsideration and administrative proceedings, but the focus of administrative litigation is not the economic interests of the relationship, but the administrative relationship; the same time, In addition, because the defendants of the economic dispute cases and non-state administrative organs and their staff, it is clear that the handling of economic disputes cases cannot be fully applied or cannot apply to administrative proceedings at all.

The Complement of Defects of the Litigation of Economic Law

To make up for the flawlessness of economic law, it is necessary to change the existing litigation mechanism, or to create a new form of litigation, that is, economic litigation. The emergence of new forms of litigation is always compatible with the corresponding substantive law needs, and always to meet the objective requirements to address the relevant social conflicts.

The evolution of human social litigation and the law of the litigation system itself show that the form of litigation is the inevitable derivation of the substantive legal system. The specific type of substantive legal system is the logical basis for the corresponding litigation form. The trial procedure and the law should be of the same spirit, since the trial procedure is only the form of life of the law and the manifestation of the inner life of the law. It is based on the close relationship between substantive law and procedural law. The promulgation of economic regulations in our country inevitably leads to the emergence of economic litigation. The performance of economic litigation as an internal life of economic law effectively embodies the economic laws of the mandatory binding, and safeguards the practical implementation of economic law. In Chinese current legal system, civil law, economic law, administrative law, criminal law, respectively, in accordance with their respective adjustment objects, with their own different adjustment methods to jointly adjust the socio-economic relations, and civil law, administrative law and criminal law corresponding to the three substantive law and China has already established civil litigation, administrative litigation and criminal procedure system. With the deepening of the economic system reform and the establishment of the socialist market economy, economic legislation has made great progress, and constantly improve, economic law has also been more recognized as an important independent legal department, but not with Adapted to the economic litigation system has not been due attention. Perfecting the legal system of socialist market economy should not only improve the substantive law of economic law, but also pay attention to the formulation and improvement of the procedural law of economic litigation law. If there is no corresponding procedural law to protect, substantive law will be difficult to put into practice. In the real life of Chinese large number of economic violations why so deep and difficult, the reason, the lack of economic litigation mechanism is one of the important reasons.

As economic relations become more and more complicated, economic conflicts are becoming more and more comprehensive, and the same economic conflicts often take into account the different natures of civil, administrative and criminal aspects. This conflict is carried out on a case-by-case basis decomposition, and then according to different procedures to be resolved, not only very high cost, and almost impossible and necessary. Adapting to this change is bound to cause changes in the traditional lawsuit classification, at least to change the existing litigation type structure. If you want to maintain the status of the existing litigation structure, you should add a new mechanism for litigation. In recent years, some legal theory workers and judges put forward the idea of the integration of economic litigation sanctions according to the characteristics of the diversification of sanctions on economic law and the problems reflected in judicial practice. Advocates in the single economic proceedings, at the same time from the economic, criminal and administrative aspects of the three countries to resolve the relevant issues in the economic conflict, made three different sanctions and deal with to ensure the resolution of the thoroughness and effectiveness. This breakthrough in the traditional litigation system and the idea of the idea, to avoid the conversion of litigation costs caused by different litigation costs and deal with contradictions and other issues, reflecting the objective requirements of economic conflict. Therefore, we must overcome the current economic trial function is limited to the determination of economic interests

and economic significance of the serious drawbacks of sanctions, give full play to the comprehensive function of economic litigation.

In order to solve the problem of the litigation of economic law, in addition to the substantive law clearly defined economic litigation rights, the proceedings should be at least different from the traditional three litigation of the following points: First, to expand the scope of the plaintiff, Not only the victim has the right to sue, and all other organizations and individuals who have no direct interest are also entitled to the right to sue, the economic litigation with the characteristics of the public action. Second, the scope of the defendant is also expanded, including all the socio-economic as a whole, comprehensive, long-term interests of the threat or damage caused by the organization and individuals, different from the administrative litigation will be strictly limited to the specific administrative act of administrative organs. Third, the nature of the case diversification, both private prosecution cases, that is, the victim to the court filed economic cases; there are cases of prosecution, that is, supervision and inspection departments to ex officio to the court filed economic cases; there are common litigation cases, Joint litigation, multiple private prosecutors or multiple prosecutors.

Conclusion

The litigation of economic law is one of its essential attributes. With the continuous improvement of our legal system, the question of the lack of economic law can be solved very well, so that the rights of the majority of economic subjects will be More perfect protection, in order to better achieve the economic law of the prosecution, improve the procedural laws and regulations must take a step! This also requires the joint efforts of the majority of legal people and I sincerely wish our laws and regulations more and more progress!

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