Exploration of Making the Mediation in Advance System in Article 125 of Chinese Civil Procedure Law Mandatory and Comment on the German Pre-litigation Mandatory Mediation System

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Abstract. In the new era, the central government has made important decisions to “Insist on the prioritization of non-litigation disputes resolution mechanism” and has put forward new requirements for the further development of the non-litigation disputes resolution mechanism. Article 125 of the "Civil Procedure Law of the People's Republic of China" (hereinafter referred to as the Civil Procedure Law) stipulates the mediation in advance system. This system, which was newly added in 2012, has shown its limitations due to its insistence on “Only if there is consensus, there could be mediation”. In order to further strengthen the construction of the case distribution mechanism and alleviate the judicial work dilemma of “Many cases but few judges”, it needs a new interpretation of the “the rule of autonomy of will in mediation” and breaking through the traditional mediation process which must be initiated voluntarily by the parties and meanwhile still strictly adhering to the parties have free will for the conduct and outcome of the mediation process. Many countries and regions have broken the rule that the initiation of mediation procedures must comply with the will of the parties and established pre-litigation mandatory mediation system and gained great effects. In this article, I discuss the theoretical rationality and practical feasibility of the pre-litigation mandatory mediation system in the new era. It is recommended to learn from the experience of overseas legislation, explore the amendment of Article 125 of the Civil Procedure Law and establish a Chinese-style pre-litigation mandatory mediation system. At the same time, in order to cooperate with the operation of the pre-litigation mandatory mediation system, it is necessary to promote the improvement of supporting institutional measures such as the working mechanism for linking up litigation and mediation.

Keywords: Pre-litigation Mandatory Mediation; Mediation in advance; Civil Procedure Law; Litigation Source Governance.

1. Preface

1.1 Background and significance of selected topic

Chinese judicial work has long been troubled by a contradiction of “Many cases but few judges”. In recent years, the number of cases accepted by people's courts at all levels in my country has shown a continuous growth trend, increasing from 28.035 million cases in 2018 to 33.723 million cases in 2022. At the same time, from 2017 to 2022, the number of cases handled by judges nationwide per year increased from 187 to 242. The courts continue to operate at a high load. This problem has caused some courts and judges have a serious backlog of cases and even do not file cases at the end of the year. That has affected people's pursuit of judicial relief and justice and the construction of our country's rule of law. Faced with this judicial dilemma, a good way is to use the non-litigation dispute resolution mechanism to divert cases and resolve some disputes before case filing. Compared with litigation, non-litigation dispute resolution is more economical, more procedurally flexible, convenient for participation, and has great benefits. In 2012, China revised its Civil Procedure Law and formally created a pre-litigation mediation system - the mediation in advance system. Since then, many policy documents issued by the central government have emphasized the need to further explore, develop and improve the pre-litigation mediation system.
1.2 Literature review

Many Chinese academic scholars have conducted valuable discussions on the establishment of a pre-litigation mandatory mediation system. Among them, Ms. Long Fei believes that if the parties involved in the preliminary mediation do not agree to the mediation, the mediation process cannot be started, which actually limits the development space of the pre-mediation process. From the practice of compulsory mediation outside the territory, we can find that pre-mediation procedures actually have some practical significance. Professor Liu Jialiang directly pointed out the advantages of the pre-litigation mandatory mediation system, believing that it helps divert a considerable number of disputes before litigation, increases the number of non-litigation mediation cases, and promotes disputes to be resolved in a peaceful and low-cost manner. Professor Liao Yong'an and other scholars innovatively proposed a "dual model" for initiating pre-litigation mediation. Only when the parties' refusal is without justifiable reasons, the pre-mediation process is forcibly initiated. Generally, the parties should be persuaded through the induction mechanism as much as possible. In theory, such a "dual model" can indeed take into account the parties' right to choose and the difficulty in starting pre-litigation mediation, but can the local court actually and effectively implement the induction mechanism and what is without justifiable reasons? These are all debatable. In this article, I will discuss about entire logical process of establishing a new pre-litigation mediation system to replace mediation in advance system, in order to provide theory academic exploration for alleviating judicial work dilemma.

2. The Text Interpretation of the Mediation in Advance System

To discuss the reform of the mediation in advance system, we must first conduct a contextual analysis of the provisions of Article 125 of the Civil Procedure Law, fully clarify the connotation of the mediation in advance system and analyze the shortcomings of the mediation in advance system and what kind of legal system reforms do we need to implement to address this shortcoming.

2.1 Overview of The Mediation in Advance System in Article 125 of the Civil Procedure Law

According to the provisions of Article 125 of the Civil Procedure Law of China and relevant documents issued by the Supreme People's Court, when some suitable for mediation civil disputes are brought to the court, the court will not immediately file them but guide the parties to accept mediation. If the parties refuse mediation, the dispute shall not be resolved through mediation and the normal case filing procedures shall continue.

China’s mediation in advance system is procedurally before case filing, a large number of civil dispute cases such as adjacent relations that are suitable for mediation can be handled by diversified mediation forces on the premise that the parties do not object. If the mediation is successful, the case will no longer involve civil litigation procedures and consume the litigation resources of the People’s Court. In view of how to alleviate the contradiction of "Many cases but few judges", the advance mediation system enables a large number of civil dispute cases that might otherwise be filed and enter subsequent litigation procedures to be resolved before they are filed, thus achieving the goal of entering into civil disputes. The number of cases in court litigation can be actually reduced, thereby achieving the effect of diversion of cases. Practice has shown that such a system is correct and can produce results. However, the proviso in the last sentence of Article 125 of the Civil Procedure Law limits the application of this kind of advance mediation to the consent of the parties. With the development of social economy, the number of cases is increasing year by year. “Person-case contradiction” in the courts still needs to be resolved. Current situation has increasingly highlighted the limitations of the advance mediation system. Such limitations need attention and to be discussed.
2.2 Limitations of The Mediation in Advance System in Article 125 of the Civil Procedure Law

Although mediation in advance system has the functions of a diversion valve and a filter for case disputes, as long as the parties refuse, it will be skipped and will not be able to function. In many cases in practice, the parties cannot judge whether their disputes should be handled through mediation and whether mediation can resolve the disputes more appropriately because they lack sufficient information and experiences. Then voluntariness will become hollow legal commitment, there is no real voluntariness without sufficient knowledge. Of course, the court can explain mediation system in detail. But in actual practice, it is highly questionable what effect the court can achieve by simply using words to explain in such a short period of time. Moreover, litigation has higher authority among various dispute resolution methods. The results of litigation are more predictable than non-litigation means, and some parties only have trust in litigation. These factors affect some parties to choose to refuse preliminary mediation. Preliminary mediation is just a futile thing for them. These parties had the opportunity to accept more suitable dispute resolution methods but unfortunately missed it. Some disputes suitable for mediation still cannot be diverted, so they continue to enter the court and be handled by the court's litigation force. These circumstances affect the utilization rate of advance mediation, making it partially impossible to achieve the purpose of the design of the advance mediation system.

Such a problem reflects the limitations of the mediation in advance system which can only fulfil function if the parties do not object. Such limitations are the consequences of mechanically and absolutely insisting on the principle of voluntary mediation. In specific judicial practice, due to the lack of pre-mediation procedures in the legal system, there is no mandatory requirement for pre-litigation mediation. This has become a bottleneck that hinders the reform and development of diversified dispute resolution mechanisms. I believe that it is necessary to re-examine “Except if the parties refuse to mediate” in Article 125 of the Civil Procedure Law and form a new understanding of the principle of voluntary mediation, break through the traditional thinking of “Only if there is consensus, there could be mediation”.

2.3 Breakthrough of the Thinking of “Only if there is consensus, there could be mediation”

Judging from the content of our country’s civil procedure law system, China’s principle of voluntary mediation adheres to the voluntary nature of the parties in both substance and procedure. That is, the parties' voluntariness is required in three aspects: (1) The initiation of the mediation process; (2) The proceeding of the mediation process. (3) The achievement of the mediation result. From the perspective of extraterritorial legislation, many countries and regions have broken the rule that the initiation of mediation procedures must be voluntary by the parties. For example, the Civil Procedure Law of Taiwan clearly stipulates which matters should be mediated by the court before litigation. The British "Civil Procedure Rules" mandate parties to use mediation through a litigation cost penalty mechanism.

In addition, studying the process of drafting and formulating Article125 by legislators in 2012, we can find that legislators also wanted to break through the existing understanding of voluntary mediation. According to the relative provisions in the first draft of the 2011 “Amendment to the Civil Procedure Law (Draft)”, mediation in advance does not require the parties to voluntarily. Even in the subsequent formal amendments, legislators added the requirement to comply with the voluntariness of the parties. The content is also stipulated in the form of a proviso. As we know proviso is meaningful. Judging from the literal meaning of Article125, when facing special civil disputes the court is the active initiator of the mediation process. It can be seen that legislators at that time had a tendency to make breakthroughs in the aspect that the initiation of mediation procedures required the parties to voluntarily. In fact, breaking through the voluntary initiation of pre-litigation mediation does not violate the essential purpose of the principle of voluntary mediation.

The principle of voluntariness in mediation should be mainly to protect the parties' right to litigate by taking the parties' will as the premise, and to prevent the court from using its authority to force the
parties to reach a mediation agreement and infringing on the parties' interests in using litigation for rights relief. However, the emphasis on safeguarding the parties’ right to litigate does not mean that reasonable restrictions on the exercise of the right to litigate cannot be imposed. Adding a compulsory mediation procedure before filing a case, while still strictly insisting on the voluntary nature of the mediation process and the voluntary mediation results. If mediation fails, the litigation process can continue. This will not only not deprive the litigation rights of parties, but also expand the realization of the parties' pursuit of the path of justice. Therefore, it is feasible to amend Article 125 of the Civil Procedure Law to establish China’s pre-litigation mandatory mediation system.

3. The Pre-litigation Mandatory Mediation System

The pre-litigation compulsory mediation system is the product of many years of development of the alternative dispute resolution (ADR) movement in the world. To explore the establishment of this system in our country, we first need to have a clear understanding of the connotation and characteristics of the concept and explore its rationality. And study some actual overseas experiences to gain some theoretical foundation.

3.1 The Connotation and Features of the Pre-litigation Mandatory Mediation System

Pre-litigation mandatory mediation refers to the process by which certain types of disputes, such as family disputes, neighborhood disputes, small debt disputes, etc., must undergo mediation before litigation according to legal provisions. Many countries or regions have established their own pre-litigation mandatory mediation systems. As a unique mediation system, pre-litigation mandatory mediation mainly has the following three characteristics, and these characteristics need to be clearly understood:

1) Compulsion. The “Compulsion” can easily be understood as allowing the court to force the parties to reach a mediation agreement against their will, which is considered a complete violation of the principle of voluntary mediation. What needs to be made clear is that the compulsory nature of pre-litigation mandatory mediation only involves procedural issues. Procedural regulations are used to require the parties to the case to unconditionally participate in mediation activities before the litigation process. For example, according to German pre-litigation mandatory mediation system, each federal state has the right to stipulate that specific disputes can only be accepted by the court after mediation by a mediation institution established or recognized by the state judicial management agency. The parties still have voluntariness regarding the conduct of the mediation process and the outcome of the mediation.

2) Legality. The feature of compulsion of pre-litigation mandatory mediation requires that the compulsory procedures and applicable types must be clearly stipulated by law. First of all, the pre-litigation mandatory mediation system objectively does have certain restrictions on the parties’ freedom to exercise their right to request adjudication. As we all know, there must also be restrictions on rights, so pre-litigation mandatory mediation must be clear and specific in the law. Local regulations to prevent the court from unreasonably expanding its authority to initiate pre-litigation mandatory mediation procedures in judicial practice. Secondly, not all civil disputes are suitable for settlement by mediation. Only a few special dispute types are suitable for pre-litigation mandatory mediation, which should be clearly stipulated in the law. If the court has too much freedom to judge the applicable case types, it may cause the court to delay the case through mediation, or even directly leave the case to the mediation organization as much as possible, which will result in nothing more than passing on the burden of litigation to Mediation system.

3) Procedural precedence. This is a procedural feature of pre-litigation compulsory mediation. The mediation work of pre-litigation compulsory mediation should be carried out at the front of the litigation process, that is, before the case is filed, in order to realize its "case diversion" function.
3.2 Foreign Experience-- German Pre-litigation Mandatory Mediation System

When establishing a new legal system, exploring the existing experiences of other countries can broaden horizons and provide inspiration and reminders. Germany authorizes states in its legal provisions to stipulate that certain types of disputes will be accepted only after mediation. This is in line with the direction of the establishment of a pre-litigation mediation system that the author wants to advocate in this article, so this section specifically discusses the legal experience of Germany.

In 2000, the German Civil Procedure Enforcement Act came into effect, and Article 15a of it stipulated in detail the pre-litigation compulsory mediation system. According to Article 15a, paragraph 1, state laws may stipulate that four types of disputes may be litigated only after attempts at harmonious mediation by a mediation agency established or recognized by the state judicial department. When suing, the plaintiff must submit a certificate issued by the mediation agency proving that it failed to reach an agreement with the defendant. Paragraph 2 of Article 15a limits pre-litigation mandatory mediation and stipulates a total of six circumstances that exclude the application of Paragraph 1. Article 15a also provides that further details are provided for by state law, allowing state law to limit the scope of application in paragraph 1 and expand the reasons for exclusion in paragraph 2. In addition, the settlement agreement reached can be applied for enforcement to provide validity guarantee. In response to this article, most federal states have successively formulated state regulations on pre-litigation mandatory mediation. German pre-litigation mandatory mediation system increases the opportunities for parties to use mediation and can effectively save judicial resources. In addition, the law also gives each state considerable autonomy, retaining greater flexibility and room for development. Each state can adapt the compulsory pre-litigation mediation system to local conditions based on the specific conditions of each state. As for practical results, the federal states have basically set the application period of their own state regulations before the end of December 2005. Whether they will continue to implement compulsory pre-litigation mediation will be determined based on the results of implementation. State laws did announce different extensions, most to December 31, 2008, and then most to December 31, 2011. In the ten years from 2002 to 2012, the number of annual civil litigation cases in Germany did decline significantly. The annual number of cases of Amtsgericht (AG) dropped from 1.5 million to 1.15 million, and the number of annual cases of Landgericht (LG) dropped from 412,000 to 355,000. Admittedly, there are many reasons for this phenomenon, but some scholars have affirmed the efforts of legislators to influence the number of new cases through Article 15a of the German Civil Procedure Code (EGZPO).

However, the mandatory pre-litigation mediation under Article 15a has also revealed some problems in Germany’s specific judicial practice:

1. In German judicial practice, the pre-litigation mandatory mediation system is sometimes ignored and skipped. Sometimes, cases enter the court without prior mediation and have already passed the first instance. According to Article 15a, litigation in such cases is not allowed. As a result, there will be situations where lawsuits are dismissed because they violate the provisions of the pre-litigation mandatory system, and judgments that have already been made are revised. For example, in the judgment of the Saarland Higher Regional Court of January 22, 2015 (No. 4U 34/14). The plaintiff and the defendant brought a dispute to court over a neighboring relationship. In the lawsuit at the Saarbrücken District Court, the plaintiff won the case. However, when the defendant later appealed to the Higher Regional Court, he pointed out that the dispute had not been subject to the compulsory pre-litigation mediation procedure. This will lead to idle procedures and long-term repeated confrontations, increasing the antagonism between the two parties.

2. The mediation costs. According to Article 15a, paragraph 4, pre-litigation compulsory mediation conducted by a mediation agency will incur corresponding legal dispute expenses that fall under Article 91 of the German Civil Procedure Code. When the mediation is successful, the mediation costs will be shared based on the mutual consent of the parties. When mediation fails, the subsequent losing party shall bear the costs of mediation.

3. Concerns about the impartiality of the mediator. If the defendant initially doubts the impartiality of the mediator, for example, if the mediator is an "insider" whom the plaintiff already
knows, it will be difficult to end the dispute through mediation. To this end, states have basically provided for mediator disqualification in their state laws.

Judging from the system experience of pre-litigation compulsory mediation in Germany, the author believes that we can get the following enlightenment: The establishment of a pre-litigation compulsory mediation system has the potential to increase the diversion of cases and reduce the number of civil disputes entering court proceedings. However, it requires Based on my country's national conditions, we will consider many aspects such as the subject of mediation, program design, and the relationship between the central and local governments, and establish a Chinese-style pre-litigation compulsory mediation system.

3.3 The Rationality of Establishing Pre-litigation Mandatory Mediation System in China

Law has the duality of will and rationality. As the saying goes, "reason" is the basis and "force" is the necessity. The construction of legal norms must have its basis in rationality. After all, compulsory mediation certainly limits the parties’ procedural options, and its effectiveness is not a priori and does not need to be proven. The judicial policy of expanding the application of mediation itself is quite controversial, and there have always been questions about the legitimacy and effectiveness of compulsory mediation. Therefore, the establishment of a pre-litigation mandatory mediation system requires a strict rationality basis. The author believes that this rational basis can be discussed from two aspects, one is necessity, and the other is legitimacy.

2.1. 3.3.1 The Necessity of Pre-litigation mandatory mediation system

The pursuit of good rule of law requires that when creating a legal system, we must be very cautious, fully consider the legislative needs and the necessity of legal creation, and avoid emotional legislation, legislative instrumentalism, etc., so that it can comply with the principles of scientific legislation. From the perspective of legislative needs, the author has already elaborated on the legislative needs for the pre-litigation compulsory mediation system in the previous article: Faced with the operational problem of the national judicial system of “Many cases but few judges” that still exists and needs to be solved, Article 1 of the Civil Procedure Law The advance mediation system stipulated in Article 125 has shown its shortcomings and requires new breakthroughs in the legal system. So is pre-litigation compulsory mediation necessary to meet this legislative demand?

General Secretary Xi once said that we cannot become a “litigation power”. This is determined by our country's national conditions. Strong medicine for serious illness. For the current judicial dilemma, advance mediation system is not functional enough. And the problem is not that the effect is bad, but mainly that the quantities of cases filtered by the “filter” called mediation in advance system is not enough. So this “filter” must be expanded to catch more cases. Making pre-litigation mediation compulsory can directly expand the scale of this “filter”. As early as the National People's Congress in 2018, as a representative of the National People's Congress and then president of the Beijing Higher People's Court, Yang Wanming once pointed out: “The most important reason why diversified dispute resolution is not effective is that there is no legal system for pre-mediation procedures. Pre-litigation mediation lacks mandatory legal support and complete procedural arrangements. The establishment of a legal system for pre-mediation procedures has become the key to breaking through the bottleneck in the development of diversified dispute resolution mechanisms.”It is more effective to directly use legal provisions to compel pre-litigation mediation. Previous studies have shown that the success rate of mediation under a compulsory mediation framework is not necessarily inferior to the success rate of mediation if the parties voluntarily choose to initiate it. In summary, it is imperative to promote the pre-litigation mandatory mediation system.

2.2. 3.3.2 The Legitimacy of Pre-litigation mandatory mediation system

The pre-litigation mandatory mediation system still conforms to the spiritual requirements of the principle of voluntary mediation. Its objective restrictions on the right of action will also be limited to a reasonable range due to the requirements of statutory characteristics. Secondly, judging from the
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legislative experience of some foreign countries and regions, the establishment of pre-mediation procedures can effectively allocate dispute resolution resources in society, create opportunities and space for the development of other non-litigation dispute resolution mechanisms, and provide parties with more There are more and more appropriate ways to resolve disputes, which is consistent with the theory of social autonomy.

According to the theory of law and economics, rights are not absolute and priceless. The realization of rights has resources and social costs that need to be weighed; society and the country should design or reform litigation procedures and inhibit them through system design and incentive mechanisms. The unlimited growth of litigation. The judiciary should indeed adhere to fairness as the highest value criterion. However, the balance of costs and benefits is also an important measure of social and judicial justice. In order to maximize the benefits of limited judicial resources, ADR with relatively low costs must be the most reasonable Therefore, the state has the obligation to allocate laws and resources. On the one hand, it needs to restrict abusive and malicious litigation through corresponding legal liabilities; on the other hand, it must provide more convenient and low-cost ADR, and it must appropriately establish some Preemptive (mandatory) ADR.

4. Constructing Chinese Pre-litigation mandatory mediation system

Chen Wenqing, Secretary of the Central Political and Legal Affairs Commission, stated at the National Mediation Work Conference in October 2023 that we will further promote the innovative development of mediation work and strengthen the concepts of prevention first, mediation first, legal mediation, and substantive mediation. Give full play to the role of mediation work with China's distinctive national characteristics and institutional advantages. China has diversified mediation forces with people’s mediation as its outstanding feature. In order to build a Chinese-style pre-litigation mandatory mediation system. It is necessary to think carefully about various aspects such as system design and system construction methods, system effect guarantee, etc.

4.1 Legislative level

I believe that it is needed to learn from German legislative approach to establish a pre-litigation compulsory mediation system. In our country, the only entities that currently have the power to restrict basic rights are the National People’s Congress and its Standing Committee—our country’s legislative body. Therefore, through legislative means to amend Article 125 of the Civil Procedure Law and adjust relevant legal documents, the specific implementation details of local courts can be stipulated by local governments. At the same time, the following issues need to be clarified and stipulated clearly and in detail in the specific design of the legal content:

(1) About the initiation of procedure, it still continues to be initiated by the People's Court as the advance mediation, instead of excluding the admissibility of cases without pre-litigation compulsory mediation procedures as stipulated in German law, thereby forcing the parties to find mediation organizations on their own. When conducting pre-litigation diversion of cases, Western courts generally play the role of “trading counters”, while Chinese courts have unique initiative. As for the mediation entities, Chinese diverse mediation forces outside the courts should be brought into play, and mediation should be conducted by people’s mediation organizations and specially invited mediation entities. The selection of a specific mediator should first be selected from the roster through negotiation between the parties, in order to enhance the parties' voluntariness in the mediation process. If the parties fail to reach an agreement through negotiation, the people's court will appoint the mediator from the roster of specially invited mediators.

(2) The scope of application of pre-litigation mandatory mediation must be reasonably and clearly defined after careful consideration. German approach is to clearly list the types of cases to which it is applicable and excluded. This can very strictly limit the types of disputes to which pre-litigation mandatory mediation is applicable and avoid, to the greatest extent, disputes that are not suitable for mediation from being unreasonably transferred to the mediation system by the court. I
recommend that the scope of applicable dispute types be determined by the same method of “positive enumeration + reverse exclusion” in our country. Regarding the types of disputes applicable to positive inclusion, the Supreme People's Court has already expressed which types of disputes are suitable for pre-mediation procedures. I suggest that the articles clearly stipulate that these specifically mentioned types of disputes are subject to pre-litigation compulsory mediation, and be careful to avoid using catch-all expressions, because the catch-all will leave the court with room for free judgment. Judging from the current conflicts between people and cases in our country's courts, it is very likely that some local courts will wantonly expand the scope of application. For mandatory pre-litigation mediation, the author believes that such risks need to be avoided. As for the reverse exclusion, the list includes “re-litigation cases”, “serious situations of the above types”, etc., plus the vague statement as “other legal basis is not suitable for mediation.”

4.2 Improving Supporting Measures

Firstly, if the parties really cannot reach a settlement during pre-litigation mandatory mediation and give up the mediation, or if the mediation agreement has expired and the mediation agreement has passed, they need to enter the litigation process. At this time, a close and complete docking system for litigation and mediation is required to ensure the convenience of dispute cases. Quickly transition to litigation. The parties should be able to obtain the assistance of mediation organizations and mediators, so that they can quickly go to the people's court to re-open the case and enter the litigation process. It is recommended that the non-litigation dispute resolution centers or conflict dispute mediation centers established in some places be directly connected with the litigation service centers of the people's courts. In addition, we can promote the establishment of litigation-mediating docking centers in qualified courts to specifically handle litigation-mediator docking work.

Secondly, strengthen the construction of specially invited mediation and people's mediation teams. First of all, the People's Court must implement the establishment of a roster of specially invited mediation organizations and specially invited mediators, and conduct real-time and effective management of the roster. Secondly, in response to the need to expand the mediation force that may arise from the establishment of a pre-litigation compulsory mediation system, the People's Court should promptly, reasonably and scientifically expand the list of specially invited mediators, and absorb more qualified mediation organizations and personnel into specially invited mediation. The people's mediation team also needs to be continuously strengthened and optimized. The training for relevant mediation team personnel also needs to be improved and strengthened. To this end, relevant local governments should also provide necessary financial support.

The establishment of a system does not happen overnight. In the history of China's system reform, there has always been a fine tradition of steady advancement under the guidance of scientific methodology. The establishment of a pre-litigation compulsory mediation system in my country can be said to be a major institutional innovation. It is recommended that the National People's Congress authorize some qualified local courts to carry out pilot work, and then further promote it based on the results of the pilot discussion. As for the revision of the Civil Procedure Law, it is considered to be gradually advanced on a pilot basis.

5. Conclusion

Judging from the actions of the central government's major policies in the past four to five years, the reform of the diversified dispute resolution mechanism has received more and more attention. A mature and complete dispute resolution system outside litigation is also an indispensable piece of the puzzle for the future of the rule of law society, and it has begun to take steps forward. Some steps in institutional reform have strategic significance. Due to the limitations of the Civil Procedure Law, the exploration of pre-mediation procedures breaks through the principle of voluntary mediation, which ultimately makes it difficult to achieve the diversion of cases. It is recommended to steadily and gradually advance a series of reforms. First, learn from Germany's direct pre-litigation compulsory
mediation system in the law, and amend Article 125 of the Civil Procedure Law. The revised content can be “for civil disputes that are suitable for mediation when the parties sue to the People's Court, the People's Court should first appoint people's mediation, specially invited mediation organizations or specially invited mediators to conduct mediation.” And add content below this sentence to clearly limit the types of civil disputes to which this article applies using the method of “positive enumeration + negative exclusion”. At the same time, in order to cooperate with the establishment of a pre-litigation compulsory mediation system, other relevant regulations also need to be modified and adjusted, mainly to update the principle of voluntary mediation and integrate the concept of pre-litigation mandatory mediation into the legal system. Secondly, it is necessary to promote and improve the litigation-mediation docking system and strengthen the construction of mediation teams and mediation institutions to support pre-litigation mediation activities. In this way, a hierarchical system for resolving civil disputes can be established in the future, with pre-litigation compulsory mediation before litigation, to better realize the diversion of cases, further leverage the power of dispute resolution outside the court, and reduce the burden of litigation on the court. Promote the modernization of national governance.

3. References


