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On the Possibilities and Limitations of Arbitration Punishment

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Independence and impartiality are the operating core of an arbitration disciplinary mechanism. Due to many factors, illegalities and improper acts in arbitration cases are facts of life in our country, and have greatly damaged the credibility of arbitration. It is necessary for us to perfect the operating mechanism of arbitration discipline from the four pluralistic progressive aspects of disciplining the cause externalization, disciplining the subject duality, the quasi-judicature of disciplinary procedures and the disciplining measures so that the populace can experience fairness and justice in every case. We should perfect the supporting measures such as the strict selection conditions and procedures of arbitrators, improving the quality of the arbitrator team, exploring the management mechanisms and strengthening the evaluation dynamic. An examination is a general investigation and evaluation so as to provide encouragement for being continually engaged as arbitrators, but it does not provide an objective basis of arbitration discipline. It is urgent to perfect the arbitration guarantee system on the basis of meeting the material needs of the arbitrators so as to enhance the sense of professional rank and honour of arbitration.

Key Words : arbitration discipline; arbitration independence; arbitration impartiality; operating mechanism; supporting measures.

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Ⅰ. The Origins of the Problems: The Improper Behaviour of Arbitration Should Be Administered Urgently

Article 38 of the Arbitration Law of the People's Republic of China stipulates that arbitrators will bear their legal responsibilities according to law if they act as following such as "meeting the parties and agents secretly, or accepting their treat or gifts"; and if the case is of seriousness or "asking for or taking bribes, favoritism and perverting the law in arbitrating the case". It has a significant effects for the state to ensure justice according to law, adjudicate independently and control the no-incorruptible behaviour of arbitration. In practice, however, some unhealthy phenomena that arbitrators often violate the principles of impartiality and independence to do adjudication in their judgment, and even have been lazy in exercising their rights of arbitration adjudication to result in an unfair adjudication and serious consequences occurred from time to time. On this, many exploratory articles and achievements have been focusing on the construction of the arbitration responsibility institution of the arbitration system development,[1] an ethic for arbitrators, the arbitration avoidance system, the neutrality of arbitrators, the best way to determine the chief arbitrator, perfecting the arbitration responsibility,[2] and the assumption of industrial responsibility, criminal responsibility and civil liability and so on,[3] but it is not easy to deal with the long-standing abuses of arbitration illegality and the improper behaviour essentially.

Shown by the perspective of extraterritorial research, the tendentious theoretical basis of civil law countries is an arbitration contract. It thinks that the arbitration is a special contractual act rather than a quasi-judicial action. If arbitrators abuse their powers, they

1) Deng Ruiping, Yi Yan. A Brief Discussion on the System of Commercial Arbitration Responsibility, Journal of Chongqing University (Social Science Edition), No.1, 2005, pp.115-122.

2) Wang Guofeng. Reflection and Integration of China's Arbitrator System, Administration and Law, No. 6, 2004, pp. 103-105.

3) Fan Mingchao. The Law of Commercial Arbitration in the Perspective of Commercial Arbitration, Hebei Law in December 2009, pp.125-130; Chen Wei. The Change and Promotion of the Way of Prosecution of Arbitration in Arbitration-Concurrently on the Circulation of Arbitration Responsibility and Criminal The establishment of liability, the Chinese Criminal Law magazine 2008 No. 7, the first 55-64; Huang Zhiyong. arbitrators of civil liability for comparative study, arbitration research second series, pp.47-52; Liu Xiaohong. Determine the arbitrator responsibility Institutional Thinking of the System - Also Comment on the System of Arbitrators' Responsibility in China. Journal of East China University of Political Science and Law, 2007, (5). pp.82-90.

would shoulder their responsibility of illegality and breaking a contract instead of exempting them from their post. The Arbitrators, for example, are required to bear their civil liabilities for the losses of the parties because of their improper behaviour in Austria, Peru and France. In the practice of civil law countries, the arbitrating liabilities of arbitrators are usually divided into two kinds of arbitrating liabilities, they are full arbitrating liabilities and limited arbitrating liabilities. According to existing law and precedents in Germany, the responsibility of arbitrators can be divided into contractual liability and tort liability. In the case of contractual responsibility, the arbitrators are entitled to the rights of partial legal disclaimer, but the responsibility for the procedure errors are not within the scope of disclaimer. The British-American-law countries advocate the arbitration immunity theory. It holds that arbitrators would not bear any related legal liabilities including civil liabilities except the fault caused by their own professional knowledge during doing their duties. The United States Court extended the immunity of arbitrating liabilities to the arbitration institution in the case of Coery v. New York Stock Exchange. The British law has always been believing that the position of arbitrators are similar to judges. The arbitrators should be absolutely exempted from civil liabilities. But there is no clear stipulation in the legislation. This theory originated from the theory of judicial immunity, and argued that the implementation of the arbitration liability exemption would be beneficial to the integrity of the arbitration procedure and exclude the psychological concerns of arbitrators. In comparison, foreign countries have formed their different arbitration disciplinary theories and methods of distinctive features proceeding from their actual conditions of legal culture and their solving the problems.

The reasons why this paper pays attention to the study on arbitration disciplinary mechanism are as follows: first, the illegal and improper acts of arbitration exist objectively. And the discipline to arbitrators is nothing but an empty shell because of many other factors. Secondly, there is an essential difference on arbitration discipline between the two legal system countries. Looking forward to the legislation trend of each country, we found that most countries are shifting from absolute exemption of responsibility or comprehensive responsibility system of arbitration to limited exemption of responsibility. On the basis of criticism and reference, the limited exemption theory of arbitration responsibility was put forward in china. It has

provided a satisfactory solution for applying the theory discussion to the practical problems dissolved. Thirdly, the arbitration liabilities are related to the outcome of the arbitration award. Because of the differences between the background and value of the arbitrators, it is reasonable to have divergences of disagreeing with the facts of the case and to the application of the law. And the scientific and normative disciplinary mechanism can force arbitration behaviour to keep the legality and independence.

With the putting forward to strengthening the preventing and resolving mechanism of social conflicts and disputes, perfecting a component join of arbitration and the mechanism of mutual harmonious pluralistic dispute resolution, and consummating the arbitration system and improving credibility of arbitration in the Fourth Plenary Session of the Eighteenth Central Committee of the Communist Party of China, the State Council has actively promoted the construction of Independent Arbitration Commission Against Corruption and the "two-oriented" construction. With the strengthening of the whole society's dependence on the arbitration, the public have taken opposition to the arbitration and arbitrators.[4] The author considers that it is of great significance that we should examine closely the existing problems of arbitration disciplinary mechanism in our country, standardize the arbitration procedures and the arbitration acts so as to form a reasonable and legitimate adjudicating results accepted by the parties and the public and achieve the goal of dissolving the disputes perfectly.

Ⅱ. The Adjudication Justice under the Arbitration Independence

According to article 13, Section 1 of our China's Arbitration Law, the Arbitration Commission should be employed from the persons who are righteousness and uprightness. So it is obvious that justice and independence are the most basic value pursuit of arbitrator's moral cultivation. This is consistent with the arbitration law of many foreign countries and the regulations of some arbitration authorities. For example, the American Bar Association and the American Arbitration Association enacted Ethical

4) Liu xiaohong. The jurisprudence of determining the responsibility system of arbitrators - a review of the responsibility system of arbitrators in China. Journal of east China university of political science and law, 2007, (5). pp.82-90.

Guidelines for Domestic Arbitrators in 1997. But justice and independence are more from the subjective judgment or psychological evaluation of the parties. Then, how to handle the relationship between impartiality and independence? There are three viewpoints in practice: the UK perspective focuses on the impartiality of arbitrators, independence is considered in some special situations. The arbitration rules of the International Chamber of Commerce stipulate that the independence of arbitrators and the impartiality are the proper meaning of independence. In China, the independence and impartiality for arbitrators are both required. In general, the arbitration acts should be restrained by the arbitration legislation, the parties' agreement, the rules of the Arbitration Commission, the self-discipline of the arbitrators and the standardized restrain of various forms and different levels.[5] According to the core thought of the arbitration disciplinary mechanism, the author suggests that it should at least accord with the two basic requirements that the arbitration should be independent from justice.

1. Arbitration Independence

Independence is the premise and guarantee of the result justice and it is a necessary condition of adjudication fairly. The arbitration independence mainly manifests two aspects. One is that an arbitrator is independent from the party, independent from the other arbitrators and the arbitration institution within the arbitration institution. It means that whether the arbitrator was selected by the party or the chief arbitrator was appointed by the arbitration organization, they would get to know and adjudicate the case in the position of a neutral third party. Although the party hopes that the selected arbitrator can pay attention to his rights and interests, and even to “give consideration to” his case, the arbitrators cannot forget their own identity and responsibility. In particularly, when the “acquaintance relationship” may be of a certain degree to disturb the impartiality of the award, they should withdraw of his own accord. Of course, the parties also have rights to apply for the replacement of an arbitrator based on the above reasons. The individual members of the arbitration institution are independent. The arbitrators should not subjectively be affected by irrational factors such as their

5) Hou Denghua. On the arbitrators of impartiality guarantee, contained in the Arbitration and Law No. 3, Law Press, 2002, pp.53.

own selfish desire and prejudice. They must hold themselves free and independent consciousness while participating in the arbitration activities. And no matter what the level and status they have, the members of arbitration organization are independent from each other objectively. All the members have their own independent status and personality and they could be able to make an independent judgment under the rational guidance or choose their own acceptable views and opinions independently. From the standpoint of the arbitration award, the arbitration organization should remain independent between the both parties and never give unprincipled protection to any party. The arbitration institution should adhere to its own understanding for the law and honestly deduce the outcome of adjudication according to the regulations of the procedural law. Although the arbitration institution has the supervisory and verifiable rights to arbitrators and the award, the exercise of the power does not damage the arbitrators' independence of the trial and the adjudication. In other words, the arbitration institution could not be allowed to interfere, deprive and restrict the arbitrators to hear and adjudicate the cases independently. The other is on the external level. As a whole independent adjudication power, when the arbitrators are adjudicating the cases, any subjects out of the adjudication power would be prohibited to intervene the procedure of the arbitration illegally to interfere them to arbitrate normally. It is the concrete embodiment and implementation that the arbitration is independence in arbitration institution. It requires that the arbitration power should be handed over to the arbitration institution and adjudicate independently and authoritatively by the arbitration organization according to law.

2. Arbitration Justice

Justice is a soul and lifeblood of the arbitration system. Without justice, the arbitration will bereave the foundation of existence and development because the justice runs throughout the whole process of arbitration. Justice mainly reflects the following aspects in the operation of the programs.

(1) The Neutrality and Specialization of the Adjudication Institution

Neutrality requires the arbitration tribunal should be impartial between the arbitration

parties, which means the arbitrators are not personally concerned with the interests of the parties and have the self-control ability of emotions. This is because the arbitration will adjudicate on its own initiative, and take one matter into the range of arbitration continuously or on its own initiative. And it will deprive arbitration of its neutrality to help one party to fight the other party with rational arguments. If the arbitration does not interpose between their property disputes, it will be helpful to exerting the influence of the arbitration adjudication results on both parties equally so as to improve the adjudication to keep calm, restraint and self-discipline and ensure that the parties and the public can agree with the adjudicated results and the justice images of arbitrators. Specialization requires the arbitration body must engage in a rational thinking according to an organic integrated realistic spirit of combining the pursuit of the authenticity of law with the objective reality. The authenticity of law does not completely exclude the objective reality, and they are of dialectical unification between them. The objective reality should be an ultimate goal pursued by an arbitration certification activity, and the arbitration activity should strive to achieve the organic unification of legal facts and objective facts. "Law is an art. A man can gain cognition only through long-term learning and practice."[6] Therefore, the authority of arbitrators does not derive from the power of arbitration, but from the professionalism and personal charm of arbitrator's.

(2) The Operation of Arbitral Proceedings and Active Disclosure

What the operation of arbitration Proceedings and the operation of active disclosure arbitration power pursued is firstly the procedural justice. It should establish both important concepts of procedural justice and substantive justice and emphasize that the arbitrators should treat all parties equally so as to ensure that the parties can exercise equality of their rights and to adduce evidence, cross-examine the evidence and debate equally. An arbitrator is not allowed to contact with any parties and their agents privately. Otherwise, it will inevitably lead to the loss of independence, and the fair of the adjudication outcome of the case will be nothing left. Thus, the arbitration law of all countries made a prohibition on it. Article 34, 38 and 58 of PRC arbitration law also

6) Edward S · Covent. The Constitution of the United States "Advanced Law" background, translated by qiang shigong, Sanlian book. 1996, pp.34-35.

made specific provisions to it. But the arbitration mediation procedure made an exception regulation. In general, the arbitrator may take an appropriate way to meet one party or the agent alone so as to make the mediation successfully. The arbitration secretary should be present and take notes well. If the mediation is hard to achieve, any part of the parties won't invoke what the other parties and the court of arbitration issued, proposed, suggested and agreed after the procedure of arbitration, judicial procedure and any other proceedings and even any statements, views, opinions or suggestions that have been accepted or denied by the parties are used as the basis for requesting, replying and contrary to requesting.

Confidentiality is of essential characteristics that distinguishes arbitration from litigation. It is not only an important factor for the parties to be fond of solving the dispute's way but a common practice all over the world. Article 40 of PRC Arbitration Law has made specific provisions to it. In fact, the confidentiality of the arbitration does not only reflect in the operation of the arbitration procedure, and even after the arbitration award, the confidential obligations of arbitrators will still be shouldered and especially in the interviews and writing articles after the arbitration award, the name of the parties, the details of program operation and other contents on technical secrets and business intelligence involved in the adjudicated cases are not allowed to disclosed by arbitrators.

An active disclosure requires an arbitrator to make an initiative to disclose any stakes such as the money, business and professional relations which may affect impartiality or cause unfair and give unprincipled protection. It is conducive to enhancing the transparency of arbitrators and good for the effective implementation of the avoidance system. For this, Article 12 of the United Nations Model Law on International Commercial Arbitration provides provisions. In China, though the article 34 of the Arbitration Law does not use the term "disclosure", article 28 of the China International Economic and Trade Arbitration Commission Arbitration Rules in 2005 and article 5 of Code of Arbitrators have ruled for the arbitrator's duty of disclosure. In general, the arbitrator should disclose any direct or indirect stakes with the outcome of the arbitration, which may result in unfairness between the parties in the proceedings. All existing or previous relationship with money, business, occupation, family, social contacts and other situations that may affect the handling of cases fairly.[7)]

(3) The Initiative and Effectiveness of Arbitration;

The Initiative of arbitration emphasizes that we should not only fully respect the properties of arbitration but also respect the objective law of arbitration activities in arbitration because it is a restoration of substantive justice and parallel to arbitration neutrality. Under the premise that the legislative goal has been realized, the cost of arbitration is required to be the least, best and the most efficient and can effectively achieve the goal of solving the disputes. Therefore, it is necessary to count the economic accounts of "per capital closure" and "case cost", but also to calculate the legality accounts of whether the effectiveness of the procedure have played a great role and whether the arbitration resources are fully utilized and how the public impression of the arbitration operation is in the operation of arbitration. We must understand and recognize the benefits of arbitration from angles of dynamic and developing with time.

(4) The Finality and Stability of the Arbitration Operation Results

"First award being the final award" requires that the adjudicating results given by the arbitration award should be of authority. And it is not allowed to be arbitrarily changed by any institutions or individuals. Any other institutions cannot be allowed to judge and examine the arbitration award in any legal senses any more. The theory has been widely approved by the international community and has become a basic criterion accepted by the international community and followed by arbitration activities. Article 9, Article 57 and Article 62 of the Arbitration Law of the People's Republic of China stipulate that arbitration award become effective from the date of award done. If one party fails to perform, the other party can apply for the court to execute it in accordance with the regulations of the Civil Procedure Law and the applied court must implement. The arbitration committee or the court will not accept the case if the party applies for arbitration or goes to court with the same dispute. If the adjudication has been adjudicated to be repealed or not to be enforced by the court according to law, the party can apply for arbitration or go to the court according to the new reached agreement between both parties. The ultimate nature of the award is directly related to the purpose of arbitration. It is also related to the efficiency of arbitration and make

7) Cai Hong, Liu Jialiang, Deng Xiaojing. Arbitration Law, Peking University Press, 2011, p.57.

the arbitration purpose achieved so as to reflect the stability and authority of the activities and conclusions of the arbitration award and to prevent the repeating investigating so as to avoid the phenomena occurring of repeating arbitrating and "indiscriminate arbitrating".

Ⅲ. The Cause Externalization of Arbitration Discipline

What acts of arbitration should be disciplined? This involves how to define the cause of arbitration discipline reasonably. According to the provisions of continental law countries, the arbitrators will shoulder their responsibility if they abuse their arbitration rights. It is hardly to find that the adjudication errors were recognized as the arbitration disciplinary cause, but it is often recognized the behaviourism of arbitration as a standard. This is because the judgement of adjudication results is uncertain, it is easy to lead to the interference from arbitration discretion and meanwhile the adjudication results may lead to objective incrimination. Behaviourism is used as the cause to discipline the arbitrators so as to connect it with the arbitration behaviour and the credibility of arbitration. For example, the US Federal and State Laws do not impose liabilities on the arbitrator's secession without reason, but the arbitrator will undertake liabilities for his malicious behaviour. He does not undertake liabilities for his behaviour of "honest", "not out of spite" and "no fraud".[8] Misconduct will undermine the confidence of the public in judicial neutrality and impartiality.[9] Article 29 of the 1991 Arbitration Act of the United Kingdom provides that whether the arbitrator did deeds or not based on malice or violated the principle of good faith,[10] the court will think it unreasonable of the arbitrator to submit the resignation reason[11] and he should assume his liabilities. The United States supports the theory of limited immunity in practice.[12] Article 36 of the American Arbitration Association (AAA)

8) Enberthy v. Dymock[Z].1954. N.Z.L.R. 130, 134.

9) Peter M. Ryan. Counnsels, Councils and Lunch: Preventing Abuse of the Power to Appoint Independent Counsels, University of Pennsylvania Law Review, Vol.144, No.6(jun,1996), pp.25-38.

10) HOMASCARBONNEAU. A Comment on the 1996 United Kingdom Arbitration Act. 22TUL. MAR.L.J, 1997, pp.131-142.

11) English Arbitration Act of 1996[Z].UK:1996, p.25.

12) Huang Jin. Private International Law and International Commercial Arbitration. Wuhan University Press, 1994. pp.113-114.

International Arbitration Rules provides the regulation of "Exclusion Responsibility", that is, the members of the arbitration tribunal and the administrative staff of the association do not assume any liabilities for their deeds or no deeds according to rules, but they should be responsible for the serious consequences to one party caused by their deliberate illegal behaviour. This design of conception and system reflects the basic consensus of arbitration power problems in developed countries ruled by law. It means that the operation of the arbitration rights requires that the conduct of arbitration must be impeccable, which is based on the public's trust in the impartiality of arbitration.

The situation of bearing legal responsibility is defined to two kinds in Article 38 of the Arbitration Law of the People's Republic of China. One is that an arbitrator meets the parties and the agents in private, or accepts dinner invitations and gifts from the parties, and the circumstances are serious; and the other is that the arbitrator plays favoritism, commits irregularities and perverts the law in arbitrating the case. All of the arbitration behaviour should be exempted from liabilities except the two kinds. The author thinks that this regulation is not precise and not conducive to uphold the impartiality of the arbitration award. It may especially indulge arbitrators' behaviour including divulging secrets, not disclosing what other circumstances should be avoided but without evasion, delaying the proceedings and the serious negligence of the arbitrator to result in the serious consequences. On this question, The author advocates that since the arbitration is regarded as a quasi-judicial behaviour in our country, we should follow the operation of quasi-judicial acts to adopt disciplining the cause externalization as improper behaviour of arbitration including fraud, bribery, malice, improper leaving office and other active illegal acts, as well as the negative behaviour of not disclosed interests, not following the requirements of the party's, not performing the responsibility of arbitration rules, not participating in the trial and no adjudicating timely and so on. In accordance with article 25 of the Opinions of the Supreme People's Court on Perfecting the Judicial Responsibility System of the People's Court, arbitrators who violated the law and regulations deliberately or led to an incorrect adjudication and caused serious consequences due to gross negligence in the arbitration work would be liable for the illegal arbitration responsibility. Arbitration has some regulations on violating the professional code of ethics and discipline. If the

arbitrators accepted dinner and gifts of the parties and the related people, or had improper communication with lawyers and other behaviour of violating the law or discipline, they would be dealt with separately according to law and the related regulations of discipline. In other words, the arbitrators must take responsibilities for their behaviour of performed arbitration duties. And they must be responsible for the quality of the cases that they have dealt with within their duties all their life.

Ⅳ. The "Subject Duality" of Arbitration Discipline

From the international point of view, Though the United States has no statutory provisions on the exemption of arbitral institutions, the Austem case shows that the arbitral institutions enjoy absolute immunity. In contrast, Britain's protection for the arbitration institutions is so deficient that British commentators believe that the arbitral institutions should be liable for failing to appoint arbitrators, to reasonably supervise arbitration proceedings and the contract obligation and so on.[13] French law stipulates that the relationship between the parties and the arbitration institutions is contractual, which means the French courts do not regard the arbitral institutions as judicial institutions.[14] The arbitration institutions can administer and supervise the arbitration processes and the arbitrators. The liabilities of the arbitration institutions would not be exempted if the parties were damaged by the neglectful management and supervision of arbitration institutions. The Arbitration Rules set by the ICC International Court of Arbitration have provided rules for the replacement of the arbitrators and the arbitrator's approval of the award respectively in Article 12 and Article 27. After then, it is widely adopted by China's arbitration institutions. As a result, article 15 and 38 of the arbitration law in our country stipulate that the arbitration association will supervise the behaviors of violating discipline of the Arbitration Commission and its constituent personnel and the arbitrators according to rules. The arbitrators will be removed their names from the rolls by the Arbitration Commission rather than only bear the legal responsibilities if they "met the parties and agents secretly, or accepted the dinner or

13) ROBERTMERKIN. Arbitration Act 1996. An Ann of a-ted Guide. LLP, 1996, p.111.

14) EMMANUEL GAILLARD. International Arbitration Law: New Insight into the Duties of Arbitral Institutions. 8/2/2001N.Y.L.J. 3(col. 1).

gifts" given or sent by the parties and agents, and If the circumstances were serious, or during the arbitration they had such conditions of "asking for bribes or bribery, favoritism and perverting adjudication" and so on that some scholars believe that this kind of benign restriction mechanism will be able to construct an effective guarantee system of fair trial and fair adjudication.[15)]

The author believes that it is necessary to supervise and discipline the arbitration actions according to above regulations of ensuring the quality of cases and maintaining the reputation of the arbitration institutions. But it is difficult to embody the operation laws of arbitration. From the angles of the regulations of respecting the arbitration autonomy and the constitution, the author suggests that the arbitration disciplinary subjects should be reformed in accordance with the provisions of the judge punishment as follows: that is, the provincial government should set up a special Arbitration Disciplinary Committee (ADC) which is responsible for exercising the arbitration disciplinary power and hearing an appeal and prosecution to the arbitration from the social public respectively. In order to embody the democratic nature of arbitration disciplinary activities, the common values, mode of thinking, professional knowledge and skills, as well as the common moral evaluation standard pursued by the legal, the ADC should be composed of the National People's Congress (NPC) members, Chinese People's Political Consultative Conference (CPPCC) members, lawyers and law experts with legal background. The arbitration bodies at all levels are responsible for investigating the arbitrators involved the case. The ADC will conduct the case and make decisions according to the justified proceedings and principles of "Separation of trial and prosecution".

Ⅴ. The Quasi-Judicature of Disciplinary proceedings

How should the discipline of an arbitrator be performed? It is related to the establishment of arbitration disciplinary proceedings. The arbitration discipline itself is also a quasi-judicial activity. And It is an important symbol of the perfecting degree of the arbitration disciplinary system to measure the democratization of a country's arbitration system. Observing from the arbitration disciplinary system of western

15) Song Lianbin. Arbitration theory and practice, Hunan University Press, 2005, p.96.

countries ruled by law, the design and effective operation of the normative and legalized arbitration disciplinary system fully reflected their respect for arbitration and the prudence of arbitration discipline, which is also one of the most important symbols of the arbitration system perfecting. The extraterritorial disciplinary procedure presents a quasi-judicature-using similar trial methods, whether being removed its name from the rolls or common violating discipline. Compared with the quasi-judicial procedure in the foreign countries, the insufficient guaranty for the arbitrator's rights and unfair procedure still exist in the arbitration disciplinary system in our country. Therefore, the author suggests that the methods of binding, restrain and relief for arbitration disciplinary results should be the contents of arbitration punishment. So it is key of arbitration discipline to embody the procedure by putting on file for investigation and prosecution, investigating, treating and relieving so as to ensure that the arbitration disciplinary cases can be objectively and impartially handled through investigating to find out the facts, clearly distinguishing between right and wrong and collating and stipulating responsibilities. On this basis, the arbitrator should also be given appropriate disciplinary relief rights. That is if the disciplined person was dissatisfied with the disciplinary decision, he would have rights to file a reconsideration application for the decision-making organ within a certain period of time from the date of receipt of the decision. In this case, if the reconsideration maintains the original decision, the disciplinary decision will take effect immediately and enter the stage of implementation. On the contrary, if the disciplinary agent thinks that the disciplinary decision was found the facts unclear, evidence insufficient or legal application improper by reconsideration, it should be investigated once again.

Ⅵ. The Pluralistic Progression of Disciplinary Measures

What kind of punishment should the arbitrator accept? This involves the definition of the arbitration disciplinary measures. Judging from the design of arbitration disciplinary measures of the continental law system countries, the arbitrator will be responsible for the professional caution responsibility and the impartial behaviour responsibility if the measures of arbitration discipline are largely similar or identical. That is, for example, if an arbitrator inadvertently caused losses to the client, or took bribes, fraud and

abuse his power, the client may revoke the award or challenge the adjudication and require the arbitrator to bear his personal responsibilities. For instance, article 584 of the Austrian Code of Civil Procedure stipulates that the arbitrator will bear his responsibilities if he doesn't timely or fully perform what he has shouldered when he accepted the appointment and caused the losses of the party due to his wrong refusal or delay. In accordance with the provisions of China's arbitration law, it is generally believed that the arbitrator should bear the responsibilities, moral liabilities and legal liabilities offered by the parties. And the legal liability is the strictest and severest among them.

In view of the current problems on arbitration in China, it can more embody the nature of arbitration to integrate the so-called informal punishment in practice into the formal disciplinary measures according to the inherent requirement of the professionalization and specialization of arbitration management. We proposed to limit the measures of arbitration discipline to the following four types of warning, suspension of doing his duty, civil compensation and expunging his name from a list. The warning is mainly applicable to those who had broken the law and violated discipline to carry a light responsibility, made a little impact of society and shown an active repentance. The suspension of doing his duty is mainly aimed at the arbitrators who had broken the law and violated discipline with the serious circumstances, but the consequences and impact have not yet reached the extent of removing his name from the rolls according to law. The duration of the suspension may be set at more than six months but less than one years. After the suspension of arbitration duty expired, those who have become qualified by the testing and judging may continue to engage in the arbitration work. Civil compensation is mainly aimed at the civil liabilities for pecuniary remedy which is mainly due to the serious legal consequences caused by misconduct. There is no doubt that this civil compensation will have special significance to the parties in the arbitration because the parties most concern about the compensation of their economic losses. In general, the civil compensation upholds the principle of "How much damage lost, how much compensation paid", which balances the loss and the benefit of the victim. The amount of civil compensation is generally calculated by illicitly acquired money in practice in China. And compensating the direct economic losses for the parties are only limited to the remuneration received by the arbitrators. Expunging his name from a list is the severest sanction measures of arbitration discipline for arbitrators. It is applicable for those who were investigated

criminal responsibility for duty crimes, who had ever been suspended from doing his duty, who were punished for breaking the law and violating discipline once again after resuming his post of arbitrator and other situations that need to be exempted from the position of the arbitrator should give the arbitrator sanction to exempt him from the duty of judge officer. And those who need to be found out his criminal liabilities should be transferred to the judicial organs with jurisdiction according to law.

Ⅶ. Conclusion

It is undeniable that arbitration has the quasi-judicial characteristics. However, the relationship between the arbitrator and the litigant is based on the contractual relationship or the arbitration agreement. In addition, the autonomy of the parties is the prerequisite. It is this trait that distinguishes arbitration from other forms of dispute resolution. It is our final goal to solve disputes centr(e)ing upon fair, independent and efficient arbitration. We must improve and perfect the operating mechanism of arbitration discipline from the four pluralistic progressive aspects of disciplining the cause externalization, disciplining the subject duality, the quasi-judicature of disciplinary procedure and the disciplining measures so that the populace can experience the fair and justice in every case. It is no doubt whether to innovate the theory or to design the path of practice, it must be followed by the operation rules of arbitration, basing on the value choice of national conditions and improving supporting measures in accordance with taking measures suited to local conditions. On the one hand, it is necessary to tighten the standards of selection for arbitrators and the selection procedures from application, recommendation, the evaluation of committee's, publishing and appointment. On the other hand, we should accelerate the construction of the standardization, specialization and professionalism of the arbitration team, continuously improve the professional accomplishment and specialized level of the arbitrators and actively explore and build up the management mechanism in line with the characteristics of arbitration work to meet the objective demand for the development of the situation. Meanwhile, we should also strengthen the evaluation dynamic of arbitrators. We should regard the arbitration competence and the professional achievement as the focal points of evaluation and insist mainly on checking in normal times but subsidiary at the end of the year so as to execute the separation between

rewards and punishments. An examination is a general investigation and evaluation for the arbitration competence of arbitrators so as to provide an encouragement for being continually engaged as the arbitrators but not as an objective basis of arbitration discipline. In addition, it is necessary to perfect the arbitration guarantee system to actively explore and build up the guarantee system of the arbitration vocation on a basis of meeting needs of material life of the arbitrators so as to enhance the sense of professional rank and honour of arbitration.

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