

Research on the reasons and regulation of the abuse of the objection system of civil procedure jurisdiction

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Abstract: *The legal provisions on objection to jurisdiction are scattered in the legal provisions of the pretrial procedure of the Civil Procedure Law of the People's Republic of China and relevant judicial interpretations, and the content of the provisions is rough and the directivity is unclear. The party who raises the objection to jurisdiction is precisely using the loophole of the system to abuse the right of objection to jurisdiction in the civil procedure law. Therefore, this paper summarizes the reasons for the abuse of objection to civil jurisdiction in China, puts forward specific measures to limit the abuse of civil jurisdiction, and promotes the improvement of the system.*

Keywords: *Jurisdiction of civil litigation; Objection to jurisdiction; Abuse of the right of action; Legal regulation*

1. Introduction

The Civil Procedure Law and relevant judicial interpretations, especially the Supreme People's Court's Interpretation on the Application of the Civil Procedure Law of the People's Republic of China promulgated by the Supreme People's Court on December 29, 2020, have made provisions on the trial of jurisdiction and objection to jurisdiction, and have made more detailed provisions on the jurisdiction rules of specific cases. Due to the lagging nature of the law, the concept of "abuse of jurisdiction" has not been clearly put forward in the relevant laws and judicial interpretations. Even though the court recognized the phenomenon of "abuse of jurisdiction" in some cases, when punishing such acts, it only punished them in violation of the principle of good faith in civil litigation. Under the operation of this abnormal litigation phenomenon, the court has a large backlog of cases, the litigants have difficulties in safeguarding their rights, and can not resolve the disputes between the parties in time, resolve the conflicts between the parties, thus causing more social conflicts. At the same time, the court must also draw a certain number of judicial personnel from the shortage of judicial resources to conduct procedural review for some cases of objection to jurisdiction raised by the parties with obvious malicious intent, which wastes a lot of judicial resources, so it is particularly important to regulate such issues.

2. Reasons for abuse of objection to jurisdiction in civil procedure

"Prohibition of abuse of the right of action" is a "white paper" clause with uncertain connotation and extension, which has the characteristics of "double-edged sword". It is easy to hinder the realization of the right of action if it does not work well in practical operation. On the contrary, if it works well, it is conducive to ensuring the realization of the right of action. This section summarizes the causes of the abuse of objection to jurisdiction through the empirical analysis of the above abuse of objection to jurisdiction in civil litigation.

2.1. The provisions of jurisdiction objection system are vague

The current civil procedure law only stipulates that if a party has an objection to the jurisdiction, it should submit it to the court during the period of submitting the defense, and then the court will review its application. If the objection is established, the court against which the case is filed will make a ruling according to law to transfer the case to the court with jurisdiction for trial; If the objection is not established, the court will rule to reject the objection of the parties, but at the same time, the law also stipulates that the parties can appeal against the ruling of the objection to jurisdiction.^[1] However, for other provisions in the jurisdiction objection system, the law does not specify:

(1) The subject is not clear

The civil procedure law only stipulates that the subject who raises the objection to jurisdiction is the party, but the understanding of the party can be divided into narrow sense and broad sense: the narrow sense of the party only refers to the plaintiff and defendant in the case; In a broad sense, the parties, in addition to the plaintiff and the defendant, should also include the co-litigant and the third party, and the third party referred to here also includes the third party with independent claim and the third party without independent claim. In judicial practice, it is generally recognized that the defendant has the right to raise an objection to the jurisdiction of the case, but whether the plaintiff, the third party, or the co-litigant has the right to raise an objection to the jurisdiction is not clearly stipulated in the law.

(2) Ambiguous object

The object of objection to jurisdiction refers to which type of jurisdiction the parties can object to or to which people's courts. According to the classification of jurisdiction in the Civil Procedure Law, there are five types of jurisdiction, including territorial jurisdiction, level jurisdiction, transfer jurisdiction, designated jurisdiction and jurisdiction transfer, but the law does not specify which type the parties can raise jurisdiction objection against. In judicial practice, it is generally recognized that the object of objection to jurisdiction includes territorial jurisdiction and hierarchical jurisdiction, but the law does not make clear whether the parties can also raise objection to jurisdiction for the three types of jurisdiction, namely, transfer jurisdiction, designated jurisdiction and jurisdiction transfer.

(3) The cause is not clear

Neither the current civil procedure law nor the judicial interpretation clearly stipulates what formal and substantive elements should be possessed when the parties raise objections to jurisdiction or appeal against the ruling of the first instance; Whether there is a need for clear facts and reasons to raise objections to the jurisdiction of the parties has not been clearly specified; It is also not clearly stipulated whether the parties need to submit corresponding evidence for cross-examination in the process of hearing the objection to jurisdiction; In addition, the subject matter of the appeal for objection to jurisdiction has not been clearly defined, resulting in a series of judicial disorderly acts in judicial practice.

2.2. Low-cost and high-yield objection

The current payment provisions of China's procedural law are the Measures for Payment of Litigation Expenses, which have been implemented since April 1, 2007. Paragraph 6 of Article 13 of the Measures stipulates that if the objection to the jurisdiction raised by the parties is not tenable, the litigation expenses of 50 to 100 yuan shall be paid.^[2] If the objection to the jurisdiction of the parties is established, there is no need to pay legal fees separately. In addition, the charging standard for the case of objection to jurisdiction is piece charge, which is uniform regardless of the amount of the subject matter of the case. In addition, it is not stipulated that if the parties are not satisfied with the ruling of the objection to jurisdiction and appeal to the higher court, whether they need to pay the litigation fee again, but in practice, if the parties are not satisfied with the ruling of the objection to jurisdiction and appeal again, they need not pay the litigation fee. That is to say, the defendant needs only 50-100 yuan of litigation fee and dozens of yuan of express postage. We can achieve our goal of delaying the litigation process. Liu Tianchang, a scholar, put forward his opinion on how to pay the case acceptance fee for objection to jurisdiction. He believed that the case acceptance fee should be paid in advance, and if the parties failed to pay the case acceptance fee as required, the court should automatically waive the objection.^[3] The low cost of the parties' abuse of jurisdiction objection is not only reflected in the money cost, but also reflected in the time cost and energy consumption. The parties only need to draw up an application for objection to jurisdiction and submit it to the court. When appealing, they only need to submit the petition, and even do not need to submit other evidentiary materials. This hardly requires too much time and energy. Compared with the low cost of abuse of objection to jurisdiction, the parties have a high rate of return.

2.3. Lack of measures to sanction abuse

Although China's civil procedure law has special provisions on how to deal with acts that hinder civil litigation, there are no clear and specific provisions on the abuse of jurisdiction objection by the parties. In some cases, the court could not punish or punish the actor in accordance with existing laws, regulations, judicial interpretations and relevant provisions, even though it was aware that the parties

abused their litigation rights and maliciously raised objections to jurisdiction. In judicial practice, although some judges, when making a decision on objection to jurisdiction, have strictly examined the evidence, analyzed the facts of the case, and comprehensively considered the malicious degree of the defendant's abuse of jurisdiction objection, and determined that the applicant for objection should bear the corresponding responsibility or appropriately increased the proportion of responsibility in the decision, it is only the act of individual judges exercising their discretion, which only plays a certain role in correcting the case, It is not a universally accepted method, has no universal guiding significance, and cannot regulate the behavior of malicious delay in litigation and abuse of litigation rights.

3. Specific measures to limit the abuse of objection to civil jurisdiction

In order to prevent the abuse of the right of objection to jurisdiction, the exercise of this right should also be subject to certain restrictions. Therefore, the following measures are suggested to prevent and regulate the abuse of the right of objection to jurisdiction and urge the parties to exercise the right of objection to jurisdiction properly:

3.1. Clarify the determination standard of objection to jurisdiction

The imperfection of the application conditions for objection to jurisdiction provides an opportunity for the parties to abuse the objection to jurisdiction, which is a major inducement for the parties to abuse the objection to jurisdiction. The application conditions for objection to jurisdiction should be improved from the following conditions:

(1) Clarify the subject of objection right. First, the plaintiff has no right to raise objection to jurisdiction. The plaintiff exercised the right of action to file a civil lawsuit because he recognized the jurisdiction of the court against which the case was filed. If the plaintiff raised an objection to the jurisdiction, it would violate the principle of unity of litigation. Second, the third party shall not raise objection to jurisdiction. From a theoretical perspective, the status of the third party with independent claim belongs to the plaintiff, who can apply to participate in this lawsuit or file a separate lawsuit. If he participates in this lawsuit, it means that he accepts the jurisdiction of the sued court. Therefore, he cannot raise a jurisdictional objection to this lawsuit; As for the third party without independent right of claim, whether it participates actively or adds passively is based on the existence of this lawsuit, so it has no right.

(2) Define the object scope of objection. First, the parties shall not raise objection to the jurisdiction of three types of cases that are transferred, designated and transferred by the court according to its authority. Because these three types of jurisdiction cases are adjusted by the court system according to its authority, the cases transferred by the court according to its authority cannot be transferred again; Both the designated jurisdiction and the transfer of jurisdiction are made by the superior court, which belongs to the modification and management of jurisdiction and is not easily overturned. Second, for cases with exclusive jurisdiction, hierarchical jurisdiction and no jurisdiction of the court where the defendant is domiciled according to the law, the court shall not review the case if the party raises an objection to jurisdiction and requests to be transferred to the court where the defendant is domiciled for jurisdiction.

(3) There are clear facts and reasons. When exercising the right of objection to jurisdiction, the parties shall have clear facts and reasons, and submit corresponding evidence to prove their objection when necessary. The court shall order the objector to provide corresponding evidence within a time limit. If the objector cannot provide corresponding evidence, the court shall not review it. This urges the parties to actively provide evidence that the court against which the claim is filed has no jurisdiction, and changes the confusion that the parties have no reason, no evidence or even improperly filed the objection to jurisdiction in practice.

3.2. Increase the litigation cost of objection to jurisdiction

"Cost policy" is an important factor affecting modern civil justice. The main content of this idea is to adjust the litigation costs borne by the parties through the system design, and then exert influence on the actions of the people to choose the civil procedure. In essence, it is to set a certain cost threshold for some litigation actions to curb some indiscriminate actions. For property cases, they are generally divided according to the amount of the subject matter of the case and the nature of the case. On the

basis of the amount of the litigation claim, a certain amount of administrative objection acceptance fees can be charged in advance by referring to the calculation method of litigation costs. The charging standard can be between 100-10000 yuan. For non-property cases, the charging standard can be between 50-5000, because non-property cases are generally charged on a case-by-case basis, and the case itself has certain sociality. Or because most of the jurisdiction cases are contract dispute cases, we can consider comparing the charging standards of contract disputes, and on the premise of setting the minimum charging standards, collect the litigation costs of the jurisdiction objection cases based on a certain proportion of the amount of the subject matter involved; For the case of objection to jurisdiction with no subject matter, it shall be stipulated that the litigation fee shall be charged according to the minimum standard. In addition, a system of advance payment of litigation costs should be established. If a party raises an objection to the court, the court should pay the case acceptance fee in advance. Only after the party has paid the case acceptance fee in advance can the court accept it, otherwise it will not accept it. After the case is reviewed by the court, if the court decides that the objection is tenable, the court shall refund the case acceptance fee paid by the parties in advance. If the court decides that the objection is not tenable, the court does not need to refund. By setting a threshold for the advance payment of litigation costs for the parties to apply for objection to the jurisdiction of the court, so as to prevent some of the parties to the case from applying for objection to the jurisdiction of the court without reasonable reasons, regulate the phenomenon of abuse of jurisdiction objection by the parties in judicial practice, allow the parties who maliciously file the right of action to make full consideration before filing the objection to the jurisdiction, and increase the cost of abuse of the right of action in malicious litigation, It is of great significance to curb the abuse of objection to jurisdiction.

3.3. Establish a disciplinary mechanism for objection to jurisdiction

At present, the abuse of jurisdiction objection in China does not clearly stipulate sanctions. Malicious parties often abuse jurisdiction objection without any punishment measures. The most important reason for the abuse of jurisdiction objection is that the abuse of jurisdiction objection in China's civil procedure law has not been equipped with corresponding punishment measures.^[4] Therefore, it is necessary to clarify the relevant disciplinary mechanism, and take the following measures to punish the perpetrators on the basis of referring to the compulsory measures against civil litigation:

(1) Fine. In civil litigation, fine is a common economic sanction for acts that hinder civil litigation. In terms of punishment for abuse of jurisdiction objection, many countries have taken the form of fines. China can also refer to the provisions of Article 115 of the Civil Procedure Law. If the parties abuse jurisdiction objection and cause serious consequences, they will be fined not more than 50000 yuan for individuals and not more than 50000 yuan for units. If the attorney abuses the litigation right, the lawyer may be punished according to the amount of personal fines, and the lawyer's dishonest litigation behavior shall be reported to the Lawyers Association or the judicial department for treatment.^[5]

(2) Liability for damages. If the parties to the case abuse the jurisdictional objection to achieve the purpose of deliberately delaying the trial time of the case, they can punish the defendant according to law and need to compensate the other party for the losses. It should be clearly stipulated in the law that the aggrieved party can prove the various expenses paid during the delay of the trial of the case due to the abuse of the jurisdictional objection by the other party, including attorney's fees Reasonable expenses such as transportation expenses and work delay expenses shall be compensated in material form for the litigation costs incurred by the injured party. It can also protect the legitimate rights and interests of bona fide parties and maintain the authority of the law by making the perpetrators of the abuse of jurisdiction dissent bear the corresponding liability for damages, increasing the costs of the abuse of the right of action, and reducing the occurrence of such acts.

(3) Incorporate into the file of dishonest litigation and establish a "blacklist" of objection to jurisdiction. In the process of building the socialist credit system, the birth of the "blacklist" system has accelerated the regulation and improvement of the credit system. For example, the implementation of the "dishonest person" system, the "blacklist" system of ticket evasion and seat abuse on the train, and the "blacklist" system of bidding and tendering form a strong deterrent effect on the parties to the case in practice. Referring to the implementation of the "dishonest person" system, explore the establishment of a "blacklist" system of objection to jurisdiction, include the parties who maliciously use the objection to jurisdiction in the "blacklist", and timely enter it into the credit platform, increase the data sharing between courts at all levels, form a joint force, and give a strong blow to the parties who abuse the objection to jurisdiction.

4. Conclusions

As an important part of China's civil jurisdiction system, the jurisdiction objection system plays an important role in supervising the court's jurisdiction and ensuring the equal status of both parties to the proceedings. However, due to the abuse of the right of dissent by malicious parties and the resulting delay in litigation, it has attracted considerable attention from the practical and theoretical circles. It is a consensus to regulate the abuse of jurisdiction dissent. The phenomenon of abuse reflects the lack of social integrity. The institutional problems behind this phenomenon cannot be ignored. The real realization of the value of the system is the ultimate goal of the establishment and operation of the system. It has become the general trend to reform the system of objection to the jurisdiction of civil litigation in China and make it truly realize the value of the system itself. By analyzing and summarizing the reasons for the abuse of the objection to the jurisdiction of civil litigation, this paper puts forward the measures to regulate the abuse of the jurisdiction, so as to promote the system of objection to the jurisdiction to truly play its intrinsic value.

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