

# *An analysis of the adjudication suspension procedure—a contract dispute as an example*

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**Abstract:** In the process of civil litigation, if there are some legal reasons that make the litigation unsuitable or unable to continue, the court may decide to suspend the litigation according to relevant regulations, that is, suspend the trial of the case. After the cause of the suspension disappears, the litigation will be resumed. However, there are some shortcomings in the application process of litigation suspension, such as the need for "punishment before the people" in the substantive trial process? Actually, it's not the case. The main thing to consider is the degree of correlation between the two. If they are independent, then there is no need to suspend the civil litigation process, which will try to avoid unnecessary waste of judicial resources. At the same time, we should also pay attention to the relationship and difference between the suspension of the judgment and the termination of the judgment, and cannot confuse the two, otherwise it will greatly affect the normal operation of civil litigation procedures.

## 1. Summary of typical case adjudication suspension

### 1.1 Qingyang City Jiayuan Real Estate Development Co., Ltd. proposed He Shilin and Qingyang City Jiayuan Real Estate Development Co., Ltd. construction equipment lease contract dispute a case of the gist of execution objection ruling

(1) Zhang Xingkuan signed a lease agreement with Qingyang City Construction and Installation Engineering Company Limited on behalf of Qingyang Jiayuan Real Estate Development Co. The dissenters have reported the case to the public security authorities on the grounds that Zhang Xingkuan had carved his company's seal privately and carried out economic activities in the name of his company, and the public security authorities have decided to open a case. In accordance with Article 1 of the Provisions of the Supreme People's Court on Several Issues Concerning the Suspicion of Economic Crimes in the Trial of Economic Dispute Cases: Where the same citizen, legal person or other economic organisation is involved in an economic dispute and a suspected economic crime respectively due to different legal facts, the economic dispute case and the suspected economic crime case shall be heard separately. Article 10: If, in the course of hearing an economic dispute case, the people's court finds clues or materials of economic suspicion that are implicated in the case but not

in the same legal relationship with the case, it shall transfer the clues or materials of criminal suspicion to the relevant public security organs or procuratorial organs for investigation and handling, and the economic dispute case shall continue to be heard. Article 153, paragraph 1(5) of the Civil Procedure Law of the People's Republic of China provides that "If the present case must be based on the outcome of another case, which has not yet been concluded, it shall be ruled that the proceedings are suspended."

(2) Zhang Xingkuan then signed a lease agreement with Qingyang City Construction and Installation Engineering Co., Ltd. on behalf of Qingyang City Jiayuan Real Estate Development Co., Ltd. and the objector has been reported to the public security authorities as Zhang Xingkuan privately engraved his company seal and carried out economic activities in the name of his company, and the public security authorities have decided to open a case. In line with the 'Supreme People's Court on several issues involving economic crime suspicion in the trial of economic dispute cases' Article 1: If the same citizen, legal person or other economic organization is involved in economic dispute and economic crime suspicion respectively due to different legal facts, the economic dispute cases and economic crime suspicion cases shall be heard separately. Article 10: In the trial of economic dispute cases, the people's court finds clues and materials of economic suspicion implicated in the case, but not the same legal relationship with the case, the clues and materials of criminal suspicion shall be transferred to the relevant public security organs or procuratorial organs for investigation and handling, and the economic dispute cases shall continue to be heard. The Civil Procedure Law of the People's Republic of China, Article 153, paragraph 1 (5) provides that 'The action must depend on the results of the trial of another case which has not been concluded.'

(3) The case involves the principle of "criminal first and civil second ". Sentencing before the people refers to in civil litigation activities, when suspected criminal offenses are discovered, the court should first try the criminal offense after the investigation authorities have investigated the facts of the suspected criminal offense, and then try the civil liability involved; The facts of the case confirmed by the court's effective civil judgment are suspected of criminal offenses, and the civil judgment should be dealt with after the suspected criminal offense is sentenced. This case, Zhang Xingkuan, is suspected of a criminal offense. The public security organs have decided to file the case, which is in line with the principle of "criminal first and civil second ".

(4) Therefore, the Court shall suspend the execution and the objection of the objector, Qingyang Jiayuan Real Estate Development Co. Ltd. requested to suspend the execution of the civil judgment of our court according to the law, which is not a problem solved by the execution objection of this case. In summary, in accordance with Article 225 of the Civil Procedure Law of the People's Republic of China and Article 7(3) and Article 17(2) of the Provisions of the Supreme People's Court on Several Issues Concerning the Handling of Objection and Reconsideration Cases by the People's Courts, it is ruled as follows: the execution of the execution notice of the Court is suspended. If you are not satisfied with this ruling, you may apply to the Intermediate People's Court of Qingyang City, Gansu Province for reconsideration within ten days from the date of service of this ruling.

## **1.2 Hu Hongyun, Lan Yongbo contract dispute civil judgment of the second trial judgement gist:**

"Criminal first and civil second' is not the basic principle of hearing civil and criminal crossover cases, but only one of the ways to deal with it. In this case, although the public security authorities have opened a case against Wan Le Ping and Liao Yong, they have not opened a case against Lan Yong Bo for the existence of criminal acts. The case of Wan Leping and Liao Yong's alleged fraud is still in the investigation stage, and neither party has evidence to prove that the case must be based on the outcome of the trial of the criminal case. Therefore, this case does not meet the circumstances of

the suspension of litigation as stipulated in Article 153 of the Civil Procedure Law of the People's Republic of China. In view of this, the Court continued to hear the case in accordance with the law.

### **1.3 HSBC and Huangshi Xinpeng Copper Material Co. contract dispute civil judgement gist**

(1) Huangshi city public security bureau submitted to this court "on our bureau has been on xinpeng company fraudulent HSBC, minsheng bank loan case filed the situation statement", and attached to the "list of information", "decision to file", "arrest decision", "arrest warrant", "Yang Miao transcript" and "Wang Shanyi transcript" and other evidence and information, that Huangshi city public security bureau file investigation of Xin Peng company fraudulent HSBC Wuhan branch loan case involved in the facts and the case of commercial disputes for the same facts, Xin Peng company staff to change the way the contract fraudulent HSBC wuhan branch loan, suspected of criminal offences.

(2) Huangshi city public security bureau investigation of Xin Peng company deception HSBC Wuhan branch loan case and this case in the factual determination of cross, but Xin Peng company suspected of constituting a criminal offence of the fact does not negate the existence of civil relations between HSBC Wuhan branch and chinalco huazhong copper company, so does not comply with the provisions of article 153, paragraph 1 (5) of the civil procedure law, is not applicable ruling suspension.

### **1.4. Wang Jinliang, Jiang Hao and other enterprises lending dispute civil judgment of the first trial judgement gist**

During the trial of this case, the plaintiff Wang Jinliang suspected the defendant Jiang Hao of contract fraud. After examination, the court believed that the defendant Jiang Hao and Shandong Shengjiahe Energy Technology Co., Ltd. were suspected of contract fraud, and the court has transferred the relevant suspect clues to Zibo Linzi Branch according to law.

It has a direct interest in the case, the outcome of the case has relevance to the case, is a prior relationship with the case, in line with the Civil Procedure Law, Article 153, paragraph 1 (6) of the provisions of "other circumstances that should suspend the proceedings". It is the bottom clause that gives the judge certain discretionary power to rule on the suspension of the case, so it should be ruled that the case should be suspended.

### **1.5 Fan Yue, Wang Danni civil judgment gist of the first instance in the dispute over the contract of sale and purchase**

(1) Although there was no written sales contract signed between the plaintiff and the defendant, the plaintiff, as the buyer, paid the price to the defendant, and the defendant, as the seller, delivered the goods to the plaintiff. The two parties actually formed a sales contract relationship. In the trial, both the plaintiff and the defendant acknowledged the existence of a sales contract between the two parties, and the fact of the sale also occurred between the plaintiff as the buyer and the defendant as the seller. However, the defendant argued that the fact that he was defrauded was due to the relationship between him and an outsider. Even if the funds involved in the case were transferred to the outsider, it was still within the scope of the defendant's contractual obligation to deliver the goods. The economic transactions between him and the outsider did not belong to the same basic fact as the basic facts of the purchase and sale contract in this case.

(2) The matters reported by the defendant and the sales contract involved in the case do not belong to the same basic fact. The plaintiff, based on the relativity of the sales relationship, filed this lawsuit without any impropriety, and its lawsuit falls within the scope of acceptance of civil litigation by the

people's court. The plaintiff and defendant have no objection to the amount of payment for goods under the sales contract or the fact that the goods have not been delivered, that is, the facts related to the sales contract are clear, and there is no need to rely on the investigation, prosecution, or trial results of the case as claimed by the defendant. Therefore, there is no situation of suspension of litigation in this case.

## 2. Dilemma of judicial application

(1) In a civil-criminal cross-over case, if a party applies to the court to dismiss or suspend a civil case on the sole ground that a criminal case is involved. At this point, the outcome of the court's disposal is crucial to the rights and obligations of the parties. What criteria will the court use to determine whether a civil case should proceed. Should the case be discontinued or dismissed<sup>[1]</sup>? What exactly are its criteria for determining this?

(2) On the resumption of proceedings, the law only provides that "the action shall resume after the cause of suspension is eliminated" as a substantive condition. For how to start the resumption of litigation procedures and the resumption of litigation is not clearly expressed. In order to provide adequate procedural safeguards for the resumption of proceedings, the manner in which the resumption of proceedings is to be initiated should be made clear. It should also be taken into account whether the proceedings should continue after resumption or be reopened on a case-by-case basis.

## 3. Expansion of relevant information

Civil Procedure Law of the People's Republic of China Article 232

Where, for any justifiable reasons, any interested party is unable to declare its claims to the people's court before a judgment is entered, the interested party may, within one year from the day when the interested party knows or should have known the public announcement of the judgment, institute an action in the people's court which entered the judgment.

Provisions of the Supreme People's Court on Several Issues Concerning the Handling of Cases of Execution Objection and Reconsideration by the People's Courts Article 7(3)

Article 7 where a party or interested party considers that the following acts in the process of execution or in the process of executing a ruling on preservation or prior execution are illegal and raises an objection, the people's court shall conduct a review in accordance with the provisions of Article 225 of the Civil Procedure Law:

- (a) The execution measures such as seizure, attachment, freezing, auction, realisation, offsetting of debts in kind, suspension of execution, suspension of execution and termination of execution
- (b) The period and order of execution and other legal procedures to be followed
- (c) Other acts made by the people's court that infringe upon the legitimate rights and interests of the parties and interested parties.

Where an executee raises an objection to the exclusion of execution on substantive grounds after the basis for execution has come into effect, such as the extinction of the claim or the loss of the effectiveness of enforcement, the people's court shall examine the matter with reference to the provisions of Article 225 of the Civil Procedure Law.

Except for the circumstances stipulated in Article 19 of this provision, if the executee raises an objection to the exclusion of execution on substantive grounds before the basis of execution takes effect, the people's court shall inform him/her to apply for a retrial or resolve the matter through other procedures in accordance with the law.

Article 17 The people's court shall handle objections to acts of execution separately in accordance with the following circumstances:

- (a) Where the objection is not established, the ruling shall reject the objection;

(b) Where the objection is established, it shall rule that the relevant act of execution shall be revoked.

(c) Where the objection is partially established, it shall rule that the relevant act of execution shall be changed.

(d) If the objection is established or partially established, but there is no revocation or modification of the enforcement act, it shall be ruled that the objection is established or the corresponding partial objection is established.

Provisions of the Supreme People's Court on Several Issues Concerning the Suspicion of Economic Crimes in the Trial of Economic Dispute Cases Article 1: Where the same citizen, legal person or other economic organization is involved in an economic dispute and a suspected economic crime respectively due to different legal facts, the economic dispute case and the suspected economic crime case shall be heard separately.

Article 10: If, in the course of hearing an economic dispute case, the people's court finds clues or materials of economic suspicion that are implicated in the case but are not in the same legal relationship with the case, it shall transfer the clues or materials of criminal suspicion to the relevant public security organs or procuratorial organs for investigation and handling, and the economic dispute case shall continue to be heard.

#### 4. Summary of the Study

(1) In most practices, people regard "criminal first and civil second" <sup>[2]</sup> as the basic principle for handling cross disciplinary cases between civil and criminal law. However, when we look at Article 153 of the Civil Procedure Law, it actually does not explicitly express this principle. However, in past judicial practice, there have been differences in understanding the fifth item of litigation suspension, believing that as long as the facts of other litigation cases are relevant to this lawsuit, litigation suspension can be applied. In cross disciplinary cases between civil and criminal law, civil litigation should naturally be suspended, and the litigation order of "criminal first and civil second" should be applied. This understanding increases the risk of improper suspension of civil litigation and is a misreading of these norms by the Supreme People's Court. Scholars of civil procedure law and criminal law have also raised strong doubts about the trial order of "criminal first and civil second".

For example, during the trial of a "loan fraud" case, the court did not consider whether the outcome of the criminal case had an impact on the factual findings of the civil case, but simply suspended the proceedings on the grounds that the criminal case had not been completed. This has led to unnecessary delays in civil cases, causing serious damage to the rights and interests of the parties. This phenomenon has led us to replace the old "criminal first and civil second" view with "civil and criminal".

Furthermore, according to Article 153, paragraph 1 (5) of the Code of Civil Procedure, the present civil action can only be suspended if the trial of another case is a prerequisite for the trial of the present case. This doctrine is often called a condition precedent<sup>[3]</sup>. The other action with precedence is not only criminal proceedings, but also cases such as administrative proceedings and cases relating to intellectual property rights. There is no superiority or inferiority in this regard. And the condition of the stay does not leave much room for discretion on the part of the judge; it is mandatory. Otherwise it would extend to a lot of unease and would be unfair to both parties.

The so-called prior relationship<sup>[4]</sup> is a determination of the legal relationship between the other case and the case in question. For example, the determination of ownership by other suits, the determination of whether a particular claim is established, the determination of commercial relationships such as directorships, etc. The main reasons for this are the economy of litigation, the prevention of contradictory decisions and the favourable judicial unity. Moreover, in Article 11 of the

Supreme People's Court's "Provisions on the Issues Concerning Suspected Economic Crimes in the Trial of Economic Dispute Cases", it is clearly stated that "when a people's court, in the trial of an economic dispute case, finds clues or materials suspected of economic crimes that are implicated in the case, but not in the same legal relationship as the case, it shall transfer the suspected criminal clues or materials to the relevant public security organ or procuratorial organs for investigation and handling, and the economic dispute case shall continue to be heard." Article 3 of the Certain Provisions on Depository Receipt Dispute Cases also clearly states that "for cases where the pursuit of criminal liability of the parties concerned does not affect the trial of the depository receipt dispute case, the people's court shall determine and deal with whether the parties concerned in the depository receipt dispute case bear civil liability and the size of the civil liability in a timely manner in accordance with the law." The 2019 Supreme People's Court issued the "Nine Civil Minutes" which also clearly conveyed that "if a civil or commercial case is not required to be based on the outcome of the relevant criminal case, the civil or commercial case should continue to be heard." The viewpoint of the SPC is an important unifying guidance for civil trials.

(2) After the suspension of the lawsuit, unlike the termination of the lawsuit, although the time for resuming the procedure is difficult to determine, the actual issue has not been resolved. Therefore, regardless of the length of the time, as long as the reasons for the suspension of the lawsuit are eliminated, it should resume the litigation procedure. In China, there are mainly two phenomena: the court restores the litigation procedure according to its authority and the parties apply<sup>[5]</sup> for litigation restoration. However, after the start of the litigation procedure, the variables that occur during the intermediate stage are unpredictable and may even affect the trial outcome. Whether the start of the procedure should continue with the trial or whether it should be re tried based on individual circumstances should be considered. However, in principle, the trial should continue.

For example, when the parties to the succession of litigation<sup>[6]</sup>, such as the death of the parties, legal persons or other organizations terminated, a party incapacitated litigation, and later due to the succession of litigation to replace the parties, in order to implement the principle of direct litigation and the principle of procedural participation, should be resumed after the resumption of litigation proceedings.

But in the suspension of litigation, for a party incapacitated resulting in the suspension of litigation, after the determination of its legal representative, although the legal representative has similar rights to the parties to litigation, but in the final analysis is only to represent the parties to litigation. The final result of the court's decision is still aimed at the original party who has lost the capacity to litigate, and not the legal representative who comes out later, this period is not the succession of rights and obligations. Therefore, the proceedings should be continued after the resumption of proceedings.

Secondly, following the stay of proceedings, both parties before the stay and after the resumption of proceedings were proper parties to the case. For the two parties before and after the trial proceedings are for the same subject matter of the original, and the judge in both stages are also personally to the proper parties, during the trial process is clear, the facts are clear, before and after is complete throughout.

Finally, Article 55 of the Interpretation of the Civil Procedure Law in China also clarifies that if one party dies, the litigation actions already taken by them are valid for the heirs who bear the litigation. Comply with the principle of litigation economy. For those who believe that they have deprived their successors of their full right to participate in the litigation, as eligible parties<sup>[7]</sup>, they can also attack and defend the facts of the case, and debate the legal relationship of the litigation subject matter. There will be relevant procedures to ensure this. Therefore, in the case of litigation, the litigation process should continue rather than restart.

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