Abuse and Regulation of the Jurisdiction Objection System in Civil Litigation

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Abstract

The system of jurisdictional objection in civil litigation plays a positive role in protecting the litigation rights of the parties and promoting the fairness of case procedures and substantive justice. In recent years, the number of jurisdictional objection cases has remained high, with objection reasons becoming even more chaotic. The jurisdictional objection system has deviated from its original design and has been seriously abused. The jurisprudential basis for the abuse of the system of jurisdictional objections lies in the balance of fairness and efficiency, the right to sue, the right to a trial, and the absence of procedural sanctions. Therefore, in cases of jurisdictional objections, the threshold for initiating the objection procedure should be heightened, the trial procedure should be enhanced, and a mechanism for imposing penalties should be established. These measures aim to regulate the misuse of jurisdictional objections, promote procedural justice, and ensure substantive justice in the case.

Keywords

Civil suit, Jurisdiction Objection, Abuse, Regulation

1. Overview of the jurisdictional objection system and its development context

1.1 Overview of the jurisdictional objection system

An objection to jurisdiction means that after the People’s Court accepts the case, the parties think that the court has no jurisdiction over the case, and put forward a claim and opinion that they refuse to accept the jurisdiction of the court (Jiang Wei, 2013). In civil litigation, both parties enjoy equal litigation rights, for example, both parties enjoy the litigation rights to entrust an agent AD litem and apply for withdrawal. Because the two litigation is a natural opposition, therefore, one party claims the appeal, and the other party will inevitably object (Zhang Weiping, 2006). When the prosecution sues the respondent, it usually chooses the court of jurisdiction that is most favorable to it and will circumvent the court of jurisdiction that it considers unfavorable to it. From this point of view, this may lead to the unfairness of the litigation process. In order to avoid this "selective jurisdiction", the jurisdictional objection system is applied (Qiao Bo, 2020).

1.2 The development context of the jurisdictional objection system

In 1987, the Supreme People's Court issued the Answer to Several Questions on the Specific Application of the Trial of Economic Dispute Cases, the answer for the first time in Paragraph 2, giving the party the right to contest the jurisdiction of the court accepting the case. China’s civil litigation jurisdiction objection system was formally
established in Article 38 of the Civil Procedure Law of the People's Republic of China in 1991. The 2007 amendment to the Civil Procedure Law of the People's Republic of China made no changes to the system. In 2012, the amendment to the Civil Procedure Law of the People's Republic of China adjusted the provisions of the system from the original jurisdiction of Chapter II to the ordinary procedure of Chapter 12, as the content of paragraph 1 of Article 127 and the jurisdiction of responding to lawsuits. The 2017 amendment to the Civil Procedure Law of the People's Republic of China did not make any changes to it. The 2021 amendment to the Civil Procedure Law of the People's Republic of China merely changed the article from Article 127 to Article 130, without changing the content of the law (Jiang Wei, 2019).

2. The status of the jurisdictional objection system

2.1 The status quo of the legislative level of the jurisdiction objection system

China in 1991 will jurisdiction objection system into the civil procedure law of the People's Republic of China, the system stipulated in the current civil procedure law of the People's Republic of China, the law, made clear that the parties shall during the defence accept the case of the people's court of jurisdiction objection, and provides the people's court for such jurisdiction objection case handling way and processing results. Article 128 of the Civil Procedure Law of the People's Republic of China stipulates that the defendant shall submit a defense within 15 days from the date of receiving a copy of the statement of complaint. Article 178 of the Civil Procedure Law of the People's Republic of China stipulates that the handling form of the people's court of second instance is also a ruling.

2.2 The practical status quo of the jurisdiction objection system

In recent years, the number of cases of first instance and second instance accepted by the people's courts at all levels in China has been on the rise. In judicial practice, after the party raises an objection to the jurisdiction case, the court of first instance has a higher chance of rejection. For the rejected jurisdiction case, the party will usually choose to appeal. However, the odds of the second-instance court rejecting the appeal and upholding the original ruling are also high.

3. The shortcomings of the jurisdictional objection system

3.1 The scope of the right subject is not clear

The controversial focus of the jurisdictional objection system is first focused on the scope of the subject of the jurisdictional objection, that is, who has the right to raise the jurisdictional objection. According to Article 130 of the Civil Procedure Law of the People's Republic of China, the subject with the right to raise jurisdiction is the party to this case. But "party" has a narrow sense and a broad sense. In the narrow sense, the "parties" include only the plaintiff and the defendant. In a broad sense, the "parties" include not only the plaintiff and the defendant but also the third party. So, does the subject of jurisdiction objection refer to the defendant, or does it contain the plaintiff and the third party? China's Civil Procedure Law stipulates that the parties have the right to raise objections to the jurisdiction, however, the theoretical community has different views on this: First, the subject of the objection to the jurisdiction includes the plaintiff, the defendant, and the third party; Second, the subject of the objection to the jurisdiction includes only the defendant; Third, the subject of objection to jurisdiction includes the defendant and the third party who has the right to claim; Fourthly, the subject of objection to jurisdiction includes the defendant, the third party who notifies the court to attend the trial and the plaintiff under special circumstances.

It can be seen from the above that the subject scope of the jurisdiction objection system is quite controversial at present, the legislative provisions are relatively general, and there are understanding deviations in practical application.

3.2 The threshold of the jurisdictional objection procedure is too low

Article 130 of the current Civil Procedure Law of the People's Republic of China only clearly stipulates the time limit for raising the jurisdiction objection system but does not stipulate the way of raising objections and the reasons for objection. As a result, some parties in practice only need to submit a paper jurisdiction objection application to the court, and even use oral means to inform the court that they want to raise jurisdiction objection. And the objection
reason, is more diverse, such as: do not provide reasons or provide the reason is very far-fetched. Moreover, the parties do not need to consider the cost and risk. According to the "litigation cost pay method" 13 provisions, when the party raises jurisdiction objection is ruled not established, need to pay 50 yuan to 100 yuan only. According to the "litigation cost pay method" article 8 provisions, the parties to the objection to the jurisdiction order and file an appeal, do not need to pay the case acceptance fee. In practice, a large number of jurisdictional objections are raised by the defendant, and it is entirely possible that the defendant took advantage of the almost "zero cost" jurisdictional system to delay time. Generally speaking, the delay time has a "positive effect" on the defendant.

3.3 The trial procedure is not sound enough

For the examination of the objection to the jurisdiction, the People's Court has adopted the one-way administrative review mode. However, the scope, method, and period of examination of the objection are not specified.

First, in terms of the scope of the review, the theoretical and practical communities have the following perspectives: First, only formal review; Second, only the substantive review; Third, the form of review, the substantive review is auxiliary. Secondly, in terms of the review process, written trials are generally given priority. If there are questions about the facts and reasons for the objection application, the usual approach is to conduct an investigation and inquiry. Finally, in terms of the review period, China’s legislative framework does not clearly specify the trial period. It can be seen from the above that the current jurisdictional objection hearing procedure is too passive and vague. This passivity will lead to the inconsistency of judicial practice ruling results, and become the cause of the parties to abuse jurisdiction.

3.4 Lack of sanctions for objections to abuse of jurisdiction

The law gives the parties the right to object to the jurisdiction, but the exercise of that right is not entirely unrestricted. Due to the low provisions on the threshold conditions for the parties to object to the jurisdiction, a large number of parties reach the delay time by abusing the jurisdictional objection. The abuse of jurisdictional objection by the parties will have a direct impact on the judicial order, complicating the cases that should have been applied to simple litigation procedures to resolve the disputes, thus resulting in a waste of judicial resources. Therefore, it is necessary to set up punishment measures in the relevant legislation to regulate the abuse of the jurisdiction of the parties.

4. The perfect path of the jurisdictional objection system

4.1 Clarify the subject scope of the jurisdictional objection

First, the defendant is entitled to raise a jurisdictional objection. This is the defendant's due litigation right, which is also the fundamental purpose of the establishment of the jurisdictional objection system.

Next, the plaintiff has no right to raise jurisdictional objections. The plaintiff filed a lawsuit to the court, which is the starting point of the whole lawsuit case. If the plaintiff chooses the court because of his own interests, the court has jurisdiction. Even if the plaintiff finds the jurisdiction error after the sued court files the case, there are still other relief paths, for example, he can choose to withdraw the lawsuit and sue another court. Therefore, the plaintiff has no right to challenge jurisdiction.

Finally, the third party has no right to raise jurisdictional objections. In 1990, the Supreme People's Court issued the Reply on whether a third party can raise an objection to jurisdiction, clearly indicating that a third party with an independent claim and a third party without an independent claim have the right to object to jurisdiction.

To sum up, the author believes that in the relevant legal provisions of civil litigation in China, it should be clear that the subject of the jurisdiction objection is the defendant, so as to ensure the fairness of the litigation procedure and the effective operation of the law.

4.2 Improve the application conditions for raising objections to jurisdiction

First, strengthen the claim responsibility of the objection applicant. In principle, an objection to jurisdiction shall be in the form of a written application for objection. If a written application cannot be submitted for special reasons, the facts and reasons for the objection shall be orally stated to the court, which shall be recorded by the court and signed by the parties concerned, and confirmed by the finger seal. At the same time, when the parties raise an objection to the jurisdiction, the court shall clearly inform them to bear the appropriate claim responsibility and submit the
corresponding evidential materials.

Second, the construction of the objection will not review the shunt mechanism. In practice, there are no specific facts and valid reasons, and it is obvious that the parties are abusing the jurisdictional objection. To avoid the large number of such cases, the author believes that we can construct the diversion of jurisdictional objection cases, and clearly list the types of improper objection cases. For the application of such objection cases, the court can directly notify the parties not to review, without starting the procedure of jurisdiction objection review (Duan Wenbo, 2019).

4.3 Improve the procedures for reviewing jurisdictional objections

First, the scope of review regarding the jurisdictional objection. The author thinks that it should be clearly stipulated, only to take the way of formal examination. The reason is that the right of objection to jurisdiction belongs to the right of procedural relief, which arises during the defense before the case has not entered the substantive trial. Thus, at this stage, any substantive issue in the case is involved (Martin, 2021).

Secondly, the mode of review of jurisdictional objections. The author believes that the review method of cases with objections to jurisdiction can be simplified as far as possible, and it is clear that the combination of written trial, inquiry, and hearing can be applied. Adopting the electronic file review method can achieve massive storage of file information, and realize the file handover and information sharing of multiple regional courts through the Internet, which can shorten the review time of jurisdictional objection to a large extent.

Finally, the deadline for review of jurisdictional objections. With the improvement of the quality and professional ability of our judicial team, the author believes that the examination time of the court of first instance to examine the objection is less than seven days, and if the case requires a hearing and inquiry, it shall not exceed 15 days. If the party refuses to accept the ruling of the first instance and then files an appeal, the first-instance court shall complete the transfer of the case within seven days after receiving the appeal, or handle it through the online case handling system. If the court of the second instance the appeal, it shall serve the written order to the court of the first instance within seven days after the making of the ruling. If an order is transferred to jurisdiction, the written order shall be served to the court of first instance within seven days after the ruling takes effect, and the court of first instance shall be notified to complete the transfer of the case to the court with jurisdiction.

4.4 Establish a reasonable and effective punishment mechanism

First, raise the case fee standard. According to the current "litigation cost payment method", the parties raise the jurisdiction objection and the appeal of the case acceptance fee is 50-100 yuan per piece. The author thinks, can refer to the standard of plaintiff payment of litigation fee to collect jurisdiction objection case acceptance fee, the fee is paid by the objection applicant. If the jurisdictional objection is established, the total fee shall be refunded; if the jurisdictional objection is not valid, the cost shall be borne by the applicant.

Second, give discipline or fines. If a party intentionally abuses the objection to jurisdiction, delays the normal litigation process, and disturbs the litigation order, it shall be regarded as an act obstructing the civil action. In accordance with the current Civil Procedure Law of the People's Republic of China, the court may give appropriate admonishment or fines according to the circumstances and the seriousness of the consequences.

Finally, establish the liability system for damages. The act of one party abusing the jurisdiction objection to delay the lawsuit causes the infringement of the legitimate rights and interests of the other party or the third party. The people's court may, in light of the specific circumstances, support the non-fault party requiring the malicious litigant who abused the jurisdiction and exercise the objection to bear the necessary expenses such as attorney fees, lost work expenses, and travel expenses arising therefrom.

5. Conclusion

As a relief system, the jurisdiction objection system has its independent value and purpose, that is, there is the possibility to revoke the judicial act of the court and safeguard the legitimate interests of the parties. Therefore, the jurisdictional objection system was highly expected by the legislators at the beginning of the design. However, a large number of judicial case data show that the system has been abused by the parties. There are many factors in the abuse of the jurisdictional objection system, but it is due to the consideration of low cost and high yield, which leads to the dilemma of "bad money drives out good money". In order to relieve this dilemma, we should appropriately raise the litigation cost of power abusers on the basis of accurately distinguishing between legitimate exercise of rights and
abuse of rights. It can be predicted that through the continuous optimization of rules and the continuous standardization of practice, the benign operation of the jurisdiction objection system.

References


