

Research on the Perfection of the System of Prohibiting Repeated Litigation in Civil Procedure

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Abstract

The system of prohibiting repeated litigation plays a significant role in civil litigation, aiming to maintain judicial order, protect the rights and interests of parties, and improve litigation efficiency. Although China has stipulated the prohibition of repeated litigation in relevant judicial interpretations, it still faces many dilemmas in both theoretical and practical aspects. Through theoretical analysis of the system of prohibiting repeated litigation, this paper discusses its concept, origin, relationship with related concepts, and judicial value. Combined with the current situation of the system in China, it deeply analyzes the problems existing in legislative identification standards and judicial safeguard measures. Drawing on the experience of the two major foreign legal systems, it puts forward legislative improvement suggestions such as clarifying the scope of case subjects, improving the theory of the object of litigation, adopting the theory of litigation pendency, and supplementing the theory of issue preclusion. It also proposes directions for improving judicial safeguard measures, such as accelerating the establishment of a shared case-filing information network platform, supplementing guiding cases, and refining the judge's explanation system, so as to promote the continuous improvement of China's system of prohibiting repeated litigation.

Keywords

Prohibition of Repeated Litigation; Litigation Pendency; Object of Litigation; Judicial Safeguard

1. Theoretical Interpretation of the System of Prohibiting Repeated Litigation

1.1. Concept and Origin

The concept of the system of prohibiting repeated litigation has not yet formed a unified definition in academic and practical circles. One view holds that it prohibits the act of the parties re-filing a lawsuit on the same fact during the pendency of the litigation or after the judgment of the previous lawsuit becomes effective; another view emphasizes that two lawsuits with succession due to different filing times may

also constitute repeated litigation if there is a specific connection. In terms of origin, this system originates from the "consumption of litigious rights" theory in ancient Roman law, aiming to prevent the parties from abusing litigious rights and ensuring the finality and stability of litigation. In ancient Roman law, once the parties exercised their litigious rights, the litigious rights were consumed, and they could not file a lawsuit on the same matter again, which laid the foundation for the modern system of prohibiting repeated litigation.

1.2. Relationship with Related Concepts

Through an investigation of 108 "two-law convergence" cases, Zhang Zetao found that 87% of cases involving electronic evidence exhibited the phenomenon of "substituting administrative procedures for criminal investigations." A typical example is extracting mobile phone data through detention and interrogation under the Police Law to circumvent the search warrant requirement stipulated in Article 138 of the Criminal Procedure Law. This procedural conversion creates three systemic loopholes:

Litigation pendency refers to the activity that a case forms a specific legal relationship and is tried by a specific court due to the party's filing of a lawsuit. Continental countries mostly adopt this concept, while China's current Civil Procedure Law does not explicitly use it, but describes a similar state as "in litigation". There are many theories about the starting time of litigation pendency, such as the "pleading submission theory", "pleading acceptance theory" and "pleading service theory". Under China's case-filing registration system, practice tends to favor the "pleading submission theory", but the case-filing registration system has a certain impact on the "pleading acceptance theory". Litigation pendency is closely related to the prohibition of repeated litigation. Its defense characteristics can prevent the parties from filing another lawsuit on the same matter during the litigation process, ensure that the case with the same object of litigation is under the jurisdiction of the same court, and maintain the certainty of judicial procedures.

The principle of non bis in idem is deeply with the system of prohibiting repeated litigation. The principle of non bis in idem has developed into the defense effect of adjudicated cases and the defense effect of litigation pendency in civil law countries, in which the defense effect of adjudicated cases has gradually evolved into the modern theory of res judicata, while the litigation pendency system includes the effect of prohibiting repeated litigation. In China, the principle of non bis in idem is more common in the field of criminal litigation, but in civil litigation, the relationship between it and the system of prohibiting repeated litigation is controversial in academic circles. One view holds that the two have the same connotation, both aiming to prevent the parties from repeated litigation and the court from repeated trial; another view holds that the two focus on different points, with non bis in idem focusing on maintaining the finality of the judgment, and the prohibition of repeated litigation focusing on restricting the party's act of filing a lawsuit.

2. Current Situation of the System of Prohibiting Repeated Litigation in China

2.1. Legislative Status

Article 247 of the Interpretation of the Civil Procedure Law in 2015 first clarified the identification standards and regulatory methods of the system of prohibiting repeated litigation, stipulating that the constitution of repeated litigation needs to meet three conditions: the same parties, the same object of litigation, and the same litigation requests or the subsequent litigation requests substantially negate the judgment result of the previous litigation, and stipulates two regulatory methods: ruling that the case is not accepted and ruling to reject the lawsuit. However, the interpretation does not clearly define the relevant concepts, such as "parties", "object of litigation", "litigation requests", etc., and the definition is relatively principled, lacking specific operational guidelines, resulting in difficulties in the identification of repeated litigation in judicial practice.

2.2. Judicial Status

In judicial practice, the court mostly handles repeated litigation cases according to Article 247 of the Interpretation of the Civil Procedure Law, but different courts have differences in specific application. Some courts strictly adjudicate according to the "three same" standards, some courts comprehensively judge in combination with the principle of "non bis in idem" or other legal provisions, and there are even individual courts that exercise discretionary power or have inconsistent adjudication standards. In addition, in some complex cases, due to the imperfection of legal provisions, the court faces many challenges in judging repeated litigation, such as the determination of the scope of parties, the identification of the object of litigation, the comparison of litigation requests, etc., resulting in a certain confusion in the handling of repeated litigation in judicial practice.

3. Problems Existing in the System of Prohibiting Repeated Litigation in China

3.1. Dilemmas of Legislative Identification Standards

Article 247 of the Interpretation of the Civil Procedure Law has a mechanized identification method for the same parties, and the scope is too broad. In actual cases, there are controversies on how to accurately identify the same parties in cases of changes in the number of parties, litigation status, and litigation assumption, litigation succession and other circumstances. For example, in some cases involving multiple parties or transfer of rights and obligations, the court's judgment standards on whether the parties are the same are inconsistent, resulting in the phenomenon of different judgments in the same case from time to time, which affects the fairness and authority of justice.

In practice, the parties often evade the system of prohibiting repeated litigation by changing the litigation requests, and the court lacks clear standards in judging whether the litigation requests are the same. Some courts only make a formal comparison without considering the substantive content of the litigation requests, and because the relationship between the litigation requests and the object of litigation is not clear, the boundary between the two is blurred. For example, in cases involving partial requests, there are different views on whether it constitutes repeated litigation. Some courts believe that splitting the principal and interest into separate lawsuits is the litigation right of the parties, while some courts believe that it constitutes repeated litigation. This difference affects the unity and fairness of judicial adjudication.

3.2. Lack of Judicial Safeguard Measures

Under the case-filing registration system, the court's case-filing review standard is relatively loose, so it is difficult to effectively identify repeated litigation cases. Some courts do not fully verify whether the parties have repeated litigation behavior when filing cases, and lack a comprehensive review of case information. At the same time, the screening role of the pretrial procedure for repeated litigation has not been fully played, and the case information sharing between courts is not smooth, resulting in the inability to timely find repeated litigation cases, which affects judicial efficiency and fairness. For example, in some cross-regional cases, due to the lack of information connection, the parties may file repeated lawsuits on the same matter in different courts, and the court only finds the problem in the trial process, resulting in waste of judicial resources.

The judge's explanation system in China's civil litigation has the problem of insufficient refined measures. In repeated litigation cases, the exercise of the judge's right to explain lacks clear norms, and there are no specific provisions on which issues should be explained and the degree of explanation. This makes it difficult for judges to accurately grasp the scope and method of explanation in practice, which affects the litigation rights of the parties and the fair trial of cases, and is not conducive to giving play to the role of the judge's explanation system in preventing and solving the problem of repeated litigation.

4. Improvement Paths of the System of Prohibiting Repeated Litigation in China

4.1. Amendment of Legislative Identification Standards

The legislation should further clarify the identification standard of the same parties and review the legal relationship between the parties from a substantive perspective. For counterclaim cases, it should be clear that they do not apply the determination standard of repeated litigation to promote the improvement of litigation efficiency. In cases where litigation successors participate, accurately judge whether

the parties are the same according to different succession situations to protect the legitimate rights and interests of successors. For joint litigation cases, especially when the number of parties increases or decreases, comprehensively consider the specific circumstances of the case and the litigation status of the parties to reasonably determine whether it constitutes repeated litigation, so as to prevent the parties from evading the system of prohibiting repeated litigation through formal changes. Clarify the relationship between the litigation request and the object of litigation, regard the litigation request as the external manifestation form of the object of litigation, and judge whether the litigation requests are the same on the basis of the object of litigation. For cases of partial requests, formulate a unified adjudication standard, and comprehensively consider factors such as the parties' behavior motivation and the specific circumstances of the case to judge whether it constitutes repeated litigation. When the parties split the litigation requests, strengthen the review of their rationality, prevent the parties from evading the system of prohibiting repeated litigation by improper means, and maintain judicial justice and litigation order.

4.2. Optimization of Judicial Safeguard Measures

Establish a national unified shared case-filing information network platform to realize the real-time sharing of case information between courts at all levels. At the case-filing stage, the staff should strictly follow the identification standards of repeated litigation, comprehensively review the litigation materials submitted by the parties, and enter the relevant information into the platform for screening. For suspected repeated litigation cases, timely communicate and verify with the relevant courts to ensure accurate judgment. At the same time, strengthen the review function of the pretrial procedure for repeated litigation, and timely discover repeated litigation cases through improving the pretrial procedure of summarizing the focus of litigation and the evidence exchange procedure, so as to improve judicial efficiency and reduce the burden of litigation on the parties.

The Supreme People's Court should increase the release of guiding cases related to the prohibition of repeated litigation, and timely screen, sort out and release representative cases for the common problems and dispute focuses in judicial practice. Clarify the adjudication points and reasons in the cases, provide specific adjudication guidance for judges, and unify the judicial adjudication scale. Lower courts should strengthen the study and research of guiding cases, organize judges to carry out case discussions and training, improve the ability of judges to use guiding cases, and ensure that when handling repeated litigation cases, they can accurately refer to relevant cases and achieve the same judgment for the same case.

4.3. Refining the Judge's Explanation System

Through legislation or judicial interpretation, clarify the scope, method and proce-

dures of the judge's right to explain, and standardize the judge's explanation behavior in repeated litigation cases. In cases where the parties may constitute repeated litigation, the judge should timely explain the relevant legal provisions and consequences to the parties, and guide the parties to correctly exercise their litigious rights. In the process of explanation, pay attention to protecting the legitimate rights and interests of the parties and ensure the neutrality of the judge. At the same time, establish a supervision mechanism for the judge's explanation, and supervise and correct the judge's improper or untimely explanation behavior to ensure the effective implementation of the explanation system.

5. Conclusion

This paper conducts a research on the improvement of the system of prohibiting repeated litigation in civil procedure. It first makes a theoretical interpretation of the system, including its concept, origin, relationship with related concepts like litigation pendency and the principle of non bis in idem, and judicial value. Then it analyzes the current legislative and judicial situation of the system in China, pointing out the problems such as the dilemmas in legislative identification standards, including loose identification of the same parties, unclear litigation requests, and narrow identification scope of subsequent litigation requests substantially negating the previous judgment results, as well as the lack of judicial safeguard measures like imperfect court filing and pretrial system, insufficient guiding cases, and lack of refined judge's explanation system. Finally, it proposes improvement paths from the aspects of amending legislative identification standards and optimizing judicial safeguard measures, aiming to promote the perfection of China's system of prohibiting repeated litigation.

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