Study on the Causes of Civil Judgment Protest

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Abstract. The People's Procuratorate, as the procuratorial and supervisory organ of China, protests against effective civil adjudications and corrects errors in civil cases. The protest causes are the starting point of civil judgment protest. Since its establishment in 1991, the protest system has been improved constantly and the protest reasons have also been gradually refined. It is of great significance to supervise the exercise of judicial power. However, the study still has its limitations. There is no distinction about the differences between the reasons of protest and retrial. And the provisions of specific matters need to be clear.

Introduction

According to Constitution of the People's Republic of China, the People's Procuratorate is the country's legal supervision organ. This law legitimizes the legal supervision function of the Procuratorate and gives it the right to supervise the implementation of the laws legally. In civil cases, it is the protest right of procuratorial organs. Civil cases mainly involve private rights and interests; in most cases it is necessary to determine the rights and obligations between the litigants. Civil judgment res judicata requires a legal determination of the dispute through the ruling; otherwise it may cause confusion of the social order, and the civil judgment will lose the meaning of existence. However, the deviation of the law, the judges’ personnel errors during trials or the blemish of procedure may lead to the final effective judgments deviate from the original intention of fairness and justice, and finally damage the national interests, social interests or interests of others. In this case, the role of the protest system can be demonstrated. Its purpose is to balance the contradictory relationship between the res judicata of the court and the correction of major judgment errors. On the establishment of protest system, the protest cause is the first problem to be solved. That is, under what circumstances the Procuratorate can protest. This article will focus on the subject matter of the civil referee protest provisions, especially the relevant problems about specific provisions and the distinction between the reasons of protest and retrial.

The Historical Evolution of Civil Judgment Protest

The Civil Procedure Law (Trial) in 1982 stipulates that Court is the only body that initiates the procedure of legal supervision. Although the procuratorate's procuratorial supervisory power is affirmed in Article 12, the specific rules for the exercise of its rights are not stipulated.

The Civil Procedure Law in 1991, as a remedy to the problems of the civil cases and the supervision of the Procuratorate at that time\cite{1}, has taken the procuratorial supervision, the
Civil protest system of the People's Procuratorate into account, which made up the blank of the legal supervision of the Procuratorate in civil adjudication. The system of civil procuratorial supervision has been formally from abstraction to concreteness. [2] At the time, however, the law only provided four cases of protest roughly[3]. The provisions entitled the Procuratorate to protest, but it did not clearly indicate the specific circumstances of the protest, and the scope is too narrow. This idea was difficult to operate.

In 2007, with amendments, Civil Procedure Law expanded the terms of protest f from four terms to thirteen terms, added presentation of new evidence, jurisdiction, composition of trial organization and avoidance. And it detailed the provision of lack of evidence, provided a relatively sufficient legal basis for the Procuratorate to exercise the right of protest, and reduced the contradictions and conflicts between the different government organs due to differences in legal interpretation.

The Civil Procedure Law, which was revised in August 2012, directly used the "trial judges to accept bribes, engage in malpractices for personal gain and commit bogus judgments" as the 13th protest, and removed the jurisdictional errors and other circumstances in which a complaint could be filed against a legal proceeding. It was fully specified by the way of enumeration[4]. Compared with the provisions of 2007, the structure is more reasonable.

The Deficiency of Civil Judgment Protest

A. Causes of civil judgment protest are same as that of retrial applied by litigants

Civil protest, as a form of civil procuratorial supervision system, is essentially a specific way for Procuratorate to exercise its right of inspection and supervision. The current Civil Procedure Law continues the previous methods, and does not distinguish causes of civil judgment protest from that of retrial applied by litigants. The retrial system applied by litigants is based on the right that litigants have to appeal. It’s a way for the litigants to seek relief when their rights and interests are damaged by effective referee. The purpose is to correct the errors in the trial process, help the legitimate rights and interests of the parties return to a state of distribution legally, and achieve fairness and justice. Therefore, retrial system essentially possesses the attribute of private rights relief[5]. However, the effective judgment protest is an external supervision[6]. The system focuses on correcting procedural errors that arose when a case is heard before a court; it put more emphasis on the supervision of the jurisdiction. Although the final result is of some significance for litigants, it is easy to see that the "right relief" is only an accessory of civil judgment protest.

In addition, under this rule, the litigants relieve have double protection. If the litigant’s application for retrial is rejected or the court does not reply in the specified time, the litigant can apply to the People's Procuratorate for protest in accordance with Article 209 of the Civil Procedure Law. According to Article 211 of the Civil Procedure Law, the People's Court shall retry the protest against the People's Procuratorate. Undoubtedly, such a provision for the litigants is beneficial, provided another opportunity for them to protect rights and interests. However, from the perspective of the courts and procuratorates, it is not difficult to find that the court's authority will be challenged if the reasons for the application of the retrial are the same as those of the procuratorate, which will cause the court into an embarrassing situation.

B. The specific provisions of the civil judgment protest is not clear

The current Civil Procedure Law of the People's Republic of China stipulates 13 cases of civil
protest, which covers issues such as fact determination, application of law, application of the procedure and the integrity of the trial officials. On the surface, these things basically cover the court trial process. With the supervision of these areas, fairness and justice of these cases can be achieved basically. However, with careful consideration, it can be found some shortcomings.

First of all, in the current Civil Procedure Law Article 200, paragraph 1, subparagraph 6, the new evidence is requested to overthrow the original judgment sufficiently. The statement is defective. This word sufficiently means that the new evidence can make the effective judgment change subversively. Level requirements are higher. But what kind of situation is sufficient needs to be deeply explored. The clause mainly from the point of the Procuratorate considers the degree. And whether enough to overthrow, the final decision is still made by the People's Court. The Procuratorate cannot and has no right to exercise the jurisdiction to define. When the Procuratorate think that the new evidence is enough to overthrow the original judgment, but the Court has finally rejected its view, it is bound to put the Procuratorate into an embarrassing situation.

The provision of subparagraph 6 stressed that the Procuratorate should protest when the effective judgment is incorrect indeed. In this provision, prosecutors need to stand in the point of the Adjudicators of the case to consider the legal application: which law should be applied, why this law rather than that law, whether there are exceptions and other issues and so on. However, prosecutors, after all, cannot and have no right to exercise the judicial authority. They can just to supervise of the exercise of judicial power. The Procuratorate is required to set out the errors of original decision clear and specific. This may make the Procuratorate into a vicious circle: Procuratorate protest according to law, but the court exercise of judicial power to deny the prosecution's protest. It put more emphasis on the court's voice in trial, ignoring the protest of the Procuratorate and the enthusiasm of the Procuratorate may decline. At the same time, the matter is too abstract to define, which results the actual operation is more difficult. Judges in the initial trial of the case have formed the understanding of the case, and also have some judgments on the application of the law. Retrial caused by the protest may cause some thinking, but it is difficult to change the final result.

Paragraph 1, subparagraph 7, provides for the avoidance of trial personnel, but ignores the avoidance of other litigation participants. The procedure of civil cases clearly stipulates the avoidance of other litigation participants. It is obvious that their avoidance is of great significance. The law itself takes this into account, but in the civil judgment protest the subject was not provided. First of all, it does not meet the system requirements. Moreover, not only the trial staff, but also witnesses, experts, interpreters and avoidance will affect the case avoiding the fairness of justice. This is an omission of the provisions.

Perfection of Civil Judgment Protest

A. distinguish Causes of Civil Judgment Protest from that of Retrial Applied by Litigants

Civil protest and retrial applied by litigants is two different systems, and their focuses are also different, so the effect they want to achieve is not the same. The former focuses on the supervision of judicial power, which aims to correct the injustice of judgments and rulings caused by errors in the exercise of judicial power, and achieve de facto fairness and justice, while the latter focuses on the relief of private benefits. Therefore, the author holds that when
the two systems are set up, it is unreasonable to stipulate exactly the same subject matter of
the two systems and it is difficult to balance the differences between the two systems. Of
course, this view does not mean the two systems cannot have same or similar reasons. It just
means it is necessary to make a distinction between the special circumstances of the two, and
to identify their specific issues in the provisions. Then listing their own specific causes and
highlighting their specificity. This division can undoubtedly take into account the
characteristics of the two systems. At the same time, it can make the civil protest causes more
specific, improve the operability, and avoid the contradiction caused by different
understanding between the Court and the Procuratorate to a great extent.

B. Replace Sufficient with Possible

*Sufficient* means great higher requirement to new evidence and excludes some evidence that
may affect the decision of the case. For such cases, the Procuratorate cannot fully confirm
whether the probative force of new evidence is enough to reverse the original judgment. It is
difficult to exercise the right to protest, so that some difficult cases difficult to find the truth.
Furthermore, different people may have different understandings on the new evidence. Judges
and procurators may also have different attitudes when determining whether the new evidence
is *sufficient* to overturn the original judgment or ruling, which lead to different attitudes
between the Court and the Procuratorate. In order to avoid this, it is necessary to replace
*sufficient* from *possible*. On the one hand, some *new evidences* that may overrule the original
effective judgment and ruling can be included in the scope of protest. To a certain extent, it
can expand the scope of protest in civil cases and improve the possibility of correcting wrong
judgments. On the other hand, the Court and the Procuratorate can *fuzzify* the evaluation
standard of the new evidence, dilute the contradiction between both, reduce or avoid the
situation that the Court directly deny the prosecution opinion, and ensure the independence of
Procuratorate. Surely, the actual establishment about *possible* must be determined. In order to
avoid the surge of protest cases caused by a low standard, the evaluation criteria should not be
too low. It can be decided according to the actual situation in different regions.

C. Delete the Cause of Incorrect Application of Law

Specific application of the law is mainly related to the actual trial of the case, and it is a
substantive issue. In the case of the actual trial, compared to the Procuratorate, the Court has
more authorities: the courts are the judicial organs stipulated by the Constitution. In the
theoretical researches and practical operations, the Courts have a deeper understanding about
the application of various laws, and in the specific trial of cases, it has great advantage that
the Procuratorate cannot match. In this case, it seems to be inappropriate that the
Procuratorate judges whether the application of the law about the trial is right. In most cases,
the views of the Procuratorate filed under this provision will be largely shelved. It is difficult
to play a role. If things continue this way, the Procuratorate’s enthusiasm to correct errors will
inevitably be struck. Therefore, in cases involving substantive issues, the Court of First
Instance should be encouraged to correct the errors of the case, and the Procuratorate’s
supervisory function should be limited appropriately, which will help to reduce the waste of
judicial resources and improve judicial efficiency.

D. Add Clauses about the Avoidance of Other Litigation Participants

As previously mentioned, the avoidance of other litigation participants including witnesses,
experts and translators, is also involved with the fair trial of cases. Under normal
circumstances, the trial of judges is throughout the proceedings, so judges’ avoidance is directly related to the results of the referee. There is little controversy about the avoidance of judges. While other participants in the proceedings, usually only exert an influence on the case at a procedural stage, such as witnesses. Under normal circumstances, witnesses only have direct access to the case when they testify. Witness testimony may be directly related to the fact that the case identified, the impact is enormous. Similarly, the experts, the interpreters also play an indispensable role in the trial. Their avoidance also relates fairness and justice in some stage. Therefore, it is essential to correctly understand the status of other participants in the trial process. It is necessary to add the avoidance of other litigation participants in the causes of civil judgment protest, to maximize the exclusion of procedural errors and to correct the error in trial.

Conclusion

Since 1991, the Procuratorate's civil procuratorial supervisory power has been gradually realized. Civil judgment protest is gradually specific, and operability is increasing, which provide a more adequate legal basis for Procuratorate’s procuratorial supervisory power. Nevertheless we should still put more attention on some unreasonable circumstances such as the above situation; combine with practical practices to seek more reasonable and legitimate solutions.

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