

Empirical Analysis on the Validity of Unilateral Court Selection Agreements

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Abstract: The agreement stipulating that “disputes shall be subject to the jurisdiction of the people's court designated by XX” represents the outcome of party autonomy, with “the people's court designated by XX” constituting one method for parties to select a court of jurisdiction. Through this agreement, the parties grant XX the right to designate the People's Court. This arrangement does not violate the provisions of the Civil Procedure Law concerning statutory and exclusive jurisdiction, nor does it restrict or exclude the counterparty's right to select a court of jurisdiction. The following primary issues exist in determining the validity of unilateral court selection agreements in China: First, interpretations of “the people's court designated by XX” are overly confined to literal meanings. Second, courts sometimes issue surprise rulings when adjudicating the validity of unilateral court-selection agreements.

1. Introduction

Pursuant to Article 35 of the Civil Procedure Law of the People's Republic of China (2023 Amendment) (hereinafter referred to as the “Civil Procedure Law”), in disputes over property rights, parties may agree to select a court with a substantial connection to the dispute as the court of jurisdiction, provided that such agreement does not violate exclusive or hierarchical jurisdiction rules. While this provision establishes the basic framework for an agreed jurisdiction, it does not elaborate on the specific methods for parties to designate the court of jurisdiction. In practice, when parties agree that “the dispute shall be subject to the jurisdiction of a people's court designated by XX,” courts encounter multiple challenges in determining the validity of such agreements: First, whether “a people's court designated by XX” constitutes a valid method for parties to agree on a court of jurisdiction; second, whether a specific people's court can be identified from the phrase “a people's court designated by XX.”

Given these challenges, this paper undertakes a specialized empirical study on the validity determination of jurisdiction agreements stating “Disputes shall be subject to the jurisdiction of the people's court designated by XX.” Through in-depth analysis, this study aims to provide valuable insights for judicial practice in China and the revision of judicial interpretations under the newly amended Civil Procedure Law Interpretation, while further expanding the depth and breadth of

research on the validity assessment of jurisdiction agreements.

2. Data Collection and Statistics

2.1 Data Sources

Using keywords such as “designated people's court,” “designated court,” “designated court,” and “designated people's court,” the author conducted a full-text search in the “Peking University Law Database,” yielding 2,874 judicial documents. After screening out criminal, administrative, enforcement, and serial duplicate cases, 55 valid judicial documents involving 55 relevant cases were identified.[1]

2.2 Data Analysis

The analysis of the data yields the following conclusions:

(1) Validity Determinations for Jurisdiction Agreements

Observations indicate inconsistent judicial rulings regarding the validity of agreements stipulating “disputes shall be under the jurisdiction of the People's Court designated by XX.” Most cases invalidated such jurisdiction agreements, with the number of invalidated agreements significantly exceeding those deemed valid.

(2) Grounds for Invalidity of Such Agreements

In the 43 cases where courts invalidated jurisdiction agreements, the reasons varied, primarily including the following:

- Unclear designation of the court with jurisdiction
- Unclear designation of the place of contract performance
- Non-compliance with legal provisions

The most common reason was the unclear designation of the court with jurisdiction over the case. Although courts may use different phrasing—such as “failure to clearly designate a court of jurisdiction,” “failure to determine a court of jurisdiction,” “inability to identify a specific court of jurisdiction,” or “lack of exclusivity in the jurisdictional agreement”—this author consolidates these into the single category of “unclear designation of the court of jurisdiction.”[2]

3. Analysis of “The People's Court Designated by XX”

3.1 As a Method for Parties to Agree on Jurisdiction

Neither the law nor judicial interpretations prohibit specific methods for parties to select a court of jurisdiction. Therefore, based on the principle of party autonomy, parties may agree on jurisdiction either through mutual selection or by designating one party to make the selection.[3]

3.1.1 Joint Selection of the Court of Jurisdiction

Joint selection of the court of jurisdiction refers to parties mutually agreeing on the court to resolve disputes. Based on the degree of specificity in their selection, this primarily encompasses the following two scenarios.

(1) Explicit Selection of the Court of Jurisdiction

The explicit selection of the court of jurisdiction means that the parties mutually agree on the specific people's court to resolve disputes. Based on the degree of specificity in their selection, this primarily encompasses the following two scenarios:

(2) Implied Selection of Jurisdictional Court

Implied selection occurs when the parties do not explicitly name a court in the jurisdiction agreement, but their agreement or relevant circumstances reveal an implied intent regarding the court choice.

3.1.2 Unilateral Selection of Jurisdictional Court

The unilateral designation of a court of jurisdiction occurs when one party selects the court through mutual agreement with the other party. This essentially constitutes a form of bilateral designation and reflects the parties' autonomy of will. The selection of the court depends on the choice of the party exercising that right. Provided that the selection is specific and definite and does not violate the provisions of the Civil Procedure Law concerning jurisdictional hierarchy and exclusive jurisdiction, the court may recognize that the court of jurisdiction has been designated.[4]

3.2 Determining a Specific People's Court from “The People's Court Designated by XX”

Current law does not explicitly stipulate the timeframe for determining the court of jurisdiction under unilateral jurisdiction agreements. The author believes that extending this period appropriately until the conclusion of the first-instance trial proceedings is more appropriate. The rationale is as follows: First, when XX chooses to file a complaint with a specific people's court to initiate civil litigation, it can be deemed that they have exercised their implied right to choose the court. The time of filing the lawsuit with this specific people's court constitutes the time of determining the court of jurisdiction, rendering the jurisdictional agreement legally valid. Second, if a party files a lawsuit and the opposing party raises a jurisdictional objection during the period for submitting a defense, the rights holder may also establish the court of jurisdiction at this point by indicating their choice of a specific court in writing or orally. The jurisdictional agreement is deemed legally valid.

4. Issues in Determining the Validity of Unilateral Court Selection Agreements

Based on the analysis in Part II, Chinese courts primarily encounter the following issues when adjudicating cases involving the validity of jurisdiction agreements.

4.1 Inadequate Understanding of the Parties' Court Selection Agreement

This type of clause constitutes an agreement between the parties regarding the court of jurisdiction. Although the arrangement of rights and obligations may be unequal, it should be respected unless there is fraud, coercion, or other circumstances violating the parties' autonomy, or unless one party suffers significant substantive harm to their substantive rights or faces a risk of such harm. The principle of equality should not be simplistically interpreted as requiring a perfectly symmetrical relationship between the parties.

4.2 The interpretation of “the people's court designated by XX” is overly literal

“The people's court designated by XX” represents one method for parties to select a court with jurisdiction. However, China's laws, regulations, and judicial interpretations have yet to clarify whether courts may determine a specific people's court based on this wording. Based solely on the wording, courts cannot directly identify a specific court. However, through holistic interpretation—which involves “considering all contract clauses and institutional components as an integrated whole, comprehensively evaluating the interrelationships among clauses and sections, the relationship between the disputed clause and the entire contract, and its position within the

contract”—the meaning of the disputed clause should be determined.

4.3 Surprise Judgments

A surprise judgment refers to a ruling made “without affording the parties sufficient opportunity to exercise their rights of attack and defense as provided by procedural law.” It encompasses two types: 1. Surprise in Fact-Finding: “A surprise arising from inconsistencies between the factual basis of the judgment as understood by the parties and that as perceived by the court.” 2. Surprise in legal application means that “during adjudication, the judge fails to fulfill the duty to explain the applicable law, preventing the parties from fully stating their views on legal application.[5]

5. Recommendations for Improving the Validity Determination of Such Arbitration Agreements

To address these issues, improvements were proposed at the following two levels.

5.1 Judicial Level

5.1.1 Comprehensive Application of Interpretation Methods to Ascertain the Parties' True Intent

When interpreting and applying unilateral court selection agreements, Article 30 of the Interpretation of the Civil Procedure Law stipulates that if the court with jurisdiction can be determined based on the jurisdiction agreement at the time of filing, the agreement shall prevail; if not, jurisdiction shall be determined according to the relevant provisions of the Civil Procedure Law. However, this provision lacks both specificity and clarity. Perfection remains a relative state when drafting unilateral court selection agreements. Judges, parties, and other litigation participants should recognize the special nature of jurisdiction agreements and prioritize uncovering the parties' true intentions.

5.1.2 Strengthening Judges' Duty to Provide Explanations

“Providing explanations” refers to “the court's right and obligation to ask questions or urge parties to present evidence regarding factual and legal matters to clarify the litigation relationship.” In judicial practice, the judge's duty to provide explanations plays a particularly crucial role as an effective means of preventing surprise rulings.

Regarding the agreement type “Disputes shall be under the jurisdiction of the people's court designated by XX,” the designation of a specific people's court by XX is an indispensable component of the agreement's integrity. When XX fails to designate a specific people's court, to clarify the court intended by XX, the court should proactively inquire during the trial about the people's court XX wishes to designate. This clarifies the facts and avoids directly determining them based solely on the literal meaning of the agreement, thereby preventing surprises to the parties. Specifically, if XX designates a specific people's court, it shall be determined that the parties have selected a clear court of jurisdiction.

5.2 Legislative Level

The “principle of favoring validity” originates from the Roman legal maxim “It is better to make it valid than to make it invalid.” In the context of jurisdictional agreements, this principle manifests as selecting of the law that renders the arbitration agreement valid among multiple available

governing laws. Its purpose is to maximize the policy objective of “supporting litigation and conserving social resources.” China's current legislation has not explicitly codified the “principle of favoring validity.” Future applications of law to jurisdiction agreements in China could adopt the following provision: where a jurisdiction agreement designates a specific People's Court designated by a party, and that party either directly designates a specific court (including filing directly with a specific court) or supplements the designation after the court's legal clarification, the jurisdiction agreement shall be valid. Conversely, if a specific court is not designated before the conclusion of the first-instance trial, the jurisdictional agreement is invalid. Adding this provision would help unify judicial adjudication standards, respect parties' autonomy of will, clarify the boundaries of rights and obligations, enhance judicial efficiency, and prevent surprise rulings. This would promote the healthy development of the litigation system and enhance its credibility.[6]

References

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