

Problems of Criminal Online Trial System and the Path to Improve

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Abstract. Criminal online court hearings have the unique value of improving the efficiency and quality of litigation, but their development has been relatively slow compared to civil online litigation. Due to the fragmentation and vagueness of the relevant provisions, the limits of their application are unclear, and there are debates on the limitation or expansion; there are still gaps in how to exercise the right of procedural choice and how to raise and resolve objections to procedural choice; it is difficult to guarantee the confidentiality of communication between the defendant and the defense, and there are difficulties in exercising the pre-trial rights of the defense. In order to improve the remaining defects, the limits of application of criminal online court trial should be expanded to summary procedures, ordinary procedures and minor criminal cases with little controversy, excluding the application of complex and difficult cases, the use of "special reasons" should be justified; the choice of procedures and objections should be made in writing, and the court will make a decision on procedural changes after verification and review of the objections; It should guarantee the confidentiality of defense communication from the meeting session, facilitate the exercise of the defense's right to read the file and investigate and obtain evidence, and promote the realization of the defense rights of the defendant in the online trial.

Keywords: Online Courtroom Trial; Criminal Proceedings; Applicable Limits; Procedural Options; Right to Defense.

1. The Problem

In the era of intelligent Internet, the digitization of information network builds an open platform for sharing data resources between computers in different places and with independent functions through the connection of lines and electronic equipments, which brings convenience and high efficiency for economic and social development and also promotes the integration of all aspects of society with digital information. Criminal online trial is the information age, the criminal justice field and the wisdom of the network, the integration of electronic information products, which refers to the subject of criminal proceedings in different physical space to participate in court activities, through two-way audio-visual transmission, the implementation of the court investigation and court debate behavior of the trial activities.

During the new crown epidemic, online court hearings were widely used based on its unique advantage of being able to break through space and time and realize synchronous or asynchronous hearings. In the post epidemic era, thanks to the development and utilization of information resources, criminal online trial relies on remote video technology, digital signature technology, trial intelligent inspection technology to improve the efficiency and quality of the trial, and special circumstances can not be offline trial of the case in a timely manner, so that the parties to get rid of litigation, reflecting its unique value as an emerging trial mode. However, compared with the "intelligent court" along with the construction and effective development, and gradually build up a systematic system of civil online trial, criminal online trial presents the norms of fragmentation, the development of relatively slow characteristics. For civil online trial, in 2020, the Pilot Measures for the Implementation of the Reform of Complexity and Simplicity of Civil Litigation Procedures made special provisions on how to improve the civil e-litigation, and in 2021, the Rules of the People's Courts on Online Litigation (hereinafter referred to as the Rules of Online Litigation) was released, which provides specific rules and guidelines on the scope of application, procedural conversion, and protection of the rights of the parties for the civil online trial, and makes the rules related to the civil online trial more complete and more comprehensive. The Online Litigation Rules (hereinafter

referred to as the Online Litigation Rules) were released to provide specific rules and guidelines on the scope of application, procedural conversion, protection of parties' rights, etc. for civil online trials, making the relevant rules for civil online trials more complete.

For criminal online trials, the previously released Several Opinions of the Supreme People's Court on Further Promoting the Separation of Complexity and Simplicity of Cases and Optimizing the Allocation of Judicial Resources (hereinafter referred to as the Several Opinions on Separation of Complexity and Simplicity of Cases) limits the scope of application of criminal online trials to simplified procedures; Notice of the Supreme People's Court on the Enhancement and Standardization of Online Litigation During the Prevention and Control of the New Crown Pneumonia Epidemic (hereinafter referred to as the Notice on Online Litigation during the Epidemic) includes in the scope of application cases of sentence reduction, parole cases, and simple criminal cases using the simplified procedure, speedy adjudication procedure, and cases of guilty plea and punishment leniency; The Rules on Online Litigation only stipulates in Article 3 that the scope of application of the online criminal court hearings shall be "cases of speedy adjudication procedure for criminal cases, cases of sentence reduction, parole cases and criminal cases that should not be tried offline for other special reasons". The Rules only provide in Article 3 that the scope of online criminal court hearings may be applied to "cases of criminal speedy trial procedures, cases of sentence reduction, parole cases, and criminal cases that should not be heard offline for other special reasons. It is worth noting that the draft of the Online Litigation Rules originally did not include criminal online court hearings, and the final release of the rules did not differentiate between civil and criminal online court hearings. Decentralized legal norms not only make the limits of application of criminal online trial unclear, but also make the specific aspects of its implementation, such as the right to choose the procedure of online trial, the defendant's rights protection, etc. are in a state of normative queerness.

In the context of the deep integration of science and technology and information, the improvement of the criminal online trial system is the proper meaning of judicial informatization, but also to promote the orderly development of criminal online trial, the realization of digital justice in the field of criminal justice is inevitable. Therefore, this paper intends to start from the normative level, combined with the status quo of judicial practice, to explore the limits of the application of criminal online trial, to study the procedural choice, the defendant's rights protection and other important links, and put forward the feasible way to improve the system, and try to build a more complete and standardized criminal online trial rules system.

2. The Limits of Application of Criminal Online Court Hearing Why: Normative Ambiguity Leads to Controversy

As mentioned earlier, the limits of application of criminal online court hearings have been changed by a number of legal provisions, but they have still not been clearly defined. The inconsistency of the legal norms, the vagueness of the provisions of the online procedural rules, the practice of the court to apply the diversity of the type of cases, make the criminal online court hearing applicable limits face controversy.

(1) Normative Content and Practical Status of Applicable Limits

At the level of legal norms, the Supreme People's Court previously issued two major judicial interpretations of the criminal online trial applicable limits are not consistent. Specifically, the Opinions on Simplified and Complicated Streaming only incorporates cases of simplified procedures into the scope of application of online criminal trials, and the Notice on Online Litigation during Epidemics makes it clear that cases of mitigation of sentence and parole can be heard online, and proposes that online trials can be held for cases of simplified procedures, expedited adjudication procedures, and leniency of pleas and penalties, which reflects the legislator's cautiousness about the limits of application of online criminal trials. Criminal online trial of the limits of the application of a cautious attitude. At the same time, it can be seen from the changes in the above two legal norms

on the limits of application of criminal online court hearings that the scope of application of criminal online court hearings underwent a moderate expansion during the epidemic.

In 2021, the Supreme People's Court issued the Online Litigation Rules, which systematized the online litigation activities in terms of the scope of application, initiation of procedures, and implementation of specific links. The rules take the form of enumeration + touting provisions on the limits of the application of criminal online court hearings: Article 3(2) lists three types of cases that can be applied to criminal online court hearings: speedy trial procedures, sentence reduction, and parole, and "cases that are not suitable for offline hearings due to other special reasons" as a touting provision, but what is "due to other special reasons" and what is "due to other special reasons" are not applicable. "For other special reasons", there is no other explanation; paragraph 5 also provides for "other cases suitable for online trial", giving the three major types of litigation activities to apply the flexibility of online trial space, but there is no other explanation, resulting in the existence of the above provisions. Ambiguity.

From the perspective of judicial practice, after the release of the Online Procedural Rules, the judicial interpretation of the previous criminal online trial and the inconsistency of the rules, the latter shall prevail, and the Online Procedural Rules did not include the summary procedure cases and cases of leniency of plea and punishment into the scope of application of criminal online trial, which means that the people's court to take the above cases online mode of trial, can only be ambiguous connotation of the bottom of the pocket This means that if the people's courts want to adopt the online trial mode for the above cases, they can only use the ambiguous underpinning provisions as the basis for application.

The author to the "online procedural rules" implementation time August 1, 2021 for the start time, December 31, 2022 for the end time, by setting the case, key words and other conditions in the China Judicial Instruments Network search, a total of 1,407 cases to take the criminal online trial within the time period. Among them, there were 577 cases of summary procedure, 131 cases of speedy trial procedure, 237 cases of ordinary procedure, and 26 cases of ordinary procedure which were originally not applicable to ordinary procedure but were transferred to ordinary procedure for some reasons. It can be seen from this that, following the release of the Online Procedural Rules, the scope of the People's Court's criminal online hearings was not limited to the cases of speedy trial procedures and cases of sentence reduction and parole explicitly listed in the Rules, but also occupied a certain proportion of the cases of summary procedures, ordinary procedures, and cases that had later been transferred to ordinary procedures for trial. As mentioned earlier, the people's courts apply the cases other than those explicitly listed to be categorized as "for other special reasons" or "other appropriate online trial", but through a sample survey of the decision documents, the author found that there is no indication of the application of the above reasons. The reasons for the application of the above procedures. No conclusions can be drawn as to which cases can be categorized as "other special reasons" or which conditions are "suitable for online trial".

From the above, it can be seen that, as for the limits of the application of criminal online trial, the relevant provisions of the Online Procedural Rules are vague, and the court in practice, the application of various types of cases, but the reasons are not clear. The ambiguity of the normative level brings about inconsistency in the understanding of the provision in practice, which leads to uncertainty in the application standard. Therefore, with the rules of the bottom of the provisions as the basis for other types of cases apply online trial, the application of the conditions and boundaries of why the problem remains to be resolved, the academic community has also generated controversy over this issue.

(2) The application of the limits of the expansion or contraction of the controversy

As for the controversy over the limits of the application of criminal online court hearings, the academic community can be divided into two main points of view. One viewpoint advocates the expansion of criminal online trial application limit, but differentiated for different types of cases, another viewpoint advocates reasonable restriction, careful application.

The scholars who advocate the expansion of the applicable limits believe that: firstly, the improvement of science and technology for the online litigation to provide a platform to meet the needs of the various aspects of the relevant platform, so that the online litigation can be carried out more smoothly, the online trial in a timely manner, to enhance the efficiency of the advantages can be played; secondly, there is practice shows that the online trial mode and the type of litigation procedures do not have a direct correlation between the case and the type of summary procedures, ordinary procedures, and the case of speedy trial procedures. Cases of summary procedure cases, ordinary procedure cases, relatively complex procedures, but for the facts are clear, the evidence is indeed sufficient, and the defendant does not object to the case, the use of online trial will not detract from the party's right to a defense, in addition, taking into account the urgent practical needs of some cases of the trial, but also applicable to the ordinary procedure for trial of the first and second instance procedural cases to be taken online mode of court hearing. However, due to the differences between speedy trial procedures, summary procedures, and ordinary procedures in terms of the difficulty of hearing cases, in the process of expanding the limits of application, attention should be paid to selecting different levels of application for different types and stages of cases.

Despite the unique value and advantages of online criminal trial, some scholars, based on the concern about the instability of network technology and the impact of online trial mode on traditional litigation principles such as the principle of direct speech, pointed out that the limits of the application of online criminal trial should be limited, rather than liberalized application. At the same time, some scholars also pointed out that criminal procedure cases are different from civil litigation cases, due to the online trial process of the defendant and the defense of the confidentiality of the communication is difficult to protect, the defendant's right to defense in criminal cases may be encountered in derogation, it should be applied with caution, only to procedural norms, rigor and trial ceremonial requirements of the lower criminal cases, only can be applied to the online court hearing.

In fact, whether it is advocating reasonable restriction or moderate expansion, reflecting the academic community on how to balance the efficiency of litigation and the protection of the legitimate rights and interests of the parties to the issue of consideration and attention. In this regard, the author believes that the restriction of a school of reason is essentially out of distrust of online trial technology, the emerging trial mode can not be connected with the traditional litigation principles of concern, but in fact, reference to the development of online litigation can be found in the overseas perfect, these concerns can be resolved through technical means and the litigation principle of re-interpretation to be resolved. For example, the Australian courtroom since the end of the 1980s began to use computer technology, the scope of application of the online trial form from the original only witnesses can be applied to the case of online form, expanding to the expert witnesses can also be used in the form of video link, accused detainees can be heard in video mode, the bail link can be used in the form of video, etc.; in the expansion of the scope of application at the same time, the Australian through the provision of While expanding the scope of application, Australia has strengthened the guarantee of procedural justice for online court hearings by providing for the right to object to remote testimony and the right to cross-examination. In the United Kingdom, in order to protect the rights and interests of the defendant in the same way as offline trials, the defendant is also given the right to pre-trial and post-trial consultation, and even in the course of the trial, if the lawyer must speak with the defendant, the trial can be interrupted and the defendant can be given the right to confidential consultation. Another example is Germany, in its code of criminal procedure, provides that the trial organization in the court hearing in the form of video examination of witnesses, and to ensure that as far as possible to perceive the witnesses oral, body language on the premise of the broadcast, and this practice is precisely Germany to avoid online trial to avoid the destruction of the principle of direct speech to take the necessary measures to a large embodiment of the principle of online trials, but also means that the online trial and the conflict of the principle of traditional litigation may be resolved. In addition, reshaping and expanding the connotation of traditional litigation principles, such as the direct speech principle of the meaning of the judicial experience from the traditional offline physical space of the same to the online cyberspace of the same, from the angle of emphasizing the statement

of the way of speech to understand the essence of the principle of direct speech, etc., it will be found that the online trial mode is only online space of the same instead of the in-person nature of the offline space, and did not break through the essence of the principle of traditional litigation. The essence of the requirements.

Therefore, the author agrees that the limits of the application of criminal online trial should be appropriately expanded, taking into account the difficulty of different types of cases and different procedural requirements, to take different degrees of application, and constantly improve the relevant technology, in order to achieve a balance between enhancing the efficiency of the litigation, safeguarding the legitimate rights and interests of the parties, and safeguarding judicial justice.

3. Criminal Online Trial Important Link Norms are Missing: Norms of Fragmentation to the Blank

At present, there is no legal norms on criminal online court trial systematic provisions, in addition to lead to the application of criminal online court trial limit is unclear, but also makes it in the process of specific implementation of the lack of normative guidance, especially for procedural choices, the defendant's right to a defense and other important links, the urgent need to improve the corresponding provisions.

(1) The exercise of procedural options is not clear mechanism

Criminal cases to take online trial mode, should be decided by the court or by the parties to choose the issue, the academic community has much debate. Some scholars from the status and role of the trial, pointing out that the trial as the judicial core links and important power configuration, the primary role is to defend the social order, its offline or online should not be carried out by the parties to choose, otherwise it may damage the judicial authority. Scholars holding the opposite view believe that, due to the high degree of pursuit of justice in criminal proceedings, the prosecution and the defense appear in court is not only the need to find out the facts of the case, but actually also bear the obligation to achieve procedural justice; the prosecution and the defense, as the main body of interest in criminal proceedings, enjoy procedural interests, and whether or not to apply the online trial mode should be respected by the procedural right of choice of both the prosecution and the defense.

Article 4 of the Rules for Online Litigation makes corresponding provisions on this issue, namely, the people's court shall, with the consent of the parties, carry out online litigation, and the online criminal trial shall be subject to the consent of the public prosecutor, the parties, and the defender. This means that the Supreme People's Court holds the position of granting the parties the right to procedural choice. At the same time, this is the demarcation point, China's criminal online trial of procedural choice mode has experienced from the "defendant unilateral consent type" to the "consensual" change, that is, criminal procedure cases to take online trial mode, not only need to get the defendant's consent, but also need to get the public prosecutor, the defense, and the defendant's consent. Need to get the consent of the public prosecutor, the defense, fully respect the procedural choice of the subject. In the criminal online trial of the procedural choice mechanism, from the chronological point of view, is the court first predetermined the rules of online litigation, and then by the litigation parties to the main body to reach a "consent". This "consent" can be understood as a kind of authorization, that is, the litigation subject to give up the existing dispute resolution, agree to the court for the procedural interests of the online litigation system arrangements, it is this authorization to make the court on the procedural system has the legitimacy of the arrangement.

The "consensual" online trial procedure selection mode is formed based on the consent of the parties involved in the litigation, with a certain procedural legitimacy, but due to the criminal online trial has not yet been systematized provisions, the litigation subject of the exercise of the right to choose the procedures of the mechanism is still deficient and defects. At the normative level, for some details, such as soliciting the views of the main body should be in writing, what kind of legal instruments and legal procedures should be used to raise objections to the choice of procedure, the court should receive

procedural objections to how to deal with and so on, there is still a gap. In practice, some courts have taken the form of a notice to solicit the consent of the subject of the proceedings to the choice of procedure, but due to the normative gaps, the form of soliciting opinions is not uniform; in addition, in the case of procedural objections to the online criminal trial, some defendants did not agree to the online trial on the grounds that they could not see the trial staff and that it was unfair to the defendants, while the court did not agree to the online trial when dealing with such objections. In addition, in cases of objections to the choice of procedure for online criminal trials, some defendants disagreed with online trials on the grounds that "they could not see the trial staff and it would be unfair to the defendant", and the reasons given by the courts for handling such objections were relatively far-fetched. This shows that there is a normative gap, resulting in a lack of clarity in the details of the mechanism for the right to choose the procedure for online criminal court hearings, and no specific safeguards for the main body of the litigation to choose the procedure for their objections. In order to better promote the exercise of the subject of criminal procedure of procedural choice, should be from the normative level to fill the corresponding gap.

(2) The defendant's defense rights protection mechanism still needs to be improved

In the traditional offline litigation, defense lawyers to provide legal assistance is an important way to realize the rights and interests of the defendant's defense. In order to enable defense lawyers to give full play to their roles and effectively safeguard the legal rights of the accused, China has improved the Lawyers Law, the Criminal Procedure Law and other relevant provisions, emphasizing that defense lawyers should strictly fulfill their obligations to safeguard the litigation rights and legal interests of the accused. In addition, the system of duty counsel in criminal proceedings has been further improved through the formulation of the Measures for Legal Aid Duty Counsel Work, making it possible for criminal suspects and defendants who do not have a defender to receive effective legal assistance. This fully reflects the great importance that China attaches to safeguarding the rights of the accused to a defense, promoting the fair administration of justice and safeguarding human rights, and demonstrates that the safeguarding of the rights of the accused to a defense not only relies on the due diligence of the lawyers, but also depends on a more complete system of safeguards for the right to a defense.

As mentioned earlier, the Online Procedural Rules are more compatible with civil trial procedures and do not make differentiated provisions for online court hearings in criminal cases, and there is a lack of systematic provisions on how to safeguard the rights of the defendant's defense under the online court hearing mode. In the process of online criminal trial, due to the changes in the courtroom, prosecution, defense and trial dialogue, some of the defendant's defense rights that can be realized in the offline trial may be impaired, and it is urgent to improve the relevant provisions. In the process of offline proceedings, in order to coordinate the defense position and defense ideas, the defendant and the defender may carry out secret consultations, such as whether there is any objection to the sentence, whether to express opinions on the questioning, etc., but the online meeting and exchanges are vulnerable to eavesdropping, and it is feared that the secrecy of this negotiation will be difficult to guarantee the on-line trial, leading to the defendant's self-defense in the absence of legal help, and the effect of the defense may be greatly reduced. The effect of defense may be greatly reduced. In addition, under the wave of court informatization, the electronic case file, case handling platform relying on modern technology, big data and artificial intelligence to become the trial of the auxiliary, online trial mode for the trial of cases on both sides of the prosecution and the defense of the analysis of information and the ability to use the new requirements. The prosecution, as a state organ, has more sufficient human resources and financial support, easier access to information, the ability to analyze and screen massive information and its use is more powerful than the defense. The defense to exercise the right to investigate and obtain evidence and the right to read the information is limited, and is not conducive to the effective play of the role of the defense and the protection of the legitimate rights and interests of the accused.

Therefore, in order to realize the protection of the legitimate rights and interests of the defendant, the effective play of the role of defense lawyers and the judicial justice of online trial, the construction

of a more systematic, more adaptable to the wave of judicial and information fusion of the defendant's right to defense protection system, is a necessary move.

4. The Criminal Online Court Hearing System of the Improvement of the Path

(1) Clarify the limits of the application of criminal online trial

For the criminal online court hearing applicable limit, should take into account the judicial practice of unified specific norms guide the need for vague norms to be clear; at the same time, the practice of the diversity of applicable types of cases, to a certain extent reflects the feasibility and necessity of the expansion of the applicable limit. Therefore, should be appropriate expansion of the limits of application of criminal online trial, taking into account the characteristics of different types of cases and the difficulty of trial, scientific delimitation of the scope of application.

First of all, to take the form of clear affirmative and negative exceptions to expand the limits of application of criminal online court hearing. Within the scope of affirmative application, in addition to the expressly provided for cases of speedy trial procedures, sentence reduction cases, and parole cases, cases of summary procedures and ordinary procedure cases where there is no disagreement over facts and evidence and where there is little controversy should also be included. At the same time, the cases that can be heard online are not limited to cases of first instance; for cases of second instance where there is little controversy and where it is more efficient and convenient to apply online hearings, the court may decide whether or not to adopt online hearings. On the contrary, for cases that are difficult and complex, and where there is a great deal of evidence, such as major cases that may result in a sentence of more than 10 years' imprisonment, life imprisonment, or the death penalty, cases that are highly controversial between prosecution and defense, or cases where the line between guilt and innocence is unclear, as well as cases involving sensitive information that are not to be heard in public according to the law, and cases of crowded economic crimes, offline hearings are clearly more conducive to the ascertainment of the facts of the case, and should be categorized as a denial of the applicability of such hearings.

Secondly, the "special reasons" in the "bottom-up" clause should be explained to prevent the abuse of online court hearings. For cases that do not fall within the scope of the aforementioned explicit affirmation, but are more appropriate to adopt the online trial mode, such as cases in which the defendant is ill, disabled, or otherwise unsuitable to be remanded in custody for trial in a court of law, and cases in which proof of the main facts needs to be retrieved from cyberspace, etc., from the perspective of safeguarding the defendant's lawful rights and interests, improving the efficiency of litigation, and providing facilities for the adducing and questioning of evidence, these cases can be categorized as Cases that are heard online "for special reasons". The "special reasons" can not be interpreted arbitrarily by the court, should be involved in litigation subject rights and interests, procedural fairness and efficiency of the content, with the legitimacy of online trial.

(2) To fill the procedural option mechanism blank

Human rights protection as the core of the "people-oriented" philosophical theory, is the criminal procedure in China to follow the fundamental philosophy of development and revision. In Kantian philosophy, the subject position is regarded as the essential attribute of human being, it refers to the human being as an autonomous, conscious and meaningful individual, in cognition, value, emotion and other aspects of the independent status and ability, revealing that the subject is to recognize the world and the initiative of the action. In criminal proceedings, it is obvious that the three parties of prosecution, defense and trial are all involved in the concept of "human being", and the legal system also clearly reflects the respect for the right of the "subject of the proceedings" to express their self-consciousness and take the initiative. The case to take online trial mode for the litigation subject, means to the offline trial form of abandonment, to change the procedure of consent, this "abandonment" and "consent" belongs to the litigation subject based on the scope of the independent consciousness of the choice, should be given and safeguarded The litigation subject's right to choose

the procedure. Returning to the criminal online trial mode, in the "consensual" procedural choice mechanism, on the one hand, we should guarantee the right to know the procedures and rights and obligations of the parties who have reached a consensual agreement, so as to avoid the parties to suffer the loss of rights and interests due to the difference in information; on the other hand, we should regulate the process of soliciting consensual agreement and accepting objections, and so on.

In the process of exercising the right of procedural choice, some litigation subjects may lack of legal knowledge and online litigation experience, not clear about the legal consequences of procedural choice, which is not conducive to the realization of the voluntary procedural choice. In order to fully protect the litigant's right to participate, the right to know, and promote the democracy and science of litigation procedure, the court needs to carry out the criminal online trial links, rights and obligations, procedural choice mechanism to be notified and explained, so that the defendant, the defense, etc. to understand the consequences of their own claims or behavior. Although the Rules of Online Litigation stipulates the court's obligation to notify the specific aspects of online litigation, operational methods, but only limited to the parties' negative procedural options, for the parties to independently and actively proposed online trial procedures, there is no obligation to notify the provisions of the case. However, whether the parties to active program choice or passive consent to the court's program choice decision, there are parties due to the lack of relevant information and suffer rights and interests of the possibility of damage. Therefore, the court's obligation to inform or explain should be extended to cover situations where the parties actively exercise their procedural choice.

Since the agreement on the choice of procedure will affect the conduct of the subsequent court proceedings, it is an important part of the initiation of the online trial, and should be in written form to seek agreement. If any subject has objection to the choice of procedure, it should also be put forward in the form of a written application for objection. At the same time, in order to maintain the continuity and stability of the online trial, should set the period of time for objection to the choice of procedure, beyond the statutory period can not be objected to. The court receives the program choice objection, should be around the objection reason to verify the investigation, according to the specific circumstances of the decision whether to change the procedure.

(3) Improve the online trial defense rights protection system

In the course of the development of criminal proceedings in China, the constitutional principle that criminal suspects and defendants are effectively defended has always been implemented. In order to avoid the alienation of the criminal procedure structure into the flow of the public, prosecutorial and legal organs, China has strengthened the status and rights of the defenders, promoted the full coverage of the criminal defense, and established the duty lawyer system, etc., so as to ensure that the defense plays a substantive role from the pre-trial to the trial procedure, and to promote rational decision-making on the part of the judiciary. However, it is worth noting that in criminal online trial, the involvement of big data, artificial intelligence and other technologies in criminal justice has made the defense right protection system face new challenges. In order to avoid unilateral enhancement of the prosecution's litigation strength by science and technology and destruction of the principle of equal confrontation between the prosecution and the defense, in the process of perfecting the system of guaranteeing the right to defense in online trial, not only should measures be taken to deal with the weakening of the defendant's right to defense in online trial mode, but also pay attention to the protection of the rights and interests of the defense lawyers, so as to ensure that the defendant receives effective legal assistance in the online trial procedure.

In order to avoid the online trial on the defendant's right to defense of the derogation, should first of all to the defendant and the defense of the confidentiality of the communication to be safeguarded. In this regard, the trial staff, public prosecutors and other all evade the way or build a special network platform, so that the defendant and the defender in the case of not being wiretapped in the network communication. The protection of the confidentiality of such communication should begin with the meeting session, requiring that defense lawyers not be monitored when meeting with the defendant online, and that the public security authorities turn off the recording and monitoring equipment and

not send any officers to be present; in the course of the trial, the defendant and the defense should be provided with a separate communication channel through telephones that are independent of the video transmission system, a special text transmission system, or an online litigation conference room, among other things. In addition, the defense should be given the right to file complaints and charges against violations of their procedural rights.

For defense lawyers in the information acquisition and analysis of the weak situation, should implement the necessary means to promote the defense of the right to investigate and obtain evidence and the exercise of the right to read the file, in order to protect the prosecution and defense equal confrontation. On the one hand, for the defense learned by the prosecution or other people control information, considering the defense directly to the information controller will have many difficulties, often difficult to achieve, so in the defense application and provide relevant clues, the court should actively access to safeguard the defense investigation and evidence collection rights. On the other hand, in order to ensure that the defense has sufficient time to analyze and apply the massive information, the court should provide the defense with electronic files as early as possible within the scope of its authority, so as to avoid unnecessary obstacles to the defense in exercising its right to read the files. In addition, it is necessary to enhance the professionalism of online court trial defense lawyers to meet the needs of court trial defense in the era of data and information. This can be achieved through the establishment of an access system for online trial counsel, assisted by expert assistants, and other means.

5. Conclusion

Online trial is an emerging trial mode in the digital information era, accompanied by the construction of intelligent courts. The wave of integration of justice and information, the practical status quo of the large number of cases and small number of people, and the actual need of the judicial organs to improve the efficiency of litigation have made the development and improvement of the online trial system necessary. At present, our country still holds a cautious attitude towards online criminal trial, but the fragmentation and ambiguity of the relevant norms are not conducive to the further development of online criminal trial.

Therefore, it should take into account the real needs, the current relatively narrow limits of the application of criminal online trial to be appropriate to expand, scientifically define the boundaries of its application; to fill in the vacant online trial procedures to choose the mechanism, from the procedural choice of the proposed, objections and follow-up processing and other aspects of the improvement; online trial derogate from the rights of the defendant's defense to take targeted measures to protect the defense lawyers in the process of the online trial of the exercise of the rights, to promote the realization of an effective defense. The system of online criminal trial shall be improved in terms of the filing of objections and subsequent processing of procedural choices.

The online criminal trial system should be observed at the normative and practical levels to find out the deficiencies and defects, clarify the ambiguities, fill in the gaps, and promote the construction of its systematization. In this paper, clear limits of criminal online trial, improve the procedural selection mechanism and the defendant's rights protection mechanism is only part of the process of improving the criminal online trial system, along with the iterative development of information technology, the digital and judicial will be better integrated, the criminal online trial system will be more systematic and standardized in the process of perfecting.

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